

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3855 of 2015**

Ku.Aruna Lakda, D/o Late Bahadur Singh Baghel, aged about 18 years, residence of village Kiriya, Post Raimar, P.S. Kapu, Tahsil Dharamjaigarh, District Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Panchayat and Social Welfare Department, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Collector, Raigarh, District Raigarh, Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat, Dharamjaigarh, District Raigarh, Chhattisgarh

---- Respondents

For Petitioner	:	Mr.C.J.K.Rao, Advocate
For Respondents	:	Mr. Y.S. Thakur, Dy.Advocate General
No.1 & 2/State		with Mrs.Ashtha Shukla, Panel Lawyer
For respondent No.3	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****28/10/2015**

1. The moot question that arises for consideration is whether a person/candidate applying for a post, who is not having requisite educational qualification as per rules, is entitled for compassionate appointment de-hors the Rule applicable ?
2. Petitioner's father namely Shri Bahadur while working as Assistant Teacher (Panchayat) died in harness on 15.11.2008. The petitioner applied for appointment on the post of Assistant Teacher

(Panchayat) on compassionate ground. The said application came to be rejected by the order impugned dated 3.1.2014 (Annexure P/1) by respondent No.3/Chief Executive Officer, Janpad Panchayat, Dharamjaigarh holding that the petitioner is ineligible as she did not have minimum requisite educational qualifications i.e. passing of Senior Secondary with at least 50% marks and B.Ed/D.Ed and has also not passed Teachers Eligibility Test (TET) conducted in accordance with the NCTE guidelines leading to filing of this writ petition.

3. This writ petition has been filed by the petitioner stating inter-alia that minimum educational qualification has been prescribed by virtue of Section 23(1) of the Right to Children to Free and Compulsory Education Act, 2009 (hereafter referred to as “the Act of 2009”), which came into force w.e.f.26th August, 2009 and in exercise of the powers conferred by sub-section (1) of Section 23(1) of the Act of 2009, notification has been issued on 23rd August, 2010 and therefore, minimum educational qualification, which has been prescribed by the notification issued under the Act of 2009 cannot be insisted in the case of the petitioner as the petitioner’s father died prior to the coming into force of the Act of 2009.

4. Mr.C.J.K.Rao, learned counsel appearing for the petitioner would submit that course adopted by the respondents insisting

minimum educational qualifications as per the Act of 2009 and the notification issued thereunder is absolutely unsustainable and bad in law as the petitioner is entitled for compassionate appointment without having minimum educational qualifications as the petitioner's father died prior to coming into force of the Act of 2009 and therefore, writ of mandamus be issued to the respondents to consider the case of the petitioner without insisting on the minimum educational qualifications as per the Act of 2009.

5. Mr.Y.S. Thakur, learned Deputy Advocate General with Mrs.Ashtha Shukla, learned Panel Lawyer appearing on behalf of the State of Chhattisgarh/respondents would submit that such a minimum educational qualifications prescribed by the notification issued under Section 23(1) of the Act of 2009 is imperative in character and as such, respondent No.3 is absolutely justified in rejecting the application of the petitioner for appointment on compassionate basis on such a provisions of law. They would further submit that no writ of mandamus can be issued to act contrary to the provisions of the Act of 2009.

6. I have heard learned counsel appearing for the parties and perused the documents annexed with the petition with utmost circumspection.

7. The Right to Children to Free and Compulsory Education Act, 2009 has been enacted to provide for free and compulsory

education to all children of the age of six to fourteen years. Section 23 of the Act of 2009 provides for qualifications for appointment and terms and conditions of service of teachers and sub-section (1) of Section 23 provides that any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher. The National Council for Teacher Education Academic Authority in exercise of the powers conferred by sub-section (1) of Section 23 of the Act of 2009 has issued the notification laying down the minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII, which provides as under:-

“1. Minimum Qualifications.-

(i) Classes I-V

- (a) Senior Secondary (or its equivalent with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

Or

Senior Secondary (or its equivalent with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002

OR

Senior Secondary (or its equivalent) with at least

50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

AND

- (b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.”

8. The Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012 (hereinafter referred to as “the Rules of 2012”) has been enacted, which prescribes the minimum educational qualifications for the post of Assistant Teacher (Panchayat) as under:-

(1)	(2)	(3)	(4)	(5)	(6)
(c)	Assistant Teacher (Panchayat) (P.T. teacher)	18 years	35 years	Higher Secondary certificate exam with minimum of 50% marks and a certificate of Physical Education from any recognized institute	-do-

Note (6) Educational qualification of the applicant for direct recruitment on merit basis of Teacher (Panchayat) cadre employees i.e. basis of marks obtained in 10th, 12th, Graduation, Post Graduation and

B.Ed./D.Ed shall be given preference:-

- (i) For appointment of Assistant Teacher (Panchayat), 20 marks on the percentage of marks obtained in class 10th, 50 marks on the percentage of marks obtained in class 12th, 15 marks of the percentage of marks obtained in D.Ed/B.L.Ed and 15 marks on the percentage of marks obtained in T.E.T.

(C) Minimum qualification for Assistant (Teacher)

Panchayat:-

- (i) Higher Secondary (or its equivalent) with minimum 50% marks and four years degree in Elementary Education (B.L.Ed.) and

²[* * *]

OR

Higher Secondary (or its equivalent) with minimum 45% marks and four years degree in Elementary Education (B.D.Ed.) and ²[* * *] which shall be in accordance with NCTE (Recognition, Norms and Procedure) Regulation, 2002.

OR

Higher Secondary (or its equivalent) with minimum 50% marks and four years degree in Elementary Education (B.L.Ed.).

OR

Higher Secondary (or its equivalent) with minimum 50% marks and four years degree in Elementary Education (B.L.Ed) and 2 years

Diploma in Education (Special Education)

OR

²[* * *]

AND

- (ii) Passed in the Teachers Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the Guidelines issued by the NCTE for the purpose.

9. Thus, a careful perusal of the Act of 2009 read with the notification dated 23rd August further read with the Rules of 2012 enacted by the State Government, it would be quite vivid that the candidate applying for the post of Assistant Teacher (Panchayat) must possess certificate of Higher Secondary examination with minimum 50% marks and must have B.Ed./D.Ed. and must have passed Teachers Eligibility Test (TET) conducted by the appropriate Government in accordance with the guidelines issued by the NCTE for the purpose in order to lay a claim for the post of Assistant Teacher (Panchayat).

10. Going by the aforesaid provisions of the Act of 2009 followed by the notification dated 23rd August, 2010 and the Rules of 2012 prescribing minimum educational qualification for the post of Assistant Teacher (Panchayat) case of the petitioner is to be examined, it would be quite apparent that the petitioner admittedly does not have the minimum qualification particularly professional

qualification of B.Ed./D.Ed. and she has also not passed TET examination as on the date and as such, she does not have minimum requisite educational qualifications for the post of Assistant Teacher (Panchayat). The above-stated fact is evident from the order impugned passed by the respondent No.3, which states as under:-

“उपरोक्त आवेदक द्वारा शैक्षणिक योग्यता पूर्ण कर लिया गया है। परन्तु अनिवार्य योग्यता यथा बी.एड./डी.एड. एवं टी.ई. टी. की परीक्षा उत्तीर्ण नहीं किया गया है। परन्तु छत्तीसगढ़ शासन पंचायत एवं ग्रामीण विकास विभाग, मंत्रालय, डी.के.एस. भवन रायपुर का पत्र क्रमांक/पंचा. /पंग्राविवि/22/2011/1098/रायपुर दिनांक 02/11/2011 एवं छ0ग0शासन, पंचायत एवं ग्रामीण विकास विभाग, नया रायपुर के निर्देश पत्र क्रमांक/पंचा0/पंग्राविवि/22/2014/91/रायपुर दिनांक 07. 02/2014 में दिये गये निर्देश क्रं कंडिका-3 में अनुकम्पा नियुक्ति हेतु न्यूनतम शैक्षणिक योग्यता एवं व्यवसायिक अर्हता (बी.एड./डी.एड. एवं टी. ई. टी. की परीक्षा पास होने पर) प्राप्त करने पर ही अनुकम्पा नियुक्ति प्रदान किये जाने का प्रावधान है। ”

11. The law with regard to employment on compassionate ground for dependent of a deceased employee is well settled. The following three decisions are pertinent and are being noticed herein:

11.1 In the matter of I.G. (Karmik) and others v. Prahalad

Mani Tripathi¹, their Lordships of the Supreme Court have held that Compassionate appointment cannot be granted to a post for which the candidate is ineligible.

Their Lordships observed in paragraphs 11 and 12 as

¹(2007) 6 SCC 162

under:-

“11. The respondent, thus, could be offered an appointment only to the post for which he was suitable.

12. Furthermore, the respondent accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria. Physical fitness being an essential eligibility criteria, the Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power.”

- 11.2 In the matter of **State of Gujarat and others v. Arvindkumar T. Tiwari and another**² their Lordship of the Supreme Court considered the issue with regard to eligibility criteria of a candidate applying for the post and held that a person does not possess requisite qualifications neither can apply for recruitment nor he can be appointed on such a post by observing in

2(2012) 9 SCC 545

paragraphs 12, 13 and 14 as under:-

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of ‘fair play’, ‘good conscious’ and ‘equity’. (Vide: State of J & K v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012; and Praveen Singh v. State of Punjab & Ors., (2000) 8 SCC 633).

13. In State of Orissa & Anr. v. Mamta Mohanty, (2011) 3 SCC 436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.
14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Prit Singh v. S.K. Mangal & Ors., 1993(1) SCC (Supp.) 714; and Pramod Kumar v.

U.P. Secondary Education Services Commission & Ors., AIR 2008 SC 1817).”

11.3 Similarly, the law laid-down in the case of **I.G. (Karmik)** (supra) has been very recently followed by their Lordships of the Supreme Court in **Rajasthan State Road Transport Corporation and others v. Revat Singh**³ and it has been held that the Courts do not have power to issue directions to make appointment by way of granting relaxation of eligibility criteria or in contravention thereof and unqualified person cannot be given appointment. Their Lordships observed as under:-

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered pow-

³ 2015 AIR SCW 1229

ers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide State of J&K v. Shiv Ram Sharma (1999) 3 SCC 653 and Praveen Singh v. State of Punjab (2000) 8 SCC 633.) : (AIR 201 SC 152).”

11. Therefore, in view of the law laid down by this Court as above, we are of the opinion that since the respondent was not qualified for the post of driver, as such the High Court erred in law in directing the appellant to consider his case against the post of driver of heavy vehicle.

12. Therefore in the above circumstances, this appeal deserves to be allowed as the respondent is not qualified for the post of driver. Accordingly, the appeal is allowed. However, the respondent shall be allowed to work on the post of Artisan Grade III as offered to him. No order as to cost.”

12. Thus, it is well settled legal position that a candidate who doesn't have minimum educational qualification for the post applied for is not entitled for compassionate appointment and as such, compassionate appointment cannot be granted to a candidate being ineligible for want of minimum educational qualification.

Therefore, the respondent No.3 is absolutely justified in rejecting the claim of the petitioner for compassionate appointment, warranting no interference in the impugned order.

13. Resultantly, the instant writ petition deserves to be and accordingly dismissed. No order as to cost (s).

**Sd/-
(Sanjay K. Agrawal)
JUDGE**

B/-