

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1625 of 2015

Smt. Chanda Patel, W/o Late Shri Dwarika Prasad Patel, aged about 34 years, R/o Village Sirpur, Post Baloda, Tahsil Saraipali, District Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Panchayat & Social Welfare Department, Mantralaya, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur (C.G.)
2. Joint Director, Panchayat Directorate Chhattisgarh Raipur, Indrawati Bhawan, New Raipur, District Raipur (C.G.)
3. Collector, Mahasamund, District Mahasamund (C.G.)
4. Chief Executive Officer, Jila Panchayat, Mahasamund, District Mahasamund (C.G.)
5. Chief Executive Officer, Janpad Panchayat, Saraipali, District Mahasamund (C.G.)

---- Respondents

For Petitioner: Mr. C.J.K. Rao, Advocate.
For Respondents/State: Mr. Ajit Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/01/2016

1. Application for compassionate appointment filed by the petitioner has been rejected on the ground that the petitioner does not possess the requisite qualification for the post of Teacher (Panchayat).
2. Learned Panel Lawyer appearing for the State would submit that the question raised has been considered by this Court in

W.P.(S)No.3257/2015 (Smt. Jaya Bai Verma v. State of Chhattisgarh and others) decided on 26-10-2015 and in which this Court while dismissing the writ petition has observed in paragraphs 14 and 15 as under: -

“14. 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:

14.1 In the matter of **I.G. (Karmik) and others v. Prahalad Mani Tripathi**¹, 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 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 fulfills 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.”

14.2 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

1 (2007) 6 SCC 162

2 (2012) 9 SCC 545

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 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)."

- 14.3 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 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 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.”

15. 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 in exercise of jurisdiction under Article 226 of the Constitution of India.”

3. In view of the decision of this Court in W.P.(S)No.3257/2015 and in view of the fact that the petitioner does not have the eligibility qualification for the post of Teacher (Pnchayat), I do not find any illegality in rejecting the petitioner's application for compassionate appointment. Consequently, the petition is dismissed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge