

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 423 of 2015**

Tej Kumar Patel S/o Shri Ramlal Patel, Aged About 37 (35) Years, R/o Village Remda Tukda, Police Station Basna, Tahsil Pithoura, P.O. Salhe Tarai, Revenue And Civil District Mahasamund (Chhattisgarh)

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat, Mahanadi Building, Mantralaya, New Raipur, Post New Raipur, Police Station Rakhi, Tahsil And District Raipur (Chhattisgarh)
2. The Chief Executive Officer, Janpad Panchayat Pithoura, Civil And Revenue District Mahasamund (Chhattisgarh)

-----Respondents

For Appellant:	Shri PKC Tiwari, Senior Advocate along with Shri Shashi Bhushan Tiwari, Advocate.
For Respondents/State:	Shri UNS Deo, Government Advocate.

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

Judgment on Board**Per Navin Sinha, Chief Justice****3/11/2015**

1. The present appeal arises from order dated 24.7.2015 dismissing Writ Petition (S) No.2882 of 2013 seeking mandamus for enforcement of order dated 10.9.2010 by the Additional Collector, Mahasamund, for appointment of the Appellant as Shiksha Karmi Grade-III (Assistant Teacher (Panchayat), after closure of the Education Guarantee Scheme.

2. Learned Senior Counsel for the Appellant submitted that, the Appellant Petitioner had worked as Guruji from 1.7.1997 to 5.9.1998 under the Education Guarantee Scheme before its abolition. Having passed Higher Secondary he was eligible to be considered for absorption/appointment as Shiksha Karmi Grade-III in accordance with the Government scheme. Writ

Petition No. 6127 of 1998 was filed earlier when consideration was denied. The writ petition was disposed on 7.5.2008 with liberty to file representation. The Janpad Panchayat considered the representation on 19.6.2008 and resolved to appoint him. The appointment still remained elusive compelling him to move the Additional Collector. The latter on 10.9.2010, directed his appointment. Non-compliance with the same prompted the writ petition in question. The Learned Single Judge erred in holding that the Appellant was not Higher Secondary pass and thus ineligible for appointment as Shiksha Karmi Grade-III. The Janpad Panchayat being the appointing authority, the Learned Single Judge erred in holding that the Additional Collector was not the competent authority under the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 2007. The Appellant had moved the Additional Collector for enforcement of the order of the Janpad Panchayat only.

3. Learned Counsel for the State opposing the appeal submitted that the order calls for no interference. The Learned Single Judge has adequately considered that the Additional Collector was not the competent authority to order appointment. Only Samvidha Shiksha Karmi Grade-III were eligible to be absorbed as Shiksha Karmi Grade-III. The Appellant does not claim to be a Samvidha Shiksha Karmi Grade-III but was seeking direct appointment as Shiksha Karmi Grade-III.

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

5. The Appellant was appointed as Guruji under the Education Guarantee Scheme and worked in that capacity from 1.7.1997 to 5.9.1998, after which the scheme itself was wound up. If the scheme itself was wound up, a person appointed under it automatically lost his right to continue. If any scheme was prepared for absorption, the consideration had to be strictly in accordance

with it.

6. In Writ Petition No.6127 of 1998, the Appellant himself contended that he was appointed for one academic session only, after which his services were discontinued. Even that appointment was held not to be in consonance with Article 14 of the Constitution of India holding that he had no right to continue in service or to be reappointed in the next academic session. A plea of discrimination was urged to contend that similarly situated Gurujis had been considered for appointment as Shiksha Karmi, Grade-III. The recitals in the order sheet with regard to the submissions on behalf of the Appellant are sacrosanct so far as we are concerned. Apparently the submission of discrimination also did not impress the Court. Rather than to invite an adverse verdict, the Appellant gave up his claim on merits and sought to pursue matters in a representation before the authorities. It did not create a fresh cause of action based on any order that may be passed on such representation, when the Court originally did not find any merit in the writ petition. If relief was granted on the representation, it was the fate of the Appellant. The legal effect of such orders was noticed in (2008) 10 Supreme Court Cases 115 (C. Jacob vs. Director of Geology and Mining) holding that it does not create any fresh cause of action when the Court found no merits in the claim initially and which was accepted without challenge.

7. The consideration on 19.6.2008 by the Janpad Panchayat of the representation as revealed by the extract of the minutes brought on record by filing an amendment application in the appeal is completely non-speaking in nature and does not deal with issues discussed in the order dated 7.5.2008 that he was appointed for one academic session only, without complying requirements of Article 14 of the Constitution and that he possessed the essential qualifications for appointment as Shiksha Karmi Grade-III much less

does it discuss the Government scheme for absorption. Furthermore, the Appellant approached the Collector only in the year 2009 leading to orders on 10.9.2010 and the Writ Petition was preferred three years after the order of the Collector.

8. Having given our anxious consideration to all factual aspects of the case, we are satisfied to hold that if the appointment of the Appellant was for one academic session only and which never came to be renewed, the absence of any details with regard to the absorption scheme whether it related to such persons also who had been appointed for one academic session only and which may have ended before the abolition of the scheme itself, whether claims would lie for absorption or not, we find no reason to interfere with the order under appeal. Furthermore, order of the Janpad Panchayat sought to be strenuously relied upon by the Learned Senior Counsel for the Appellant leaves us thoroughly dissatisfied as it again does not deal with issues regarding the nature of the appointment, tenure, the scheme for absorption etc. Furthermore, it is apparent that the Appellant had failed to persuade the Court in Writ Petition No.6127 of 1998 that he had a claim on merits and effectively withdrew the Writ Petition to pursue matters in a representation. Once this Court did not find merit in the original claim, we fail to understand how the claim can be resurrected on basis of any subsequent order on the representation.

9. The submission of hostile discrimination under Article 14 of the Constitution by absorption of similarly situated persons, by reference to Annexures P-14 to 16 does not impress us in absence of proper details with regard to the fact that they were appointed similarly contrary to the mandate of Article 14 of the Constitution, for one academic session only which never came to be renewed and that the appointment had ended before the abolition

of the scheme itself.

10. In the entirety of the discussion, though for different reasons, we find no reason to interfere with the order of the Learned Single Judge.

11. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE