

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 200 of 2014

1. State Of Chhattisgarh Through Its Secretary Government Of C.G. Department Of Higher Education D.K.S. Bhawan, Mantralaya, Distt. Raipur C.G.
2. The Joint Director Directorate Of Higher Education, Govt. Science College Premises, Raipur Po, Raipur Distt., C.G. State. Pin 492010
3. The Principal Government Dr. B.S. Porte College Pandra, Civil & Revenue Distt. Bilaspur C.G.

---- Appellants

Versus

Shyam Singh Sidar S/o Late Shri Jaipal Singh Aged About 20 Years R/o Village Post Bardora, Adhwar, Tehsil Shakti Civil & Revenue Distt. Janjgir Champa C.G.

---- Respondent

For Appellants:	Shri Prafull N. Bharat, Additional Advocate General.
For Respondent:	Shri Vinod Deshmukh, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

06/08/2015

1. The present appeal arises from order dated 14.2.2013 allowing Writ Petition No.1425/2004. The Learned Single Judge set aside the order of termination regarding the Respondent dated 16.10.2003.
2. Learned Additional Advocate General in support of the appeal submits that a special drive was conducted to fill up backlog vacancies in the reserved category existing between 1.11.2000 to 30.6.2003. The Respondent was appointed against a backlog vacancy of 1.3.2000 on

19.8.2003 thereby suggesting that his appointment was not against a backlog vacancy for the specific period. Since the Respondent was appointed against a backlog vacancy of 1.3.2000, his appointment needed approval under Clause-II of the circular dated 4.7.2003. In absence of an actual final sanction by creation of a supernumary post, the Learned Single Judge erroneously presumed sanction in absence of proper assistance.

3. Learned Counsel for the Respondent submits that the present is not a case of an illegal appointment. At best, it may be classified as an irregular appointment where irregularity is curable. The Respondent published an advertisement. The candidates had to appear before the Selection Committee and then only the appointment was made on the post of Peon. It was next submitted that once the Respondent had been appointed in accordance with a selection process, even if he was on probation, his services could not have been dispensed with in the manner done by a completely non-speaking and cryptic order and that too without an opportunity to defend the appointment.

4. We have considered the submissions on behalf of the parties.

5. The pleadings in the Writ Petition are cryptic. The counter affidavit also is of no help as it falls in the same category. Collectively deciphered from the pleadings placed by both sides, it appears that there existed backlog vacancies in the reserved category. A special drive was carried out for filling up the same. The order dated 18.7.2003 of the Principal, Government College makes it apparent that an advertisement to fill up the backlog vacancies was published on 22.6.2003 and the corrigendum on

6.7.2003. The Respondent applied pursuant to the same, appeared before the Selection Committee, was kept in the waiting list and then asked to appear on 11.8.2003 for examination of his original papers after which, appointment was granted on 19.8.2003.

6. It is therefore apparent that the Respondent was not an illegal appointee through the back door but that the appointment was made in pursuance of a procedure in compliance with Article 14 of the Constitution.

7. The next question for our consideration is that if the appointment of the Respondent was against a backlog vacancy prior to 1.11.2000 or against a backlog vacancy for the period 1.11.2000 to 30.6.2003. The advertisement dated 22.6.2003/6.7.2003 has not been brought on record by either parties. It may be presumed that the advertisement must have been published with regard to existing backlog vacancies in the reserved category which was required to be filled in by a special drive. The advertisement was published on 22.6.2003 and the corrigendum on 6.7.2003. We are at loss to understand how the Government notification dated 4.7.2003, either after the first advertisement or two days prior to the corrigendum can now decide, in the peculiar facts of the present case, whether the Respondent was appointed against a backlog vacancy between 1.11.2000 up to 30.6.2003 or prior to the former date.

8. The Respondent came to this Court aggrieved that his appointment made in accordance with law has been arbitrarily terminated. The Appellants contended that the appointment itself was illegal. The onus therefore lay on the Respondent to satisfy the Court on the illegality.

Without prejudice to all of the above, the Learned Single Judge has also noticed that the Appellants never came forth with any case that financial department had refused to grant approval to the appointment of the Respondent, assuming for the sake of argument that the appointment was for a vacancy prior to the period 1.11.2000 to 30.6.2003.

9. The Respondent was appointed on a Class-IV post of Peon. The present was not a rank illegal appointment. He remained out of service from 19.8.2003 till reinstatement was ordered on 14.2.2013. The travails of a Class-IV employee, ousted from service, but still persevering in defending the appointment has to be appreciated. The appointment was a question of bread and butter for him and his family. Once we have arrived at the conclusion that the appointment was not a rank illegality and the Appellants have failed to place any material that the Respondent was appointed against a backlog vacancy prior to 1.11.2000, we do not find any reason to interfere with the order under appeal.

10. The next grievance is with regard to arrears of salary after reinstatement. Learned Additional Advocate General rightly submits that directions may be given to represent and for the authorities to examine the same and act in accordance with law.

11. The appeal is dismissed.

Sd/-
(Navin Shiha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE