

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 4059 OF 2003

1. Ravi Kumar Rao, aged 31 years, S/o Late Shri Joga Rao, R/o Veer Savarkar Nagar, Hirapur, Raipur (C.G.)
2. N.K. Jadhav, aged 46 years, S/o Shri S.R. Jadhav, R/o Rajatalab, Raipur (C.G.)
3. S.R. Sindhe, aged 51 years, S/o Late Shri J.R. Shinde, R/o D.E.O. Office Campus, Pension Bada, Raipur (C.G.)
4. Dinesh Mishra, aged 37 years, S/o Late Shri Chandramani Mishra, R/o New Shanti Nagar, Raipur (C.G.)
5. S.A. Khan, aged 45 years, S/o Late Abdul Sattar Khan, R/o D.E.O. Office Campus, Pension Bada, Raipur (C.G.)
6. Rajesh Naidu, aged 38 years, R/o Panch Building, Qr. No. 2/41-H, Durg (C.G.)
7. S. Upadhyay, aged 49 years, S/o Late Shri Nanhe Lal Upadhyay, R/o Lodhi Para, Kapa, Raipur (C.G.)

No. 1, 4, 5 and 6 are working as an Assistant Grade-II while No.2, 3, and 7 are Accountant in the office of the Director, Public Instructions & Education of the State of Chhattisgarh, having its office at Pension Bada, Raipur (C.G.)

... Petitioners

versus

1. State of Chhattisgarh, through its Secretary, Department of School Education, D.K.S. Bhawan, Mantralay, Raipur (C.G.)
2. The Director, Public Instructions & School Education, State of Chhattisgarh, having its office at Pension Bada, Raipur (C.G.)
3. The Joint Director (School) Education, having its office at Pension Bada, Raipur (C.G.)

... Respondents

WRIT PETITION NO. 4060 OF 2003

1. Sri R.P. Singh, aged 59 years, S/o Late Sri Randhir Singh, R/o Pension Bada, Raipur (C.G.)
2. Hem Lal Verma, aged 46 years, S/o Late Sri C.R. Verma, R/o Kushalpur, Raipur (C.G.)
3. B.K. Sharma, aged 50 years, S/o Sri J.L. Sharma, R/o Mukut Nagar, Raipur (C.G.)
4. B.R. Sahoo, aged 45 years, S/o Late Sri G.R. Sahoo, R/o Tikra Para, Raipur (C.G.)
5. M.H. Zohar, aged 44 years, S/o Nooruddin, R/o Satti Bazar, Raipur (C.G.)
6. R.K. Hariharano, aged 51 years, S/o Sri R.L. Hariharano, R/o Math Para, Raipur (C.G.)
7. S.K. Bhattacharya, aged 51 years, S/o Late Sri Shanti Bhattacharya, R/o D.E.O. Office Campus, Pension Bada, Raipur (C.G.)

No.2 is working as Senior Auditor while No.2 to 7 are working as Accountant in the office of the Director, Public Instructions & Education, having its office at Pension Bada, Raipur (C.G.)

... Petitioners

versus

1. State of Chhattisgarh, through its Secretary, Department of School Education, D.K.S. Bhawan, Mantralay, Raipur (C.G.)
2. The Director, Public Instructions & School Education, State of Chhattisgarh, having its office at Pension Bada, Raipur (C.G.)
3. The Joint Director (School) Education, having its office at Pension Bada, Raipur (C.G.)

... Respondents

For Petitioners	:	Mr. Animesh Verma, Advocate, under instructions of Mr. Ashish Shrivastava, Advocate.
For Respondent-State	:	Mr. D.R. Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/12/2017

1. These are two writ petitions under Article 226 of the Constitution of India, assailing the order dated 20.12.2002 (Annexure P-3) as well as order dated 1.9.2003 (Annexure P-6) .
2. Learned counsel for the petitioners submits that since the stand of the State Government is not that because of the reduction of the strength in the cadre the impugned order (Annexure P-6) was passed, the petitioners do not intend to challenge the reduction of the cadre strength, Annexure P-3, dated 20.12.2002, at this juncture and confines his argument so far as assailing the order dated 1.9.2003 (Annexure P-6) is concerned.
3. Vide the impugned order (Annexure P-6), the order of absorption dated 25.7.2003 passed in favour of each of the petitioners has been cancelled.
4. Contention of the learned counsel for the petitioners is that all the petitioners were working at different places in the School Education Department under the State of Chhattisgarh and each of the petitioners were having seniority district/divisional wise. He submits that vide order dated 4.7.2001 the State Government had issued an order posting the petitioners at the Directorate, Public Instructions at Raipur and

subsequently after about 2 years of service at the Directorate, Public Instructions, the State Government vide Annexure P-4, dated 25.7.2003, had absorbed the services of the petitioners under the Directorate and brought the seniority of the petitioners under the cadre available for the Directorate.

5. However, vide impugned order dated 1.9.2003 (Annexure P-6), the earlier order of absorption dated 25.7.2003 (Annexure P-4) has been cancelled.

6. Further contention of the learned counsel for the petitioners is that the said cancellation of absorption is *per se* illegal, for the reason that before issuance of the said order, the department has not issued any show cause notice to the petitioners seeking an explanation from each of the petitioners as to why the order of absorption should not be cancelled. It was further contended that the said order is also bad in law for the reason that, no reasons have been assigned as to why the order of absorption is bad in law and under what circumstances the order has been cancelled. Further contention is that once when the order of absorption dated 25.7.2003 (Annexure P-4) has been acted upon it could not have been cancelled without affording an opportunity of hearing to each of the petitioners and thus there is a clear violation of the principles of natural justice and for which also the impugned order is not sustainable and the same deserves to be cancelled. Next contention also is that it was initially apprehended that the impugned order of absorption was issued because of the reduction of the strength in the cadre, but, since the State Government has not taken such a stand in their return, the said ground is not being pressed upon at this juncture and thus prayed for the orders to be cancelled.

7. Learned counsel for the State however opposing the petitions submits that it is a case where the order of absorption dated 25.7.2003 (Annexure P-4) has been passed in contravention of the earlier order dated 4.7.2001 wherein it was very specifically mentioned that the petitioners would not be entitled for claiming absorption and that it would be a simple order of posting of the petitioners at the Directorate and that during the period of their posting at Directorate their lien would remain at district or divisional wise wherever they were posted before coming to the Directorate. Therefore, seniority also would be maintained at district/divisional wise at the place of posting from where they have been posted to the Directorate and their post would also remain vacant. That the petitioners in the instant case were found to have been wrongly granted the absorption and thus the erroneous granting of absorption was cancelled vide the impugned order and the same since it was erroneous did not require an opportunity of hearing to the other side because it is only a rectification of error and for rectification of error an opportunity of hearing or principles of natural justice would not be applicable.

8. In the given facts and circumstances, undisputedly, the petitioners were the employees of the Education Department having district/divisional level seniority. They have been posted initially at the Directorate vide order dated 4.7.2001 and since then they have been working at the Directorate itself and later their services were absorbed vide order dated 25.7.2003 (Annexure P-4).

9. A plain reading of the order dated 25.7.2003 (Annexure P-4) would reveal that the order of absorption had been passed cancelling the earlier order dated 4.7.2001 and which by itself means that the conditions attached to the said order dated 4.7.2001 were not to be looked into by the

respondents or have to be ignored by the respondents while issuing the order of absorption dated 25.7.2003 (Annexure P-4).

10. What further is apparent is the fact that the order dated 25.7.2003 (Annexure P-4) had been acted upon and since it has been acted upon, before cancelling of the said benefit which has flowed in favour of the petitioners, least that was required from the State Government was to at least issue a show cause to the petitioners seeking their explanation as to why the order of absorption which has been issued in their favour be not cancelled.

11. Further, it is also necessary to mention that even if the said compliance has not been done, at least the impugned order by which the absorption was being cancelled should had been a more speaking order whereby the reasons and specific details would had been given, which compelled the State Government for the issuance of the impugned order. Even otherwise, in the absence of either of the two conditions stipulated above, the State Government at least should have conducted a preliminary enquiry on the basis of which the impugned order was required to be issued. It does not appear from the reply which has been filed by the State Government or from the stand taken by the State Government during the course of hearing that any of these conditions have been fulfilled. In the absence of such exercise being conducted by the State Government, this Court does not find the impugned order dated 1.9.2003 (Annexure P-6) to have been issued with any substantive material or basis to withstand the test of judicial scrutiny under Article 226 of the Constitution of India and the same deserves to be and is accordingly set aside and the consequences to follow.

12. The said opinion of this Court stands fortified from a decision of the Hon'ble Supreme Court in the case of **Gajanan L. Pernekar v. State of Goa and Another, 1999 (8) SCC 378**, which again was a matter pertaining to an order of absorption which was subsequently recalled and the matter which ultimately had travelled up to the Supreme Court and the Hon'ble Supreme Court has in very categorical terms held that the order of recall was bad in law.

13. The State Government however shall have the liberty, if they choose, to conduct a suitable enquiry in this regard after following due process of law for rectification of error if any.

14. The two writ petitions stand accordingly allowed.

Sd/-
(P. Sam Koshy)
Judge