

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 5054 of 2006****Reserved on 04.11.2016**
Pronounced on 18.11.2016

1. Manish Kumar Gupta, Aged 19 years, S/o Lalluram Gupta, R/o Village Geedam, District Dantewada (CG)
2. Ramesh Kumar, Aged about 22 years, S/o Dhruvaram, R/o Village Ghotpal, District Dantewada (Chhattisgarh)
3. Manoj Kumar, Aged about 20 years, S/o Kamal Ram, R/o Village Barsur, District Dantewada (Chhattisgarh)
4. Baijoram, Aged about 20 years, S/o Jamdar, R/o Village Bayanar, Tahsil Kondagaon, District Bastar (CG)
5. Tularam, Aged about 24 years, S/o Yamunalal Sarwyan, R/o Village Samlur, District Dantewada (CG)
6. Santosh Jaiswal, Aged about 29 years, S/o Murlidhar, R/o Village Geedam, District Dantewada (Chhattisgarh)
7. Sunil Kumar Gupta, Aged about 20 years, S/o Jankisharan Gupta, R/o Village Geedam, District Dantewada (Chhattisgarh) ----- **Petitioners**

Versus

1. State of Chhattisgarh, through: Secretary, Panchayat and Gramin Vikas Vibhag, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. Collector, Dantewada, District South Bastar (Chhattisgarh)
3. Chief Executive Officer, Janpad Panchayat, Geedam, District Dantewada (Chhattisgarh) ----- **Respondents**

For Petitioners	:	Shri Manoj V. Paranjpe, Advocate
For Respondents 1 & 2/State	:	Shri Vinod Deshmukh, Deputy Government Advocate
For Respondent No.3	:	Shri Ravindra Agrawal, Advocate

Hon'ble Shri Justice Sanjay Agrawal**C A V Order / Judgement**

1. The petitioners have filed this petition while invoking the jurisdiction of this Court under Articles 226/227 of the Constitution of India by questioning the order

dated 15.06.2006 (Annexure P/39) passed by the Collector, Dantewada, District South Bastar whereby the selection of the petitioners on the post of Shiksha Karmi Grade-3 has been set aside without affording them any opportunity of hearing and in utter violation of Rules prescribed under Rule 5 of the Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995 (hereinafter referred to as 'the Rules of 1995').

2. Brief facts of the case are that the proceedings for appointment on the post of Shiksha Karmi Grade-3 in Janpad Panchayat, Dantewada, District South Bastar were issued by the respondent-authorities, i.e., the Chief Executive Officer, Janapad Panchayat Geedam while advertising in daily newspaper, published on 13.02.2006 (Annexure P/1), by inviting applications from the candidates. In pursuance to the said advertisement, the petitioners have applied for appointment on the said post by submitting relevant certificates and mark-sheets which were annexed to the petition as Annexure P/3 to Annexure P/30.

3. Based upon the aforesaid certificates / mark-sheets, the petitioners have been selected on the said post of Shiksha Karmi Grade-3, Janapad Panchayat Geedam and accordingly the select lists (Annexure P/31 to Annexure P/34) have been issued by the said authority, though the appointment orders were not given to them. The petitioners then moved their representations (Annexure P/35 to Annexure P/37) on 14.08.2006 before the Chief Executive Officer, Janapad Panchayat Geedam and requested for providing them the information with regard to the cancellation of the appointment orders, if any, issued in this aspect.

4. The petitioners further submit that they came to know that the Collector, vide its order impugned, has cancelled the said selection process of appointments for the post of Shiksha Karmi Grade-3 and has directed further for the initiation of fresh proceedings for recruitment to the said post even without hearing them and in violation of rules prescribed in the Rules of 1995, therefore, the order impugned deserves to be set aside. In support, the petitioners have placed their reliance in the

matter of ***Union of India & another vs. Bharkarendu Datta Majumdar and East Coast Railway & another vs. Mahadev Appa Rao & Others*** reported respectively in **2010 AIR SCW 6609** and **A.I.R. 2010 SC 2794**.

5. Respondents No. 1 & 2 have contested the petition by submitting their returns by raising a preliminary objection that the order impugned passed by the Collector is an appealable one and the efficacious remedy of appeal is prescribed before the Director, Panchayat, under the Rules of 1995, therefore, petition as framed deserves to be dismissed on this count alone *in limine*.

6. It is contested further on the ground that after the initiation of said selection process a complaint with regard to serious allegations about its selection process was received by the Zilla Panchayat, South Bastar Dantewada, therefore, the Chief Executive Officer, Zilla Panchayat had appointed the Additional Chief Executive Officer of Zilla Panchayat, South Bastar Dantewada as an Inquiry Officer to hold an inquiry into the matter. The said Inquiry Officer had conducted a detailed inquiry and had submitted its report, annexed to their return as Annexure R/2. In the said inquiry, gross irregularities were found to be committed by the Chief Executive Officer, Janpad Panchayat, South Bastar Geedam, therefore, copy of the same was forwarded to the Collector Dantewada. It is pleaded further by respondents No. 1 & 2 that the Collector in its turn has cancelled the entire selection process and directed to select the candidates afresh in strict adherence to the Rules in this regard. Accordingly, fresh proceedings for appointment of Shiksha Karmi Grade-3 in Janapad Panchayat Geedam were done subsequently, in which one of the petitioners, i.e., petitioner No. 3 – Manoj Kumar has been selected. Counsel for the respondents No. 1 & 2 has placed his reliance upon the decision rendered in the matter of ***State of U.P. and others vs. Rajkumar Sharma and others*** reported in **(2006) 3 SCC 330**.

7. The respondent No.3 in its return while contesting the claim has adopted the return made by the respondents No. 1 & 2.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. As far as the first contention raised by the respondents with regard to the availability of alternative remedy of appeal is concerned, the same deserves to be unacceptable. True, it is, that the order impugned passed by the Collector (prescribed authority) is an appealable one as per the provision prescribed under Rule 3 (b) of the Rules of 1995 before the Director, Panchayat, but, merely on the said ground the petition cannot be thrown out. From a bare perusal of the order sheets, particularly, the order sheet dated 14.09.2006, it is clear that the notice was already issued to the respondent No.3 by this Court, therefore, under such circumstances, I am not inclined to dismiss the petition at this stage and that too after the efflux of ten years on the ground of alternative remedy as prescribed under the Rules of 1995.

10. The main contention raised by the petitioners' counsel is that since the order impugned dated 15.06.2006 (Annexure P/39) has been passed by the Collector, Dantewada without affording an opportunity of hearing to them and has been passed in gross violation of the mandatory Rule 5 of the Rules of 1995, therefore, deserves to be quashed.

11. In order to appreciate the aforesaid submissions, it is necessary for this Court to examine the Rule 5 of the Rules of 1995, which reads as under :-

“5. Revision.- (1) (a) The State Government, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself / himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit:

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:

Provided further that no application for revision shall be entertained against an order appealable under the Act.

(b) An application for revision by any party shall only be entertained

if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in sub-rule (1),--

(i) Where proceedings in respect of any case have been commenced by the State Government under sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and

(ii) Where proceedings in respect of any such case have been commenced by the Officer mentioned in sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceedings and pass such order as it may deem fit.”

12. Proviso to aforesaid Rule as well as the principles of natural justice clearly provides that the revisional authority shall not vary or reverse any order unless notice has been served on the interested parties and opportunity of being heard is given.

13. For ascertaining the issue as to whether the petitioners have come within the purview of interested persons, so as to be entitled to be heard prior to the issuance of the impugned order passed by the Collector, it is necessary for this Court to examine the relevant documents, produced before this Court, particularly, Annexure P/31 to Annexure P/33 which are the select lists issued by the then C.E.O., Janpad Panchayat Geedam on 26.05.2006. If the select list (Annexure P/31) is examined, then it would reveal that only the petitioner No.2 (Ramesh Kumar), petitioner No.3 (Manoj Kumar) and petitioner No.4 (Baijoram) have been selected, while others, i.e., petitioners No.1, 5, 6 & 7 have not been selected. And, if another select list (Annexure P/33) issued by the same authority on the same day is examined, then it would reveal that only petitioner No.1 (Manish Kumar Gupta), petitioner No.5 (Tularam), petitioners No. 6 & 7 (Santosh Jaiswal and Sunil Kumar Gupta) have been selected, while others, i.e., petitioners No. 2, 3 & 4, who were shown to be selected in select list (Annexure P/31), are not selected.

14. From a conjoint reading of both the above mentioned select lists (Annexures P/31 & P/33), it is clear that they are, in fact, contradictory with each other, and therefore, no appointment orders in pursuance to the said select lists were issued. In

the matter of ***State of U.P. and others vs. Rajkumar Sharma and others*** reported in **(2006) 3 SCC 330**, as relied upon by Shri Vinod Deshmukh, learned counsel for the respondents 1 and 2, in which, it has been held by the Supreme Court that merely the inclusion of candidate's name in the list does not, *ipso facto*, confer any right to be selected. It observed in 14 as under :-

“14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47; *Asha Kaul v. State of J&K*, (1993) 2 SCC 573; *Union of India v. S.S. Uppal*, (1996) 2 SCC 168; *Hanuman Prasad v. Union of India*, (1996) 10 SCC 742; *Bihar Public Service Commission v. State of Bihar*, (1997) 3 SCC 198; *Syndicate Bank v. Shankar Paul*, (1997) 6 SCC 584; *Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra*, (1997) 10 SCC 264; *Punjab SEB v. Seema*, 1999 SCC (L&S) 629; *All India SC & ST Employees' Assn. v. A. Arthur Jeen*, (2001) 6 SCC 380; *Vinodan T. v. University of Calicut*, (2002) 4 SCC 726; *S. Renuka v. State of A.P.* (2002) 4 SCC 195 and *Batiarani Gramiya Bank v. Pallab Kumar*, (2004) 9 SCC 100.”

15. In view of the principles laid down in the above mentioned case, it is clear that the petitioners have not acquired any right and have, therefore, no locus even to question the order impugned passed by the Collector, Dantewada.

16. However, the decisions rendered in the matters of ***Union of India & another vs. Bharkarendu Datta Majumdar*** and ***East Coast Railway & another vs. Mahadev Appa Rao & Others*** reported respectively in **2010 A.I.R. SCW 6609** and **A.I.R. 2010 SC 2794**, as relied upon by the petitioners' counsel, are distinguishable from the facts involved in the instant case. In the matter of ***Union of India & another vs. Bharkarendu Datta Majumdar*** (supra), when the appointments of selected candidates were refused by the Appointing Committee without assigning any reasons, therefore, in that condition, it was held to be improper. Likewise, in the matter of ***East Coast Railway & another vs. Mahadev Appa Rao & Others*** (supra), the examination of typing test was cancelled by the competent authority even without assigning any reasons, therefore, in the said circumstances, the alleged cancellation

of typing test was held to be improper.

17. In both the above referred matters, the question with regard to the violation of principles of natural justice were not at all involved, therefore, both these decisions are inapplicable and would not be of any help to the petitioners.

18. Be that as it may, undisputedly no appointment orders pursuant to the said select lists have been issued to the petitioners, as such no right whatsoever was accrued to the petitioners merely on the basis of select lists. Since the petitioners had no personal right or interest in the list so prepared, therefore, it cannot be said that their interests are going to be affected adversely by such cancellation. Consequently, it cannot be held that the petitioners have any locus or, are the interested persons, so as to be entitled to be heard prior to the issuance of the order impugned passed by the Collector, Dantewada.

19. Resultantly, it cannot be held that the order impugned has been passed by the Collector in gross violation of the principles of natural justice or the same has been passed in violation Rule 5 of the Rules, 1995.

20. The petition, being devoid of merit and substance, deserves to be and is hereby dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge