

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 215 of 2016**

Ku. Meena Diwan D/o Shri Anand Ram Diwan, Aged about 26 years, R/o Pairi Nagar, Gariyaband, Tahsil Gariyaband, District Gariyaband, (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Panchayat & Rural Development, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. The Deputy Director, Panchayat & Social Welfare Department, Raipur, District Raipur, Chhattisgarh.
3. The Collector, Gariyaband, District Gariyaband, Chhattisgarh.
4. The Chief Executive Officer, Janpad Panchayat, Mainpur, District Gariyaband, Chhattisgarh.
5. The Block Education Officer, Mainpur, District Gariyaband, Chhattisgarh.
6. Smt. Laxmi Shree Sahu W/o Shri Dwarka Prasad Sahu, Aged about 27 years, Aged about 27 years, Earlier Posted as Shikshakarmi Grade III at Midle School, Tribal Ashram, Block Mainpur, District Gariyaband, Chhattisgarh.
7. Smt. Devla Thakur W/o Shri Budhram Thakur, Aged about 35 years, Earlier working as Shikshakarmi Grade III, At Middle School Achanpur, Janpad Panchayat, Mainpur, District Gariyaband, Chhattisgarh.
8. Ku. Ritu Yadav D/o Shri Tukeshwar Yadav, Aged about 26 years, Earlier posted as Shikshakarmi Grade III at Primary School, Tribal Ashram, Kalimati, Block Mainpur, District Gariyaband, Chhattisgarh.
9. Smt. Savitri Nishad W/o Shri Komal Nishad, Aged about 30 years, Earlier Posted as Shikshakarmi Grade III, at Primary School Badgaon, Block Mainpur, District Gariyaband, Chhattisgarh.

--- Respondents

For Appellant	: Shri Jitendra Pali, Advocate.
For Respondent/State	: Shri R.K.Gupta, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****06/05/2016**

1. The present appeal arises from order dated 26.2.2016 dismissing Review Petition No. 178 of 2015 which in turn arose from order dated 8.4.2015 in Writ

Petition (S) No. 1186 of 2015.

2. The writ petition was heard with analogous matters and came to be considered on basis of an appointment stated to have been obtained on forged certificate. The Review Petition was filed that because the matter was being heard in a bunch, it could not adequately be brought to the attention of the Court that the Appellant was not terminated on the ground of forged certificate but for under-age appointment.

3. Learned Counsel for the Appellant submits that in the Review Application at Annexure A/10, the mark-sheet of the Appellant from the Chhattisgarh Board of Secondary Education, Raipur had been annexed displaying her date of birth as 15.7.1989. The Learned Single Judge therefore erred in dismissing the Review Petition observing that no document had been brought on record to demonstrate that the Appellant was more than 18 years of age on the date of advertisement/selection on the post of Shiksha Karmi Grade III. It was next submitted that Rule 9 of the Chhattisgarh Panchayat Services (Recruitment and General Conditions of Service) Rules, 1999 (hereinafter referred to as 'the Rules') the age was to be determined on basis of 1.1.2008 and not 1.6.2007 as mentioned in the advertisement. It was next submitted that Rule 35 provides for relaxation of age in appropriate cases. The Appellant had worked for approximately 7 years and removal thereafter is unjust and unequitable. The enquiry was held behind the back of the Appellant without any opportunity of defence.

4. Learned Counsel for the State points out that the Appellant does not dispute her date of birth as 15.7.1989. That itself without furthermore makes her ineligible for appointment under the advertisement dated 17.6.2007. The last date for applying was 18.6.2007 and on which day also she did not acquire the eligibility. The advertisement specifically stipulated that persons below 18

years of age cannot be appointed. There can be no individual relaxation against Article 14 of the Constitution and that too of essential eligibility conditions for appointment. The grounds urged before this Court have not been urged at any earlier stage of the litigation.

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

6. Indisputably, the date of birth of the Petitioner is 15.7.1989. On 17.6.2007, the date advertisement was published or the last date for applying, she had clearly not attained the age of eligibility. On the date of appointment i.e. 24.8.2007, she was 18 years one month old. No further evidence was required that she had applied when she was not eligible. The consideration of an ineligible applicant was itself an illegality which could not have been cured.

7. Appointment under the government originates in a contract and subsequently turns into one of a status. Section 11 of the Contract Act, 1872 provides that a person who has attained the age of majority alone was capable of entering into contract. Apart from the above, the publication of advertisement on 17.6.2007 with the last date for applying as 18.6.2007 speaks volumes for itself with regard to the nature of the illegality and manipulative process of appointment for the favoured few. The appointment clearly was not bonafide.

8. We find no merit in the appeal. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE