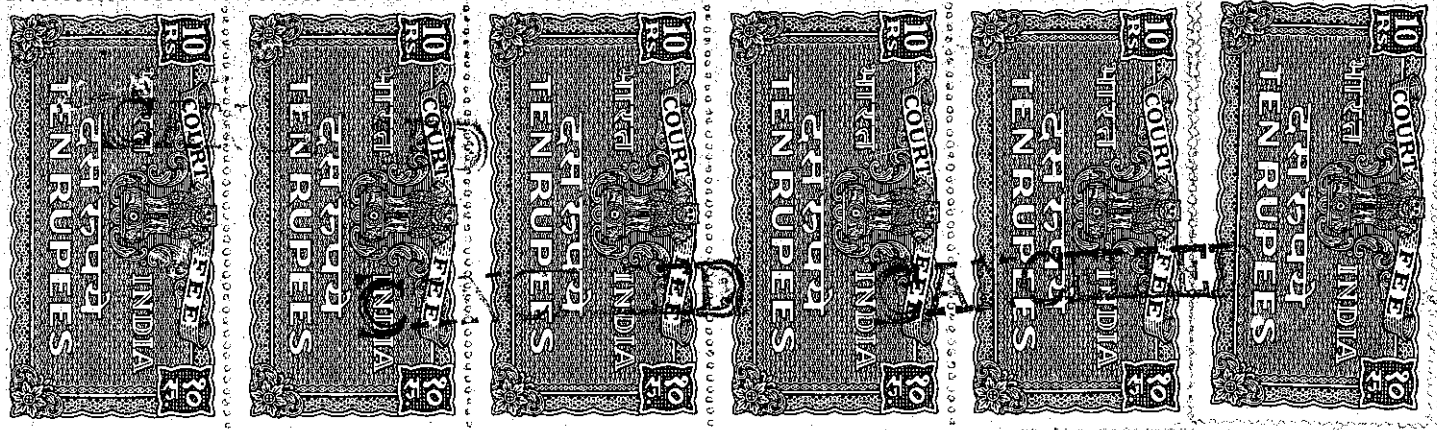


C.P-100/-

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT
BILASPUR

WP.NO. 976/2001

Petitioner

Vinod Kumar S/o T.K. Verma aged about 33 years, R/o Sahaspur Lohara, Dist : Kawardha

Versus

Respondents

- R 1. State of Chhattisgarh through the secretary Revenue Department Secretariat, Old D.K.Hospital Building, Raipur.
- R 2. The Commissioner Raipur Division, Raipur.
- R 3. Kumari Alka Mahajan Daughter of V.R.Dewangan, New Civil Colony, Qr.No.131, Rajnandgaon.
- S 4. Jila Panchayat Rajnandgaon through the Chief Executive Officer
- S 5. Smt.Seema Verma W/o Khomlal Verma, Shiksha Karmi R/o Village and Post Ghotia Dist : Rajnandgaon.
- S 6. Dhal Singh Sahu, Shiksha Karmi Grade-I Government Higher Secondary School, Ghotatola, Dist : Rajnandgaon.

P. R. No. 981/2007
Presented by Shri A. D. Singh
Date 18.6.2001



WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA.

1. Particulars of the Petitioner :

As per cause title.

2. Particulars of the Respondents :

As per cause title.

18/6/2007



22/07/16

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HIGH COURT OF CHHATTISGARH: BILASPUR

WP No. 976 of 2001

Vinod Kumar

Versus

State Of Chhattisgarh & Ors.

POST FOR ORDER ON 12th JULY, 2016

Sd/-
Prashant Kumar Mishra
Judge



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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 976 of 2001

• Vinod Kumar

---- Petitioner

Versus

• State Of Chhattisgarh & Ors.

---- Respondent

For Petitioner : Shri Awadh Tripathi, Advocate.

For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

For Respondent No.3 : Shri Pankaj Agrawal, Advocate.

For Respondent No.4 : Shri R.M. Solapurkar, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

CAV Order

Passed on : 12/07/2016

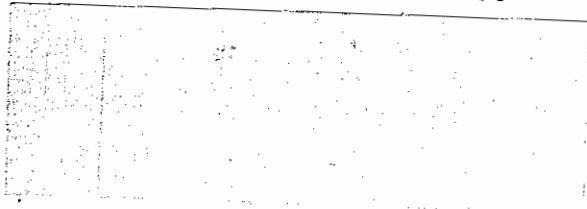
1. Challenge in this petition under Article 226/227 of the Constitution of India is to the order dated 13.6.2001 passed by the Commissioner, Raipur Division, allowing the appeal preferred by respondent No.3 Ku. Alka Mahajan to direct her appointment on one of the 3 posts reserved for women candidates and consequential cancellation of appointment of the candidate who was illegally benefited.
2. Facts of the case, in brief, are that Zila Panchayat, Rajnandgaon initiated recruitment process for filling up 17 posts of Shiksha Karmi Grade-I in the year 1999. In accordance with M.P. Civil Services



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(Special Provisions for Reservation for Women) Rules, 1997, 30% posts are to be reserved horizontally for women candidates. Thus out of 9 posts falling in the open category, at-least 3 posts should have been reserved for women candidates, however, only 2 woman candidates were appointed in the women category when the appointment orders were issued on 12.3.1999.

3. Feeling aggrieved by the appointment orders, respondent No.3 preferred an appeal before the Commissioner. In the impugned order passed by the Commissioner, it has been observed that as against 3 posts which should have been reserved for woman, only 2 posts were reserved on which Seema Verma and Rajni Damle were appointed and on the third post, a male candidate has been appointed, therefore, reservation roster was not properly applied. The Commissioner also directed that respondent No.3 Alka Mahajan be given appointment and appointment of one male candidate who has been illegally benefited be cancelled.
4. It is argued on behalf of the petitioner that he was not at fault at any point of time nor he has committed any mischief or fraud in securing appointment, therefore, he cannot be removed from the post. He would also argue that even if the order passed by the Commissioner is implemented, he would not be affected because he has secured more marks than some other male candidates.
5. Learned State Counsel would support the impugned order.





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6. Shri Pankaj Agrawal, learned counsel appearing for respondent No.3 would not dispute that during the pendency of the writ petition, respondent No.3 was earlier appointed as Shiksha Karmi Grade-II and was thereafter promoted to the post of Shiksha Karmi Grade-I on 27.7.2006 (Annexure-R-3/C). However, he would submit that the said respondent is entitled for appointment as Shiksha Karmi Grade-I from the date when the petitioner was illegally granted the benefit of appointment.

7. In the matter of **Amit Kumar Singh Vs. State of Chhattisgarh** {WPS No.2291/2009, decided on 16.10.2015}, coordinate Bench of this Court, while dealing with the similar issue, has held in paragraph-5 thus:-

“5. The Court is the considered opinion that the reservation roster is operated by the State authorities and not by the Petitioner. He had no role to play if the reservation roster was not followed. If the appointments were made against reservation roster, the Respondents were required to simultaneously proceed against the officers who did not perform their duties properly despite being paid salary. It is not the case of the Respondents that the appointment was obtained by any fraud or collusion. The order of termination dated 28.2.2009 is held to be not sustainable. It is set aside but without prejudice to the rights of the Respondents afresh in accordance with law.”

8. In the matter at hand also, it is not the case of the respondents that the petitioner had played fraud and obtained appointment by concealing any material particulars regarding his eligibility nor is a case where the persons having secured more marks than the petitioner were ignored and the petitioner, even being less meritorious has been illegally



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benefited.

9. The issue pertains to applicability of horizontal reservation for woman category candidates. Moreover, respondent No.3 has since been appointed as Shiksha Karmi Grade-II and thereafter promoted as Shiksha Karmi Grade-I, therefore, it is not a case where respondent No.3 is out of employment and someone else is still benefited at her cost. It also cannot be lost sight of that having been appointed as Shiksha Karmi Grade-I in the year 1999, the petitioner is uninterruptedly working on the strength of interim order passed by this Court for more than 17 years, therefore, it may not be appropriate to direct cancellation of his appointment after such a long lapse of time when he was not at fault in applying reservation roster or percentage.

10. For the foregoing, this Court is of the considered opinion that the order passed by the Commissioner insofar as it directs cancellation of appointment of the candidate who was illegally benefited deserves to be and is hereby set aside. As a consequence, the petitioner's appointment as Shiksha Karmi Grade-I need not be cancelled pursuant to the impugned order.

11. The Writ Petition is allowed to the extent indicated above.

Sd/-
Judge

(Prashant Kumar Mishra)