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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4378 of 2022

Priyanka Tiwari D/o Surendra Kumar Tiwari Aged About 38 Years R/o 37/d, Behind Jain Mandir, Vidyut Nagar, Durg, District Durg Chhattisgarh.
... Petitioner

versus

- 1 - State Of Chhattisgarh Through The Secretary, School Education Department, Mantralaya Mahanadi Bhawan, New Raipur Chhattisgarh.
- 2 - The Collector, Kabirdham District Kabirdham Chhattisgarh.
- 3 - District Education Officer, Kabirdham, District Kabirdham Chhattisgarh.
- 4 - The Principal, Swami Atmanand Government English Medium School, Kawardha, District Kabirdham Chhattisgarh.
- 5 - The Secretary Vidyalay Sanchalan Samiti, Swami Atmanand Government English School, Kawardha, District Kabirdham Chhattisgarh.
- 6 - Smt. Sarita Kesharwani W/o Prakash Kumar Kesharwani R/o Kachheri Para, Ward No. 12, Kawardha, District Kabirdham Chhattisgarh.

... Respondent(s)

For Petitioner	:	Mr. P. R. Patankar, Advocate
For Respondent(s)	:	Mr. Vivek Siddharth Ojha, PL
For Respondent No.6	:	Mr. Govind Prasad Dewangan, Advocate

Hon'ble Shri Justice Sachin Singh Rajput
CAV Order

1. The petitioner has filed this writ petition seeking for the following reliefs.

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records from the respondent authorities whereby the order dated 10.06.22 (Annexure P-9) has been passed by the Secretary Vidyalaya Sanchalan Samiti, Swami Atmanand Government English School Kawardha for its kind perusal.

10.2 That, this Hon'ble Court may kindly be pleased to set-aside/quashed the order dated 10.06.22 (Annexure P-9) and the petitioner be allowed to continue as Librarian at Swami Atmanand Government English School Kawardha as she was duly appointed vide order dated 03.06.22.

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief to the petitioner, which this Hon'ble Court deems fit looking ton the facts and circumstances of the present case.”

2. Facts of the case in a nutshell is that the present petition challenges the order dated 10.06.2022 passed by the Secretary, Vidyalaya Sanchalan Samiti, Swami Atmanand Government English School, Kawardha whereby the petitioner's appointment as Librarian made vide order dated 03.06.2022 was cancelled on the basis of an objection submitted by Respondent No. 6, Smt. Savita Kesharwani on 10.06.2022. The last date for submission of objections was 18.05.2022, therefore, the objection was entertained after an unexplained delay of 23 days. It is further submitted that Respondent No. 6 had participated in the selection process, appeared in the interview and was placed at Serial No. 5 in the merit list. Having failed to secure appointment, she subsequently raised the objection which is impermissible in service jurisprudence. The cancellation of the petitioner's appointment on the basis of such a time-barred objection is arbitrary, indicative of mala fides and favoritism towards Respondent No. 6.
3. Written on behalf of the respondent has been filed.

4. It is submitted that respondent No. 6 has requested the other respondent authorities for issuance of the final selection list of Librarian on the basis of prescribed qualification. It has further been submitted that after considering all aspects of the matter and material available on record, the respondent authorities found that due to inadvertence, the merit list issued for the post of Librarian was prepared on the basis of the qualification of Class 12th and B.Lib. examination passed, whereas the same was to be issued on the basis of the qualification of Graduate plus B.Lib. examination passed as per rules, therefore, the appointment of the petitioner dated 03.06.2022 was cancelled. It has further been pleaded that as the earlier merit list was inadvertently issued, a decision was taken to issue a fresh advertisement in accordance with law.
5. Learned counsel for the petitioner submitted that after completion of the entire selection process on the basis of the advertisement issued, the petitioner was appointed to the post of Librarian. The respondent no. 6 much after the date of submission of objection on the merit list, made the objection which has been considered by the respondent authorities illegally for cancellation of the appointment of the petitioner. He further submits that on the basis of similar advertisement and qualification, the recruitment process has been carried out in other districts of Chhattisgarh such as Korba, Rajnandgaon, Marwahi, and Mungeli. It has further been submitted that the rules of the game cannot be changed during the recruitment process, however, in the present case, the petitioner has already been appointed and his appointment has been cancelled contrary to the conditions of the advertisement. He further submits that respondent No. 6 is a blue-eyed person of the respondent authorities and thus in order to extend benefit to her, the appointment of the petitioner was cancelled. He further submitted that before passing the impugned order, no

show-cause notice was given to the petitioner and the principle of natural justice has not been adhered to thus, on this score, the impugned order is liable to be set aside. He placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Abhay Kumar Patel and Ors. vs. State of Bihar and Ors.*** reported in **2026 LiveLaw (SC) 14**, and the case of ***K. Manjusree vs. State of Andhra Pradesh (2008) 3 SCC 512***, and ***Tej Prakash Pathak and Ors. vs. Rajasthan High Court and Anr., (2025) 2 SCC.***

6. Opposing the submissions, learned counsel for the respondents supports the impugned order. It is submitted that due to inadvertence in the advertisement for the post of Librarian, the essential qualification was mentioned as Higher Secondary and B.Lib. It has been further submitted that as per Clause 14, Sub-clause 6, it has been clearly mentioned that for preparation of the merit list, the marks of graduation will be taken into consideration. It is further submitted that the merit list was prepared considering the qualification of Higher Secondary and B.Lib. whereas it should have been prepared on the basis of marks obtained in Graduation and B.Lib. When the objection was raised by respondent No. 6 upon realisation of the mistake, the impugned order was passed and it was decided that a fresh advertisement be issued strictly in accordance with law. He further submits that no rule of the game was changed rather, the merit list was wrongly prepared which has been corrected. Once the selection process is tainted, the appointment of the petitioner was from inception void ab initio as it was based on a merit list prepared on wrong assessment of marks, therefore, the principles of natural justice are not required to be complied with as it would result in futility. Reliance is placed on the judgment passed by the Hon'ble Supreme Court in ***Renu vs. District and Sessions Judge, Tis Hazari and Anr., (2014) 14 SCC 50, Union of India***

vs. Raghuwar Pal Singh, (2018) 15 SCC 463, and Amrit Yadav vs. State of Jharkhand and Ors., (2025) AIR (SC) 1219.

7. I have given patient hearing to the learned counsel for the parties and perused the documents available on record meticulously and with utmost circumspection.
8. The controversy involved in the instant writ petition is with regard to the appointment of the petitioner on the post of Librarian on the strength of the advertisement Annexure P/3 dated 11.04.2022 by the office of Swami Atmanand Government School Sanchalak Samiti, Kawardha, District Kabirdham, Chhattisgarh. A perusal of the advertisement would indicate that for the advertised post of Librarian, Higher Secondary and B.Lib. are the mandatory qualifications. This advertisement also lays down certain conditions for recruitment which have also been enumerated therein. Sub-clause 6 of Clause 14 of the conditions so enumerated lays down the manner by which the final selection list of Librarian and Physical Trainer would be prepared. For ready reference, the same is quoted herein below:

“6. ग्रंथपाल एवं व्यायाम शिक्षक की अंतिम चयन सूची निम्नांकित आधार पर बनाई जावेगी।

(अ) शैक्षणिक योग्यता - ग्रंथपाल हेतु स्नातक में प्राप्तांकों का प्रतिशत का-40 प्रतिशत अंक एव बी. लिब. का 20 प्रतिशत अंक एवं व्यायाम शिक्षक हेतु हायर सेकेण्डरी में प्राप्तांकों का प्रतिशत का-40 प्रतिशत अंक एव 'बी.पी.एड. का 20 प्रतिशत अंक लिया जायेगा।”

9. A perusal of this condition also indicates that 40% marks of the total graduation marks and 20% marks of B.Lib. would be taken into consideration for preparation of the final select list. Thus, a reading of the above conditions makes it abundantly clear that for preparation of the select list, the marks obtained in Graduation and B.Lib. are to be considered and not the marks

obtained in Higher Secondary. Of course, in the advertisement, the minimum mandatory qualification for the post of Librarian is Higher Secondary and B.Lib., however, the manner of preparation of the select list and allotment of marks obtained in Graduation and B.Lib. has also been specifically narrated in Sub-clause 6 of Clause 14 of the conditions enumerated in the advertisement.

10. It appears that the merit list was prepared and issued and vide Annexure P/4 inviting objections to the list till 5:00 PM on 18.05.2022. Thereafter, five candidates from the merit list were called for interview after inviting objections and preparation of the merit list in which the petitioner was placed at Sr. No. 1 and respondent no. 6 was placed at Sr. No. 5 vide Annexure P/5. It appears that after the interview was conducted, a provisional list was prepared in which the petitioner was placed at Sr. No. 1 and respondent no. 6 was placed at Sr. No. 3. The petitioner obtained 74.71 marks and respondent no. 6 obtained 71.26 marks. Thereafter, the petitioner was given appointment to the post of Librarian vide order dated 03.06.2022 Annexure P/7. A perusal of the merit list prepared after considering the objections would indicate that the same was prepared by considering 40% of the marks obtained by the candidates in their Higher Secondary examination and 20% in B.Lib. along with 20 marks for experience. It appears that in compliance with the appointment order, the petitioner joined the said post and took charge on 08.06.2022 and later on his appointment order was cancelled vide Annexure P/9 dated 10.06.2022.
11. Shri Patankar submitted that for preparation of the merit list, the respective percentage of marks obtained in Higher Secondary and B.Lib. alone was to be considered as per the minimum mandatory qualification prescribed in the advertisement and the same pattern was also followed in other districts. He

submitted that as the entire exercise was undertaken in accordance with law and as per the advertisement, the subsequent cancellation of the appointment of the petitioner cannot be sustained. He also submitted that the objection was raised by respondent no. 6 much after the last date fixed for filing objections and, therefore, the respondent authorities erred in passing the impugned order. Unfortunately, this Court is not impressed with the said submission. As indicated in the preceding paragraphs, though the minimum mandatory qualification prescribed was Higher Secondary and B.Lib., the manner in which marks had to be allotted while preparing the final selection list was duly enumerated in Sub-clause 6 of Clause 14 of the advertisement. Had it been a case that only the marks of Higher Secondary and B.Lib. were to be considered for preparation of the final selection list, there would have been no occasion for incorporating such a condition in the advertisement. The submission with regard to change of the rules of the game after the process had begun is also misplaced. In fact, the preparation of the merit list was not in accordance with the manner prescribed in the advertisement. Thus, the case laws cited by Shri Patankar do not, in any manner, help his case.

12. Shri Patankar further submitted that the objections were raised by respondent No. 6 on 06.10.2022 after a lapse of 23 days from the last date prescribed for submission of objections and, therefore, the same could not have been entertained by the respondent authorities. Of course, the objection was raised by respondent no. 6 after the last date of its submission, however, if the procedure adopted by the respondent authorities for preparation of the merit list was contrary to the manner prescribed in the advertisement, the same could be corrected subsequently. The illegality committed by the respondent authorities cannot be allowed to perpetuate merely because the same was not

brought to their notice within the prescribed time. It is to be seen that the recruitment process is required to be fair, impartial, and in accordance with law and the conditions prescribed in the advertisement. When the respondents themselves have admitted their mistake, they should be permitted to rectify the same. The respondents found that the advertisement was issued inadvertently on the basis of the qualification of Class 12th and B.Lib. examination and, therefore, they decided to issue a fresh advertisement strictly in accordance with law resulting in the passing of the impugned order. It is a settled principle of law that the advertisement must specify the number of posts, qualifications, eligibility criteria, schedule and rules governing the criteria for selection, thereby preventing arbitrariness and favouritism as has been held by the Hon'ble Supreme Court in the case of Renu (**supra**) in Paragraph No. 16 held as under:

“16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.”

13. Thus, once the mistake has been realised by the respondent authorities, they must be given an opportunity to rectify the mistake by issuing a fresh advertisement in accordance with law. As this Court is of the opinion that the preparation of the merit list and selection of the petitioner on the basis of such

list were not in accordance with the manner prescribed in the advertisement, in order to meet the ends of justice, the mistake committed by the respondent authorities must be corrected even if a third-party right has been created. In this context, it would be apt to quote Paragraph 35 of the judgment in *Amrit Yadav (supra)*, which reads as under:

"35. Thus, it is clear that once the appointment process is declared to be a nullity in law, every action taken in furtherance of such appointment process is also illegal, and, therefore, the constitutional courts have jurisdiction to set aside such appointments wholly and ab-initio. This power of the Court is not curtailed even in a situation where a third-party right has been created in those who have been offered appointment or have even joined the service."

14. The next submission of Shri Patankar with regard to violation of the principles of natural justice has not been specifically taken in the grounds of the writ petition and was orally advanced. From a perusal of the records, it does not appear that before passing the impugned order, any show-cause notice was given to the petitioner. The facts reflect that the appointment order was issued on 03.06.2022, the petitioner joined on 08.06.2022 and the impugned order was passed on 10.06.2022. In the preceding paragraphs, this Court has held that the recruitment process was tainted with procedural irregularity. Even if a show-cause notice had been given to the petitioner, in light of the glaring discrepancies in the recruitment process carried out in contravention of the advertisement itself, it would have been merely an empty formality. It is not a case where the petitioner had secured the appointment in accordance with the manner prescribed in the advertisement. Thus, in light of the judgment in *Raghuwar Pal Singh (supra)*, wherein the Hon'ble Supreme Court has held

that “when the facts are admitted or the appointment is void ab initio, the principles of natural justice are not required to be complied with as it would result in futility,” the submission of Shri Patankar is negated.

15. As a result, the writ petition fails and is hereby **dismissed**.

Sd/-

(Sachin Singh Rajput)

Judge

H.Ansari