

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.97 of 2015

1. Smt. Madhu Sahu, W/o Shri Suresh Kumar Sahu, aged about 25 years, R/o Village Misda, Tehsil Navagarh, District Janjgir-Champa (C.G.)
2. Pramod Bairagi, S/o Shri Naveen Das, aged about 34 years, R/o Aurda, Tehsil Purnaur, District Raigarh (C.G.)
3. Tilak Ram Mahant, S/o Shri Kanhaiya Das Mahant, aged about 30 years, R/o Village Durnarpali, Post Patelpali, Tehsil Purnaur, District Raigarh (C.G.)
4. Amrita Mahada, D/o Shri Krishnachand Mahada, aged about 22 years, R/o Village Purnaur, Tehsil Purnaur, District Raigarh (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat & Rural Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, Distt. Raipur (C.G.)
2. Director, Directorate of Panchayat and Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
3. Janpad Panchayat Baramkela, through the Chief Executive Officer, Janpad Panchayat Baramkela, Baramkela, District Raigarh (C.G.)
4. Chief Executive Officer, Janpad Panchayat Baramkela, Baramkela, District Raigarh (C.G.)

---- Respondents

Writ Petition (S) No.103 of 2015

1. Kamleshwar Patel, S/o Shri Rudranarayan Patel, aged about 24 years, R/o Village Kabaripali, Post Kotmi, Tehsil Dabra, District Janjgir-Champa (C.G.)
2. Durgesh Nishad, S/o Shri Bhagirathi Nishad, aged about 25 years, R/o Bachood, Tehsil Dabra, District Janjgir-Champa (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, Distt. Raipur (C.G.)
2. Director, Directorate of Panchayat and Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (C.G.)
3. Janpad Panchayat Korba, through the Chief Executive Officer, Janpad Panchayat Korba, Korba, Distt. Korba (C.G.)
4. Chief Executive Officer, Janpad Panchayat Korba, Korba, Distt. Korba (C.G.)

---- Respondents

AND

Writ Petition (S) No.104 of 2015

1. Mukesh Gupta, S/o Shri Krishna Gupta, aged about 24 years, R/o Post Baradoli, Tehsil Pusoor, Distt. Raigarh (C.G.)
2. Shekhar Dadsena, S/o Shri Bhesh Kumar Dadsena, aged about 23 years, R/o Village Basanpali, Post Sonaka, Tehsil Kharsiya, Distt. Raigarh (C.G.)
3. Rupendra Sahu, S/o Shri Hetram Sahu, aged about 25 years, R/o Village Bhedikona, Post Nariyara, Tehsil Malkharaunda, Distt. Janjgir-Champa (C.G.)
4. Chandrakant Patel, S/o Shri Krishna Kumar Patel, aged about 23 years, R/o Shalhe, Tehsil Dabhra, Distt. Janjgir-Champa (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, Distt. Raipur (C.G.)
2. Director, Directorate of Panchayat and Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (C.G.)

3. Janpad Panchayat Sarangarh, through the Chief Executive Officer, Janpad Panchayat Sarangarh, Sarangarh, Distt. Raigarh (C.G.)
4. Chief Executive Officer, Janpad Panchayat Sarangarh, Sarangarh, Distt. Raigarh (C.G.)

---- Respondents

For Petitioners: Mr. Amrito Das, Advocate.

For State: Mr. Y.S. Thakur, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/11/2015

1. Following twin questions which arise for consideration in this batch of writ petitions are as follows: -
 1. Whether the candidates declared successful in the selection process acquire any indefeasible right to get appointed against the available vacancy?
 2. Whether the policy decision of the Government to suspend the recruitment process for the time being is unjust and arbitrary?
2. Since common question of law and fact is involved in the above three writ petitions, they are being disposed of by this common order.
3. The Department of Panchayat and Rural Development on 25-4-2014 took a policy decision that selection / appointment to the posts of Teacher (Panchayat) and Assistant Teacher (Panchayat) be postponed until further

orders considering the teacher-student ratio and holding sufficient number of teachers have already been appointed in the schools. The respondent Panchayats in compliance of the order dated 25-4-2014 have stayed the selection process against which these writ petitions have been filed by the petitioners / selected candidates seeking a writ that the order dated 25-4-2014 issued by the State Government staying the process of selection / appointment be quashed being arbitrary and the respondent authority be directed to conclude the selection process initiated pursuant to the advertisement on the post of Assistant Teacher (Panchayat).

4. The respondent State has filed return opposing the writ petitions defending the order of the State Government that sufficient number of teachers have been appointed for Primary and Middle Schools of the State as the ratio of teacher-student is at present 1:19, if further appointments are made it will cross the ratio of teacher-student i.e. 1:23, thus the policy decision of the Government not to make recruitment for the time being is a considered policy decision based on material available on record. The petitioners being selected candidates have no indefeasible right to claim appointment and, therefore, the writ petitions deserve to be dismissed.

5. Mr. Amrito Das, learned counsel for the petitioners, would submit that though the petitioners have no indefeasible right to be appointed, but the decision on the part of the Government to stay the recruitment process before completion of the process is based on mala fide and apart from being arbitrary, based on no reasons and, therefore, it is liable to be quashed.
6. Mr. Y.S. Thakur, learned Deputy Advocate General appearing on behalf of the State, would submit that the petitioners, who are candidates included in the merit list, have no indefeasible right to be appointed even if the vacancy exists and the decision of the State Government not to make recruitment at this stage, is bona fide and based on reasons and, therefore, the writ petitions deserve to be dismissed.
7. I have heard learned counsel for the parties and considered their rival submissions and gone through the record with utmost circumspection.
8. The law with regard to selectees' right to appointment is neither in doubt nor in dispute. It is well settled that the candidate included in merit list has no indefeasible right to appointment even if a vacancy exists, but the notification merely amounts to an invitation to qualified candidates to apply for recruitment.

9. Way back in the year 1991, the Constitution Bench of the Supreme Court in the matter of **Shankarsan Dash v. Union of India**¹ has held in no uncertain terms that the selectees have no indefeasible right to appointment even if vacancy exists and held in paragraph seven as under: -

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*², *Neelima Shangla v. State of Haryana*³ or *Jatendra Kumar v. State of Punjab*⁴.”

10. Thereafter, in the matter of **Punjab State Electricity Board and others v. Malkiat Singh**⁵, it has been held that mere inclusion of name of a candidate in the select list

1 (1991) 3 SCC 47

2 (1974) 3 SCC 220

3 (1986) 4 SCC 268

4 (1985) 1 SCC 122

5 (2005) 9 SCC 22

does not confer on him any vested right to get an appointment. Paragraph 4 of the report states as under: -

“4. Having considered the respective submissions made by the learned counsel for the parties, we are of the view that the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in [Shankarsan Dash v. Union of India](#) [(1991) 3 SCC 47] which reads:-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in [State of Haryana v. Subhash Chander Marwaha](#) {(1974) 3 SCC 220 : 1973

SCC (L&S) 488 : (1974) 1 SCR 165}, [Neelima Shangla v. State of Haryana](#) {(1986) 4 SCC 268 : 1986 SCC (L&S) 759}, or Jatendra Kumar v. State of Punjab {(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899}.””

11. Similarly, in the matter of **Union of India and others v.**

Kali Dass Batish and another⁶, the decision of

Shankarsan Dash (supra) was followed and it has been

held in paragraph 16 as under: -

“16. In Punjab SEB v. Malkiat Singh, (2005) 9 SCC 22, this Court reiterated (SCC p.26, para 4) the observations of the Constitution Bench of this Court in Shankarsan Dash v. Union of India, (1991) 3 SCC 47, (SCC pp.50-51, para 7) as under: -

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions

6 (2006) 1 SCC 779

in [State of Haryana v. Subhash Chander Marwaha](#) {(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165}, [Neelima Shangla v. State of Haryana](#) {(1986) 4 SCC 268 : 1986 SCC (L&S) 759}, or [Jatendra Kumar v. State of Punjab](#) {(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899}.””

12. In a decision reported in the matter of **Director, SCTI for Medical Science & Technology and another v. M. Pushkaran**⁷, it has been held that the selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State, by observing as under in para 11: -

“11. The law operating in the field in this behalf is neither in doubt nor in dispute. Only because the name of a person appears in the select list, the same by itself may not be a ground for offering him an appointment. A person in the select list does not have any legal right in this behalf. The selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State. We may notice some of the precedents operating in the field.”

13. Recently, in the matter of **State of Orissa and another v. Rajkishore Nanda and others**⁸, the Constitution Bench decision of the Supreme Court in **Shankarsan Dash** (supra) has been followed with approval and it has been held as under in paragraphs 14 and 15 as under: -

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of

⁷ (2008) 1 SCC 448

⁸ (2010) 6 SCC 777

appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15. A Constitution Bench of this Court in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612, held that *appearance of the name of a candidate in the select list does not give him a right of appointment*. Mere inclusion of the candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (See also *Asha Kaul v. State of J&K*, (1993) 2 SCC 573; *Union of India v. S.S. Uppal*, AIR 1996 SC 2340; *Bihar Public Service Commission v. State of Bihar*, AIR 1997 SC 2280; *Simanchal Panda v. State of Orissa*, (2002) 2 SCC 669; *Punjab State Electricity Board v. Malkiat Singh*, (2005) 9 SCC 22; *Union of India vs. Kali Dass Batish*, AIR 2006 SC 789; *Divisional Forest Officer v. M. Ramalinga Reddy*, AIR 2007 SC 2226; *Subha B. Nair v. State of Kerala*, (2008) 7 SCC 210; *Mukul Saikia v. State of Assam*, (2009) 1 SCC 386; and *S.S. Balu v. State of Kerala*, (2009) 2 SCC 479)."

14. Very recently, in the matter of **Vijoy Kumar Pandey v. Arvind Kumar Rai and Ors.**⁹, again the Supreme Court has considered the Constitution Bench decision of **Shankarsan Dash** (supra).

15. Thus, the question involved in the present writ petitions has been considered by the Supreme Court in number of occasions clearly holding that a person whose name appears in the select list does not acquire any indefeasible right of appointment and empanelment at the best is a

9 AIR 2013 SC 2202

condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. Vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. Thus, in the present case, the petitioners, though have been selected, have no indefeasible right to be appointed for which they have been selected.

16. Now, the question is whether the decision of the Government not to continue with the appointment on the subject post is justified or such an order has been passed arbitrarily without giving proper justification.

17. The aforesaid question came to be considered by the Supreme Court in the matter of **East Coast Railway and another v. Mahadev Appa Rao and others**¹⁰ in which Their Lordships of the Supreme Court have said that though a candidate who has passed an examination or whose name appears in select list does not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can selection test be cancelled without giving proper justification and Court can give appropriate directions where decision is found to be arbitrary, and it has been observed as under: -

¹⁰“14. It is evident from the above that while no

10 (2010) 7 SCC 678

candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

15. To the same effect is the decision of this Court in [UT of Chandigarh v. Dilbagh Singh](#), (1993) 1 SCC 154, where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a malafide manner. That was also a case where the selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a "dubious selection".

16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the

candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner.

17. It is trite that [Article 14](#) of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.”

18. Applying the law laid down by Their Lordships of the Supreme Court, coming to the facts of the case, it is quite evident that the Government has taken a policy decision on 25-4-2014 in which it has clearly been recorded that in the State of Chhattisgarh, the teacher-student ratio in Primary and Middle Schools is 1:23 and if regular teachers are also included, the ratio would become 1:19, as such, sufficient number of teachers have already been appointed and, therefore, further appointment to be made on the post of Teacher (Panchayat) and Assistant Teacher (Panchayat) is stayed until further orders.

19. The decision of the Government not to hold further recruitment looking to the teacher-student ratio and for the satisfaction recorded in the order dated 25-4-2014 cannot be said to be arbitrary, as such a decision has been taken

as a policy decision of the Government after due application of mind assigning reasons.

20. It is well settled law that the policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. (See **Director, Lift Irrigation Corporation Ltd. and others v. Pravat Kiran Mohanty and others**¹¹ and **Union of India and others v. S.L. Dutta and others**¹².)

21. A coordinate Bench of this Court in W.P.(S)No.1113/2015 (Tiku Ram Verma v. State of Chhattisgarh and others) decided on 7-9-2015 dealing with similar issue has already held that the State Government having taken a policy decision not to appoint teachers in the Department of Panchayat and in the Department of Urban Administration and Development, a writ of mandamus cannot be issued, and observed as under in paragraph 6:

“Moreover, the State Government having taken a policy decision not to appoint teachers in the department of Panchayat and in the department of Urban Administration and Development, this Court cannot ignore the said policy decision to issue a writ of mandamus.”

22. Thus, the writ petitions as framed and filed challenging the policy decision of the Government to direct to conclude the recruitment already initiated cannot be accepted and as

11 (1991) 2 SCC 295

12 (1991) 1 SCC 505

such, all the three writ petitions deserve to be and are accordingly, dismissed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.97 of 2015

Smt. Madhu Sahu and others

- Versus -

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State of Chhattisgarh and others

and other two connected matters

HEAD NOTE

Decision of State Government not to recruit Teachers (Panchayat) is a policy decision, cannot be interfered with in absence of arbitrariness and perversity.

शिक्षकों (पंचायत) की नियुक्ति नहीं करने का राज्य सरकार का निर्णय नीति निर्णय है, मनमानापन और दुराग्रह के आभाव में इसमें हस्तक्षेप नहीं किया जा सकता।