

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4679 of 2007**

- Shrimati Pushpa Lata Gomasta, aged 40 years, Wife of Shri K. Gomasta resident of Village Anjora Tahsil & District Durg (C.G.)

---- Petitioner**Versus**

1. The State Government of Chhattisgarh, Through the Secretary, Social & Welfare Department, D.K.S. Bhavan, Raipur (C.G.)
2. Zila Panchayat, Durg Through The Chief Executive Officer, Zila Panchayat, Durg (C.G)
3. The Janpada Panchayat Through The Chief Executive Officer, Janpada Panchayat, Durg (C.G)
4. Noharsingh Deshmukh Son Of Dwarka Prasad Deshmukh, aged about 40 years, Sikkchha Karim Verg -3, Middle School Birejhar, Block - Dhamdha, Tahsil And Distt. Durg (C.G)
5. Shyambai Deshmukh Wife Of Dwarka Prasad Deshmukh, aged about 50 years, Ex Member Of Selection Committee & Ex President Of Gram Panchayat, Nagpura, Tahsil And District. Durg (C.G)
6. Vijay Laxmi Tamrakar Daughter Of Shri Pitamber Tamrakkar Resident Of Village & Post Bodegaon Sikkchha Karmi Verg - 3.

---- Respondents

For Petitioner	:	Shri HB Agrawal, Sr. Adv. with Ms. Preeti Yadav, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State
For Respondent No.6	:	Shri Prateek Sharma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****15/02/2016**

1. Petitioner has assailed the order passed by the Additional Collector, Durg partly allowing her appeal to direct the Education Committee of the Janpad Panchayat (for short 'the Committee') to reconsider the issue of petitioner's

appointment as Shiksha Karmi Grade-III without affecting the interest of respondents No.4 to 6.

2. Janpad Panchayat, Durg initiated process for recruitment on 102 posts of Shiksha Karmi Grade-III in the year 1998, wherein the select list was issued on 4-9-98. Since the petitioner was not selected she preferred an appeal before the Collector which was barred by about 16 months.
3. It was argued before the Collector that relatives of the members of the Committee have been selected and the petitioner was deliberately awarded less marks in the interview, so as to deprive her of appointment. It was also stated that the persons having secured lesser marks have been appointed. The Additional Collector condoned the delay in moving the appeal and remitted the matter to the Janpad Panchayat for consideration of petitioner's case for appointment, if she has secured higher marks than the last selected candidate in her category, however, the Collector specifically observed that this would not affect the interest of respondents No.2 to 5. The Committee reconsidered the issue in its meeting dated 9-8-01 and concluded that petitioner's case has been considered in the open (woman category), wherein the last selected candidate has secured 57.96% marks but the petitioner has secured only 50.11% marks, therefore, her non-selection is not illegal. The Chief Executive Officer, Janpad Panchayat, Durg thereafter communicated the Zila Panchayat, Durg on 19-8-03 that the petitioner has not found place in the select list because she has secured less marks than the last selected candidate in the open (woman category).
4. Shri HB Agrawal, learned senior counsel for the petitioner would submit that the petitioner's contention that relatives of the members of the Committee have been selected has not been considered and moreover the petitioner

was not heard by the Committee.

5. Per contra, Shri Shashank Thakur, learned Deputy Govt. Adv. and Shri Prateek Sharma, learned counsel for respondent No.6 would resist the petition on submission that the petitioner ought to have challenged the subsequent resolution of the Janpad Panchayat or the communication issued by the Janpad Panchayat addressed to the Zila Panchayat. They would submit that the writ petition itself is delayed by about 6 years, inasmuch as, the order passed by the Collector in the year 2001 has been assailed by filing the writ petition in the year 2007.
6. Before proceeding to deal with the merits of the case, it would be profitable to keep in mind that the Supreme Court in **Ranjan Kumar etc. etc. v. State of Bihar & Ors.**¹, has held that in matters concerning challenge to the selection process or the illegality or favoritism committed by the selection committee all the selected candidates should be joined as respondents. Similarly it is settled that a person belonging to open category cannot question the selection of persons in the reserved category because the petitioner has not offered her candidature for the reserved category post.
7. In the case at hand, the appointment order was issued on 4-9-98, which was assailed by preferring an appeal before the Collector, which was barred by 16 months. After the said order, the Janpad Panchayat convened a meeting of the Education Committee and passed a resolution/order on 9-8-01, however, this resolution has neither been assailed in this petition nor by filing any appeal before the appellate authority.
8. It would further appear that the selection of respondent No.4 has been assailed on the ground that her mother Shyambai Deshmukh, respondent

¹ 2014 (3) Supreme 646

No.5 being a member of the Committee, therefore, she could not have selected her own son as Shiksha Karmi Grade-III, however, the return filed by respondents No.4 & 5 would indicate that the said respondent No.4 never joined on the post of Shiksha Karmi Grade-III because he was subsequently appointed on the post of Shiksha Karmi Grade-II vide order dated 21-8-09. Thus, the very basis of challenge to the appointment of respondent No.4 is not in existence and the writ petition concerning challenge to the appointment of respondent No.4 has been rendered infructuous.

9. Insofar as the appointment of respondent No.6 is concerned, the said respondent has been selected in the category of OBC (woman) and the petitioner belongs to open (woman category) candidate, therefore, the petitioner not being a candidate for OBC woman category, she cannot challenge the appointment of respondent No.6.

10. For the foregoing, this writ petition is without any merit. It is accordingly dismissed.

Sd/-

Judge
Prashant Kumar Mishra

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