

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3220 OF 2016**

Pramod Kumar Patel, S/o Late Tejram Patel, Aged about 37 years, Resident of LIG-198, M.P. Nagar Korba, District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Department of Panchayat and Rural Development, Mantralay, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Chief Executive Officer (C.E.O.), Janpad Panchayat, Katghora, District Korba, Chhattisgarh.
3. The District Education Officer Korba, District Korba, Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Ashutosh Shukla, Advocate
For Respondents/State	:	Mr. Raj Kumar Gupta, Dy. Advocate General, on advance copy.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****28/07/2016**

Heard on admission.

1. This petition has been filed by the petitioner aggrieved by termination order dated 11/07/2016, by which, the services of the petitioner has been terminated.
2. Learned counsel for the petitioner submits that the termination order assailed on the ground that with an open eyes, the respondents knowing fully well that the petitioner has neither passed B.Ed./D.Ed. examination nor passed Teachers Eligibility Test (for short 'TET'), granted appointment on compassionate basis. Therefore, the services of the petitioner could not be terminated. It is also submitted that before termination, opportunity of hearing

has not been afforded to the petitioner; therefore, only on this ground impugned order is bad in law.

3. Learned counsel for the State submits that requirement of being possessed of B.Ed./D.Ed. degree and TET certificate are statutory requirement under the law. Under a mistaken belief, the petitioner was appointed as Assistant Teacher even though he was not possessed of the said qualifications, therefore, he has rightly been terminated.

4. Learned counsel for the petitioner could not lay hand on any document to show that the prescription of statutory qualification has been relaxed in case of compassionate appointment. If that be so, result is foregone, the petitioner could not be appointed as Assistant Teacher.

5. In a case like this where it is apparent that the qualification was not possessed by the petitioner and there is no document to show relaxation in case of appointment made on compassionate basis, no purpose would be served by sending the matter by giving an opportunity of hearing to the petitioner. The principle of natural justice is not unruly horse. In exceptional cases, where forgone conclusion theory is applicable, a person may not be entitled to relief only on the ground of violation of principle of natural justice. On facts, present is one of such cases, therefore, no relief can be granted to the petitioner.

6. However, there is one more aspect of the matter, which is highlighted by learned counsel for the petitioner and which deserves consideration. The petitioner's father was working as Attendant and he died while in the service of the Government. The compassionate appointment policy entitled the petitioner to appointment on compassionate basis. If the petitioner was not qualified for appointment as Assistant Teacher, his case was required to be considered for appointment on any other post, for which, he is qualified, in

accordance with existing policy of compassionate appointment.

7. The Chief Executive Officer while terminating the services of the petitioner has not taken care to look into the other side of the picture and even if it is to be held that the petitioner could not be appointed as Assistant Teacher for want of minimum qualification, nevertheless, he should be considered and appointed on compassionate basis on any other post of Ministerial Cadre.

8. Even though, no specific prayer has been made in this petition, in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to do justice, while challenge to the termination order fails, a direction is required to be issued to respondent No. 2 to consider the petitioner's claim of compassionate appointment on any other post of Ministerial Cadre and pass an order within a period of 60 days from the date of receipt of copy of this order.

9. With the aforesaid observation, the petition is disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge