

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 676 of 2015**

Tiku Ram Verma S/o Shri Bideshi Ram Verma, aged about 28 years, Resident of village and Post Pendraavan, Thana and Tahsil Dhamdha, District Durg, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through The Secretary, Urban Administration and Development Department, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Director, Urban Administration and Development Department, Indrawati Bhawan, New Raipur, Chhattisgarh.
3. The Chief Municipal Officer, Nagar Panchayat, Pandariya, District Kabirdham, Chhattisgarh.
4. Joint Director, Urban Administration and Development, Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Somkant Verma, Advocate.
For Respondents/State	:	Shri UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****04/01/2016**

1. I.A. No. 1 of 2015 has filed to condone delay of 45 days. Considering the duration and the explanation, after hearing Learned Counsel for the parties, delay is condoned.
2. The present appeal assails order dated 7.9.2015 in Writ Petition (S) No. 1113 of 2015 dismissing the claim of the Appellant for appointment in view of his name being at serial 2 of the select list after the person at serial 1 declined appointment.
3. Learned Counsel for the Appellant submitted that earlier select list was prepared and one Ajay Kumar Soni appointed on 31.12.2013 which was

subsequently cancelled on 25.2.2014. In March, 2014, another merit list was prepared in which one Ku. Punita Kaushik was at serial 1 and Appellant at serial 2. Even before issuance of a formal appointment order, Ku. Punita Kaushik informed that she was not interested in the appointment. The Appellant in the circumstances ought to have been considered for appointment. If there was no need for any appointment, as was sought to be urged in view of the rationalisation policy by adjustment of teachers, the Respondents would not have issued the advertisement, made appointments, cancelled it, prepared a fresh merit list all of which indicates that the ground sought to be urged on behalf of the Respondents was unjustified and arbitrary as appointments in other subjects except for Teacher (Hindi) had been made under the same advertisement.

4. Learned Counsel for the State submitted that no indefeasible right for appointment accrued to the Appellant merely because he may have been empanelled. Fresh merit list was prepared in March, 2014. The developments thereafter as discussed in paragraph 3 of the order under appeal makes it manifest that it was for those reasons that the Government decided not to go ahead with the appointments any more. Merely because prior to the fresh decision by the authorities other appointments may have been made under the advertisement will not render action of the Respondents arbitrary.

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

6. The controversy relates to appointment on the post of Teacher (Hindi). Empanellment does not create an indefeasible right to appointment. Simultaneously, having prepared the select list, the Respondents cannot arbitrarily deny appointment. If a person in a higher position in the merit list does not join, normally speaking, the vacancy should be made available and offer of appointment made to the person next in the panel. To that extent, the Appellant may have a claim to be considered for appointment on the post of Teacher

(Hindi). But, if the Respondents on account of subsequent developments are of the opinion for reasons ascribed not to go ahead with the further appointments, unless the reasons are absurd or illogical, the sufficiency of the same cannot be examined by the Courts. The fact that before the subsequent decision not to go ahead with further appointments was taken, other appointments had been made under the same advertisement will also not attract Article 14 of the Constitution, being based on fresh events.

7. In (2010) 6 SCC 777 (State of Orissa v. Rajkishore Nanda) it was observed at paragraph 18 as follows:

"18. It is the exclusive prerogative of the employer/State administration to initiate the selection process for filling up vacancies occurred during a particular year. There may be vacancies available but for financial constraints, the State may not be in a position to initiate the selection process for making appointments. Bona fide decision taken by the appointing authority to leave certain vacancies unfilled, even after preparing the select list cannot be assailed. The courts/tribunals have no competence to issue direction to the State to initiate selection process to fill up the vacancies. A candidate only has a right to be considered for appointment, when the vacancies are advertised and selection process commences, if he possesses the requisite eligibility."

8. The issue again fell for consideration in (2010) 7 SCC 678 (East Coast Railway v. Mahadev Appa Rao) observing at paragraph 14 as follows:

"14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidate as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter."

9. After the select list was prepared in March 2014, the Government took a fresh decision in May, 2014 that since Teachers are in excess in the department of Panchayat and Urban Administration and Development, it had initiated

exercise for rationalisation/adjustment of Teachers and therefore till further orders it had decided not to fill up any posts of Teacher. The reason cannot be said to be absurd or illogical and the sufficiency of the same cannot be gone into by the Court. Moreover, the select list was prepared in March 2014. Normally, unless there be rules to the contrary, the life of a select list is for one year which has also run its course.

10. In the entirety, we find no reason to interfere with the order under appeal. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE