

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2882 of 2013

- Tej Kumar Patel S/o Ramlal Patel Aged About 35 years R/o Village Remda Tukda, P.S. - Basna Tahsil Pithoura, P.O. Salhe Tarai, Revenue & Civil Distt. Mahasamund C.G.

---- Petitioner

**Versus**

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

---- Respondents

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|----------------------|---------------------------------------------|
| For Petitioner       | Mr. Shashi Bhushan Singh Patel,<br>Advocate |
| For Respondent/State | Mr. Arvind Dubey, Panel Lawyer              |

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Hon'ble Shri Justice Prashant Kumar Mishra  
Order On Board By

24/7/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner had worked as Guruji under the Education Guarantee Scheme for the period from 01.07.1997 to 05.09.1998. He has preferred this writ petition seeking a direction to the respondents to appoint him as Shiksha Karmi Grade-III, now renamed as Assistant Teacher (Panchayat ). The above prayer in the writ petition is based on the submission that several other Gurujis working under the Education Guarantee Scheme (EGS) Scheme have been granted appointment in some other Blocks under the order passed by the Chief Executive Officer of Janpad Panchayats, therefore, the petitioner is also entitled

to similar relief.

(3) It appears that when the Education Guarantee Scheme was closed, the State Government decided to appoint qualified Gurujis as Samvida Shikshak Grade-III. In due course, those Samvida Shikshak Grade-III were absorbed as Shiksha Karmi Grade-III.

(4) The petitioner had earlier preferred W.P. No.6127 of 1998 along with 13 other similarly placed persons, which was disposed of on 07.05.2008 in the following manner.

“With the consent of learned counsel appearing for both the parties, the matter is heard finally.

2) Learned counsel appearing for the petitioners submits that the petitioners were appointed as Gurujis for one academic session. Their services were discontinued after one year.

3) It appears that appointments of the petitioners as Gurujis were not in accordance with the Constitutional Scheme even otherwise, their appointment was for one academic session and as such, the petitioners have no right to continue in service or to be reappointed again in the next academic session.

4) It is further contended by learned counsel for the petitioners that similarly situated Gurujis have been considered by the concerned Collector and they on being found fit, have been appointed as Shiksha Karmi Grade-III.

5) It is prayed by learned counsel for the petitioners that the petitioners be granted liberty to make representation to the concerned authority and the concerned authority may be

directed to consider cases of the petitioners for appointment as Shiksha Karmi Grade-III on their being found otherwise qualified and fit for appointment on its own merits and in accordance with law, to which, learned counsel appearing for the respondents/State has no objection.

6) For the aforementioned reasons, this petition is disposed of with the above stated liberty. No order as to costs."

(5) The petitioner along with 11 others thereafter moved an application before the Additional Collector, Mahasamund, which was allowed by the said authority vide its order dated 10.09.2010, directing the CEO, Janpad Panchayat, Pithora to initiate process of appointment. When despite the said order passed by the Additional Collector on 10.09.2010, the appointment orders were not issued, the petitioner has preferred this writ petition in September 2013.

(6) It would further appear that when the EGS Centres were upgraded as Primary Schools in the year 1998, all such Gurujis, who possess qualification of Shiksha Karmi Grade-III, were absorbed as Samvida Shikshak Grade-III and only such Gurujis, who do not possess the qualification were left out. In the earlier writ petition filed by the petitioner and 13 others, which was decided in the year 2008, prayer was not made for their appointment as Samvida Shikshak, but the prayer was made for appointing them as Shiksha Karmi Grade-III. The decision taken by the State Government in the year 2003-2004 was for absorbing Samvida Shikshak Grade-III as Shiksha Karmi Grade-III without requiring them to undergo any selection process, whereas, the petitioner is claiming appointment as Shiksha Karmi Grade-III without having been appointed as Samvida Shikshak Grade-III, when the EGS

Centres were closed. Since admittedly, EGS Centres were closed in the year 1998 and the petitioner did not prefer any writ petition for appointing him as Samvida Shikshak Grade-III, the writ petition is belated.

(7) Merely because, the Additional Collector, Mahasamund has passed the order in the petitioner's favour, will not sweeten his claim, if it has not otherwise ripen in accordance with any enforceable government decision. If some Janpad Panchayat has granted illegal appointment to some Gurujis, without there being any governmental decision backing the said order, the petitioner cannot claim negative equality for appointment *de hors* any government decision in this regard. Granting the relief prayed for would amount to encouraging back door entry *de hors* any constitutional scheme of appointment.

(8) In the matter of *Basawaraj v. Land Acquisition Officer*<sup>1</sup>, the Supreme Court, at para 8, 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 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***

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<sup>1</sup>(2013) 14 SCC 81

*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.”*

(9) The order passed by the Additional Collector is not binding on this Court. In the earlier writ petition, liberty was reserved to make representation before the concerned authority. It is not clear as to how the Additional Collector, Mahasamund is the competent authority directing issuance of appointment order in favour of the petitioner. Under the then existing Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 2007, the appointing authority in relation to Shiksha Karmi Grade-III is Janpad Panchayat, therefore, the Additional Collector was not the competent authority to deal with the petitioner's representation. Moreover, the petitioner has not submitted any proof that on the date when EGS Centres were closed and the decision was taken by the State Government to upgrade the said Centres as Primary Schools and appoint qualified Gurujis as Samvida Shikshak Grade-III, the petitioner was holding necessary qualification.

(10) For the foregoing, this Court does not find any substance in the writ petition. It fails and is hereby dismissed.

Sd/-

Judge

**(Prashant Kumar Mishra)**