

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4802 of 2015**

Yamraj Kumar Maravi, S/o Dubraj Kumar Maravi, Aged about 41 years, Occupation Service, Presently posted at Government ITI, Korba, R/o Village Nawagonkhurd, Post Chaitram, Tahsil Pali, Distt. Korba (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Manpower Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. Director, Technical Education, Employment and Training, Indrawati Bhawan, Block 3 and 4, First, Third & Fourth Floors, Naya Raipur (C.G.)

---- Respondents**Writ Petition (S) No. 4785 of 2015**

Jayant Kumar Sahu, S/o Arjun Singh Sahu, Aged about 38 years, Occupation- Service, Presently posted at Government ITI, Nari, Distt. Dhamtari, R/o Post Palari, Tahsil Guru, Distt. Balod (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Manpower Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. Director, Technical Education, Employment and Training, Indrawati Bhawan, Block 3 and 4, First, Third & Fourth Floors, Naya Raipur (C.G.)

---- Respondents**Writ Petition (S) No. 4774 of 2015**

Sushil Kumar Khutte, S/o Chhote Lal Khutte, Aged about 31 years, Occupation Service, Presently posted at Government ITI, Kartala, District Korba, R/o Post Misda, Tahsil Nawagarh, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretay, Department of Manpower Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. Director, Technical Education, Employment and Training, Indrawati Bhawan, Block 3 and 4, First, Third & Fourth Floors, Naya Raipur (C.G.)

---- Respondents**Writ Petition (S) No. 4779 of 2015**

Suresh Kumar Sahu, S/o Ful Chand Sahu, Aged about 33 years, Occupation Service, presently posted at Government ITI, Khamaria (Seepat), District Bilaspur, R/o Gunjiyabor, Post Hasoud, via Bira, District Janjgir-Champa (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretay, Department of Manpower Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. Director, Technical Education, Employment and Training, Indrawati Bhawan, Block 3 and 4, First, Third & Fourth Floors, Naya Raipur (C.G.)

---- Respondents**Writ Petition (S) No. 4776 of 2015**

Prasanna Kumar Pandey, S/o Bijendra Nandan Pandey, Aged about 32 years, Occupation Service, presently posted at Government ITI, Chirmiri, District Korea, R/o Head Post Office, Hardi (Jarve), Tahsil Akaltara, Distt. Janjgir-Champa (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretay, Department of Manpower Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. Director, Technical Education, Employment and Training, Indrawati Bhawan, Block 3 and 4, First, Third & Fourth Floors, Naya Raipur (C.G.)

---- Respondents

---- Petitioner

Versus

- Respondents

For Petitioners : Mr. Rajeev Shrivastava & Mr. Gagan Tiwari, Advocate.
For Respondents No. 1 & 2/State : Mr. Dhiraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/10/2017

- (1) Since common question of law and fact is involved in the above batch of writ petitions, they are being disposed of by this common order.
- (2) This batch of writ petitions has been filed by the petitioners challenging the order dated 28.11.2015 (Annexure P-1), by which show cause notices have been issued to the petitioners for cancellation of their appointment.
- (3) Learned counsel appearing for the petitioners would submit that the petitioners applied for the posts of Training Officers, pursuant to the

advertisement dated 31.8.2010 issued by respondent No. 2 – Director, Technical Education; and at the time of making application, they were having the learning driving licence (LMV). They were permitted by the Appointing Authority to produce permanent driving licence at the time of their joining in the services. This fact was reiterated by the appointment letter dated 10.1.2013 and 2.5.2013 issued to the petitioners. Ultimately, the petitioners produced their permanent driving licence at the time of their joining and, they were allowed to work as Training Officer and they are still working on the said post and successfully completed their probation period. He would further submit that on 28.11.2015, a show cause notice has been issued on the basis of order of the State Government dated 1.8.2015 stating that on the date of issuance of advertisement i.e. 31.08.2010, they did not have valid driving licence to drive the Light Motor Vehicle, therefore, they were not eligible to be appointed on the post of Training Officer, which is clearly illegal and bad in law.

(4) Learned State counsel submits that the order passed by the Director, Technical Education issuing show cause notice is strictly in accordance with law. The petitioners are at liberty to file reply to the show cause notice which will be considered in accordance with law.

(5) I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the records with utmost circumspection.

(6) Advertisement for the post of Training Officer was issued on 8th September, 2010 and, thereafter corrigendum dated 25.09.2010 was issued stating that for the posts No. 7, 21 & 22, driving licence of Light Motor Vehicle is necessary. At the time of interview, petitioners did have

only learning licence (LMV). The interview committee headed by respondent No. 2 took a decision on 24.12.2012 that the petitioners should be allowed to appear in the interview on the condition that they will produce permanent driving licence at the time of selection. Thereafter, appointment order was issued to the petitioners on 10.1.2013 & 2.5.2013, in which the condition was incorporated that at the time of joining, the petitioners are required to submit their permanent driving licence of LMV, which the petitioners did and they were allowed to join on the post of Training Officer.

(7) The State Government has issued the order dated 1.8.2015 directing respondent No. 2 to cancel appointment of the petitioners on the ground that their permanent driving licence of LMV has been issued after 31.08.2010 i.e. the date of issuance of the advertisement.

(8) It is apparent on record that respondent No. 2 - Director, Technical Education has permitted the petitioners to appear in the interview and allowed them to produce their permanent driving licence at the time of selection and appointment letters dated 2.5.2013 & 10.01.2013, itself provided that the petitioners have to produce their driving licence at the time of joining, pursuant to which they have submitted their permanent driving licence at the time of their joining and, therefore, on the instructions of the State Government, order of cancellation of their appointment could not have been issued by the Director, Technical Education.

(9) In the matter of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others**¹, the Supreme Court has held that if any decision is taken by a statutory authority at the behest or on suggestion of a person

¹ (2011) 5 SCC 435

who has no statutory role to play, the same would be patently illegal.

Paragraphs 26 to 28 of the report read as under : -

“26. ... It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide *Purtabpore Co. Ltd. v. Cane Commr. of Bihar*², *Chandrika Jha v. State of Bihar*³, *Tarlochan Dev Sharma v. State of Punjab*⁴ and *Manohar Lal v. Ugrasen*⁵.)

27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*⁶, *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*⁷ and *Pancham Chand v. State of H.P.*⁸ observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

(10) In the instant case, show cause notice has been issued on the ground that permanent driving licence has been issued to the petitioners after the issuance of advertisement i.e. 31.08.2010

2 (1969) 1 SCC 308

3 (1984) 2 SCC 41

4 (2001) 6 SCC 260

5 (2010) 11 SCC 557

6 AIR 1952 SC 16

7 (2004) 2 SCC 65

8 (2008) 7 SCC 117

(11) It is pertinent to mention here that the Interview Committee, by its decision dated 24.12.2012, stated that at the time of joining, the petitioners are required to file their permanent driving licence of Light Motor Vehicle, which they have submitted and their joining has been accepted and they are still working on the said post.

(12) Respondent No. 2 has not taken into consideration the facts and conditions incorporated by the Interview Committee by its notes / orders dated 24.12.2012 and merely on the basis of dictation and direction of the State Government dated 1.8.2015, the impugned show cause notices have been issued for cancellation of appointment of the petitioners on the post of Traing Officer, which is not in accordance with law, as the respondent No.1/State Government is neither appointing authority nor disciplinary authority of the petitioners.

(13) In view of the aforesaid discussion, the show cause notice dated 28.11.2015 (Annexure P-1) issued by respondent No. 2 – Director, Technical Education holding that the petitioners were ineligible for the post of Training Officer is liable to be and is hereby quashed. However, it is open to respondent No.2 to proceed in accordance with law after following the due procedure of law.

(14) The writ petitions are allowed to the extent sketched herein-above.
No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

