

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2587 of 2015

- Kailash Chandra Devdas S/o Late Balad Ram Devdas Aged About 44 Years R/o Village Sonakhan, P.S. Kasdol, Tahsil Kasdol District Baloda Bazar- Bhatapara, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Panchayat And Rural Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S. Rakhi, Tahsil Aarang, District Raipur, Chhattisgarh
2. Chief Executive Officer, Jila Panchayat Raipur, District Raipur, (Chhattisgarh)
3. Chief Executive Officer, Janpad Panchayat Kasdol, District Balodabazar- Bhatapara, Chhattisgarh

---- Respondent

And

WPS No. 2593 Of 2015

- Hemdas Manikpuri S/o Anupdas Manikpuri Aged About 42 Years R/o Village Sukhli, P.S. Bilaigarh District Balodabazar Bhatapara (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary Department Of Panchayat And Rural Development, Mahandi Bhawan, Mantralyaa, Naya Raipur , P.S. Rakhi, Tahsil Aarang District Raipur Chhattisgarh
2. Chief Executive Officer Jila Panchayat Raipur, District Raipur Chhattisgarh
3. Chief Executive Officer Janpad Panchayat Kasdol District Baloda Bazar Bhatapara Chhattisgarh

---- Respondent

And

WPS No. 2588 Of 2015

- Dwarika Prasad Sahu S/o Late Phirtu Ram Sahu Aged About 45 Years
R/o Village & P.O. Bareli, P.S. Gidhauri, Tahsil Kasdol District
Balodabazar- Bhatapara (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary Department Of Panchayat And
Rural Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S.
Rakhi, Tahsil Aarang, District Raipur (Chhattisgarh)
2. Chief Executive Officer, Jila Panchayat Raipur, District Raipur
(Chhattisgarh)
3. Chief Executive Officer, Janpad Panchayat Kasdol District
Balodabazar- Bhatapara (Chhattisgarh)

---- Respondent

For Petitioners : Shri Alok Bakshi, Advocate.
For Respondent/State : Shri Sangharsh Pandey, Deputy GA.
For Respondents 2 & 3 : Shri YS Thakur, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on : 29/09/2015

1. In these three writ petitions, the petitioners have called in question the
legality and validity of the impugned order dated 22.6.2015 passed by
the Chief Executive Officer, Janpad Panchayat, Kasdol, canceling the
petitioners' appointment on the post of Shiksha Karmi Grade-III, now
re-designated as Assistant Teacher (Panchayat).

2. Facts of the case, briefly stated, are that the petitioners were appointed as Guruji in the year 1997 under the Education Guarantee Scheme (EGS). They continued on the post till March, 2000 when upon closure of the said scheme, their services were discontinued. In WP No.1731/2005 {Chhattisgarh Rajya Panchayat Vaikalpik Shikshak Sangh & Others Vs. The State of CG & Ors}, decided on 11th August, 2010, Chhattisgarh Rajya Panchayat Vaikalpik Shikshak Sangh prayed for a direction to the respondent/State for cognizing the merits of the teachers appointed under the Non-Formal Education Scheme in terms of their experience and specialized training by awarding 20 marks as bonus in the process of selection of Shiksha Karmis at the time of prescribing eligibility of desirable candidates to be called for interview in requirement of Rule 5 of the Shiksha Karmi Recruitment Rules, 1997 by incorporating the amendment therein. In the said matter, this Court made the following observations in paras-5 & 6:-

“5. Before entering into the merits of the case, we have been informed by Mr. Bhaduri, learned Additional Advocate General for the State that on the representation of the concerned persons, the Hon'ble Chief Minister has referred the matter with a direction to consider the matter according to the provisions prevailing in the State of Madhya Pradesh in respect of appointment of contract teachers. In pursuance to that the Under Secretary, School Education Department, Govt. of Chhattisgarh has written a vide letter bearing No.F1-160/2009/20-Ek Raipur dated 6.7.2010 to the Additional Chief Secretary, Govt. of C.G., Department of Panchayat and Rural Development and in which it has been mentioned that directions have been issued by the Chief Minister on the proposal of the Directorate of Public Education and order passed by the

Government of Madhya Pradesh dated 05.10.2009 regarding appointment of the Instructors and Supervisors on the post of contract teacher on the similar lines. Along with said letter, the Under Secretary has also sent the copy of letter dated 11.6.2010 received from the Directorate of Public Education, Madhya Pradesh for necessary action.

6. In view of above, we expect that a quick decision will be taken and therefore, without any comments, we dispose of this writ petition with a direction to the State Government to take decision as expeditiously as possible latest by 31st December, 2010, subject to moving application for extension, if required, giving reasons for the same.”

3. Several other persons like Pannalal Bharti (WP No.3677/2005) and M.K. Patel (WPS No.6668/2010) also preferred writ petitions which were disposed of in terms of the order passed in the Chhattisgarh Rajya Panchayat Vaikalpik Shikshak Sangh, referred to above.
4. Pannalal Bharti, petitioner of WP No.3677/2005 was appointed as Shiksha Karmi Grade-III on 3.11.2011. The petitioners also preferred similar writ petition bearing WPS No.2752/2013 which was also disposed of in same terms on 11.9.2013.
5. On receipt of the order, the CEO, Janpad Panchayat, Kasdol sought guidance from the CEO, Zila Panchayat, Raipur. The Joint Director, Panchayat, Directorate of Panchayat, Chhattisgarh directed the CEO, Zila Panchayat to act in accordance with the direction issued by this Court. Thereafter the petitioners were appointed as Assistant Teacher (Panchayat) vide order dated 15.6.2015. However, in about a week's time, the said order has been cancelled by the impugned order.

6. Learned counsel for the petitioners would submit that since similarly placed persons were earlier appointed, the petitioners could not have been removed from the post by canceling the appointment order. It is also argued that the State Government had taken a policy decision on 29.9.2003 for upgradation of the Education Guarantee Scheme centres and thereafter all eligible Gurujis were made contract teachers Grade-III. Thereafter they were appointed as Shiksha Karmi Grade-III, now redesignated as Assistant Teacher (Panchayat). Therefore, the petitioners' appointment was not illegal.
7. Per contra, learned State Counsel would submit that the petitioners were appointed dehors the recruitment rules, without subjecting them to any recruitment process, therefore, the appointment was *void ab initio*.
8. Perusal of the papers annexed with the writ petition would reveal that with upgradation of the EGS centres, eligible Gurujis were appointed on the post of contract teachers and thereafter all those who were working as contract teachers were absorbed as Shiksha Karmi Grade-III. The State Government has never taken any policy decision to appoint Guruji as Shiksha Karmi Grade-III or Assistant Teacher (Panchayat). In the matter of Chhattisgarh Rajya Panchayat Vaikalpik Shikshak Sangh, referred to above, or in subsequent orders passed in different writ petitions in terms of Chhattisgarh Rajya Panchayat Vaikalpik Shikshak Sangh, referred to above, this Court has never issued any such direction for appointment of Guruji as Shiksha Karmi Grade-III or Assistant

Teacher (Panchayat). In absence of any such policy decision, the petitioners could not have been appointed on the post without requiring them to undergo recruitment process on advertisement of the post.

9. In **Renu and others Vs. District and Sessions Judge, Tis Hazari Courts, Delhi and another**¹, it has been laid down thus:-

“10. In *Suresh Kumar v. State of Haryana*² this Court upheld the judgment of the Punjab and Haryana High Court wherein **1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. **The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.****

11. In *UPSC v. Girish Jayanti Lal Vaghela*³ this Court held: (SCC p. 490, para 12)

“12. ... The appointment to any post under the State can *only be made after a proper advertisement* has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made ... **Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.”**

(emphasis supplied)

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in

1 (2014) 14 SCC 50

2 (2003) 10 SCC 276

3 (2006) 2 SCC 482

*M.P. State Coop. Bank Ltd. v. Nanuram Yadav*⁴ as under: (SCC pp. 274-75, para 24)

“(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

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.

26. In *Binod Kumar Gupta v. Ram Ashray Mahoto*⁵ this Court did not accept the contention that appointment could be made to Class IV post in subordinate courts under the Civil Court Rules without advertisement in the newspapers inviting applications for the posts as that would lead to *lack of transparency* and violation of the provisions of Article 16 of the Constitution. The Court terminated the services of such appointees who had worked even for 15 years observing that the Court otherwise “would be guilty of condoning a gross irregularity in their initial appointment”.

10. The petitioners are also claiming parity with one Pannalal Bharti, who was appointed as Shiksha Karmi Grade-III in similar manner. In this regard, suffice it would be to state that law does not recognise negative equality, therefore, if any other person has wrongly been appointed, the same would not furnish a ground to seek parity, as the same amounts to perpetuating the illegality.

11. In respect of negative equality, the Supreme Court in **Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer**⁶, has held thus:-

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be

⁵ (2005) 4 SCC 209

⁶ AIR 2014 SC 746

enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.”

12.It is also to be seen that recruitment on the post of Assistant Teacher (Panchayat) is governed under the Chhattisgarh Shikshak (Nagariya Nikay) Samvarg (Recruitment and Conditions of Service) Rules, 2013. There is no provision in the said rules for direct appointment of Gurujis who were working under the EGS scheme. Even as per the communication (Annexure-P/11), Gurujis were required to be appointed as contract teachers in the year 2003 itself and thereafter they were absorbed as Shiksha Karmi. Admittedly, the petitioners were never appointed as contract teachers, therefore, there was no occasion for considering their cases for absorption as Assistant Teacher (Panchayat). In absence of any direction by this Court for petitioners' appointment or any policy decision by the State Government to that effect, the petitioners' appointment was illegal and void from inception, therefore, the respondent Janpad Panchayat has not committed any illegality in canceling the appointment.

13.Before parting, this Court deems it appropriate to observe that there is growing tendency amongst the litigants to obtain an order for deciding

the representation, even in dead and stale matters and thereafter to prevail upon the authorities to pass such orders which were never directed by the Court. It is high time, this Court should deal with such officers who deliberately misconstrued the orders passed by the High Court for granting such undeserving benefits which were not at all directed by the Court. Since in the present case, the officer who had granted appointment has himself cancelled the same, this Court would refrain itself from directing any enquiry.

14. For the forgoing, the writ petitions deserve to be and are hereby dismissed. However, it is expected of the State and its authorities to desist from giving undue benefit to the persons by wrongly quoting or interpreting the orders passed by the High Court wherein no such relief has been made admissible to them.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve