

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 1324 of 2009**

1. Smt. Usha Yadav, W/o Shri Anuplal Yadav, Assistant Teacher, Aged about 48 years, posted at Primary School Chikhali, District Rajnandgaon (CG)
2. Smt. Sarla Jain, W/o late Shri Amarchand Jain, Assistant Teacher, Aged about 45 years, posted at Primary School Chikhali, District - Rajnandgaon (C.G.)
3. Smt. Nirja Phadke, W/o Shri Rajesh Radke, Assistant Teacher, Aged about 41 years, posted at Primary School Chikhali, District - Rajnandgaon (C.G.)
4. Anand Shrivastava, S/o late Shri Tularam Shrivastava, Aged about 52 years, Assistant Teacher, Government Primary School, Chikhali, District Rajnandgaon (CG)
5. Ram Kumar Chaubey, S/o Shri Hiralal Chaubey, Aged about 48 years, Assistant Teacher, Primary School Thakurwela, District Rajnandgaon (CG)

---- Petitioners**Versus**

1. State of Chhattisgarh, Through – Secretary, Education Department, Department, Mantralaya, D.K.S. Bhawan, Raipur (CG)
2. District Education Officer, Rajnandgaon, District Rajnandgaon (C.G.)

---- Respondents**And****WPS No. 5100 of 2009**

1. Ranvijay Pratap Singh, S/o Shri R.N. Singh, aged about 46 years, Assistant Teacher, Posted at Government Multipurpose Higher Secondary School, Rajnandgaon (CG)
2. Shambhoo Nath Jha S/o Late Shri R.K. Jha, aged about 46 years, Assistant Teacher, Posted at Government Middle School, Nandai, Rajnandgaon, District Rajnandgaon (CG)
3. Poonamchand Buddhekar, S/o Late Shri Banaji, aged about 46 years, Assistant Teacher, Posted at Government Middle School, Mohad, Rajnandgaon, District Rajnandgaon (CG)
4. Rajendralal Yadav, S/o Shri Durga Prasad Yadav, aged about 49 years, Assistant Teacher, Posted at Government Sarveshwar Das Middle School, Rajnandgaon, District - Rajnandgaon (CG)

5. Sudesh Kumar Sharma, S/o Shri Shiv Kumar Sharma, aged about 45 years, Assistant Teacher, Posted at Government Middle School, Chikhli, Rajnandgaon, District – Rajnandgaon (CG)
6. Smt. Madhusheela Ram, W/o Shri Pradeep Ram, aged about 50 years, Assistant Teacher, Posted at Government Middle School, Basantpur, Rajnandgaon, District Rajnandgaon (CG)
7. Ashok Mehra, S/o Late Shri Birjhum Ram Mehra, aged about 44 years, Assistant Teacher, Posted at Government Middle School, Dhamansara, Rajnandgaon, District Rajnandgaon (CG)
8. Mohammed Hasan Siddiqui S/o Late Shri Sabir Siddiqui, aged about 48 years, Assistant Teacher, Posted at Maharani Laxmi Bai Girls Higher Secondary School, Rajnandgaon, District - Rajnandgaon (CG)
9. Rajendra Kumar Agrawal, S/o Late Shri Chhaganlal Agrawal, aged about 46 years, Assistant Teacher, Posted at Maharani Laxmi Bai Girls Higher Secondary School, Rajnandgaon, District - Rajnandgaon (CG)
10. Smt. Vijay Laxmi Shrivastava, W/o Shri Hemendra Kumar Shrivastava, aged about 44 years, Assistant Teacher, Posted at Sarveshwar Das Middle School, Rajnandgaon, District - Rajnandgaon (CG)
11. Ganesh Prasad Sharma, S/o Late Shri Vishnu Prasad Sharma, aged about 47 years, Assistant Teacher, Posted at Government Sarveshwar Das Middle School, Rajnandgaon, District - Rajnandgaon (CG)
12. Smt. Suman Soni, W/o Shri Naresh Soni, aged about 45 years, Assistant Teacher, Posted at Government Sarveshwar Das Middle School, Rajnandgaon, District - Rajnandgaon (CG)
13. Deepak Kumar Sinha, S/o Late Shri Jaimal Ram Sinha, aged about 50 years, Assistant Teacher, Posted at Sarveshwar Das Middle School, Rajnandgaon, District - Rajnandgaon (CG)
14. Smt. Uma Shrivastava, W/o Shri A.C. Shrivastava, aged about 50 years, Assistant Teacher, Posted at Urdu Middle School, Rajnandgaon, District - Rajnandgaon (CG)
15. Smt. Kanti Thakur, W/o Shri Bhupendra Thakur, aged about 45 years, Assistant Teacher, Posted at Government Middle School, Chikhli, Rajnandgaon, District – Rajnandgaon (CG)
16. Smt. Meera Tiwari, W/o Shri Pramod Sharma, aged about 45 years, Assistant Teacher, Posted at Government Middle School, Chikhli, Rajnandgaon, District – Rajnandgaon (CG)
17. Ramesh Bhojwani, S/o Late Shri Motumal Bhojwani, aged about 50 years, Assistant Teacher, Posted at Government High School, Kanharपुरी, District - Rajnandgaon (CG)
18. Smt. Deepika Thakur, W/o Shri Rakesh Thakur, aged about 45 years, Assistant Teacher, Posted at Pyarelal Middle School, Rajnandgaon, District - Rajnandgaon (CG)

---- Petitioners

Vs

1. State of Chhattisgarh, through the Secretary, School Education Department, Mantralaya, D.K.S. Bhawan, Raipur (CG)
2. District Education Officer Rajnandgaon, District - Rajnandgaon (CG)

---- Respondents

For Petitioners : Shri Anup Majumdar and Shri Atanu Ghosh, Advocates.
 For Respondents : Shri Y.S. Thakur, Deputy Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

18/06/2015

1. In these petitions under Article 226 of the Constitution of India, the petitioners, who are Assistant Teachers and are graduate in different subjects of Arts faculty and working in different schools in Rajnandgaon district have prayed for a direction to the respondents to consider the cases of the petitioners for promotion to the post of Upper Division Teacher (UDT) as per their seniority maintained in the gradation list of Assistant Teachers.
2. Shri Majumdar and Shri Ghosh, learned counsel for the petitioners would submit that recruitment and promotion to the posts of Assistant Teachers and Teachers in the Department of School Education are governed by the Chhattisgarh Non-Gazetted Class III Education Service (School Level Service) Recruitment and Promotion Rules, 2008 (henceforth 'the Rules, 2008') framed under Article 309 of the Constitution of India wherein Rule 13 deals with appointment by promotion and Rule 14 provides for conditions regarding eligibility for promotion. Rule 15 makes a provision for preparation of gradation list. Shri Majumdar would submit that there is no provision for maintaining separate gradation list of Assistant Teachers, who are graduate in Arts

and Science faculty, yet the Secretary, School Education has issued a communication on 6.9.2008 (Annexure-R/1) directing that after promulgation of the Rules, 2008, the remaining unfilled posts of UDT are to be filled up by promoting such teachers who are graduate in Science subjects. He would submit that because of this letter, the petitioners would be deprived of promotion throughout their career.

3. Shri YS Thakur, learned Deputy Advocate General would submit that the letter (Annexure-R/1) is only recommendatory and would in no way supersede the rules. He would submit that because of interim orders operative in these writ petitions, about 1500 posts of UDT are lying vacant in Rajnandgaon district and the department is facing difficulty in posting the teachers in primary and middle schools. He would submit that the State Government shall consider the cases of all eligible Assistant Teachers in accordance with the Rules, 2008 depending upon the availability of vacancies.
4. In his communication dated 24.2.2014 addressed to the Commissioner, Public Instructions, Chhattisgarh, the District Education Officer, Rajnandgaon has informed the State Government that there are 2689 posts of UDT in Rajnandgaon district, however, only 1490 UDTs are working. Thus 1199 posts are lying vacant. The Assistant Teachers in Arts subjects (Hindi, Sanskrit, Social Science and English) remaining to be promoted are 645, out of which 450 can be promoted on the vacant posts if the interim orders operative in these petitions are vacated. Similarly, Zila Panchayat, Rajnandgaon has informed the State Government on 22.8.2014 (Annexure-R/1 in WPS No.3327/2011) along with a chart, para-9 whereof states that out of available posts of UDTs, 625 can be filled up by promoting such Assistant Teachers who are Arts graduate.
5. Shri Majumdar, learned counsel for the petitioners has submitted that because of remark column written against Item No.2 of Schedule-II of the Rules also, an impression has been gathered by the Department that the vacant posts of UDTs shall be filled up by appointing Shiksha

Karmi Grade-II or Teacher (Panchayat).

6. Shri Thakur, learned Deputy Advocate General would submit that interpretation put-forth by Shri Majumdar, learned counsel for the petitioners about the remark column is not correct inasmuch as the vacant posts of UDTs shall be converted into the posts of Shiksha Karmi Grade-II/Teacher (Panchayat) only when the vacancies are notified to be filled up by the Panchayat Department. As long as eligible candidates are available in the School Education Department, such posts would not be made available to the Panchayat Department for filling up the same by recruiting Shiksha Karmi Grade-II or Teacher (Panchayat).
7. In view of the submission made by learned Deputy Advocate General and in view of the provisions contained in the Rules, 2008, the available vacancy of UDT has to be filled up in accordance with seniority of Assistant Teachers for which gradation list is to be prepared under Rule 15. The direction issued by the Secretary vide Annexure-R/1 runs contrary to the Rules. Promotion on the post of UDT has to be undertaken by the respondent authorities in the School Education Department of Rajnandgaon district strictly in accordance with the provisions of the Rules, 2008 on the basis of gradation list of Assistant Teachers maintained in the district. It is ordered accordingly.
8. With the above observations, the writ petitions stand disposed of.

J U D G E

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