

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 3693 of 2012**

Harish Kumar Patel S/o Rajendra Kumar Patel Aged About 37 Years Pt.  
Deendayal Upadhaya Ward No. 5, Nagari, Distt. Dhamtari (CG).

**---- Petitioner****Versus**

1. State of Chhattisgarh through The Secretary, Urban Administration Department, DKS Bhawan, Raipur (CG).
2. Joint Director Urban Administration & Development Department, Subhash Stadium, Moti Bag, Raipur C.G.
3. Chief Executive Officer, Nagar Panhayat, Nagari, Distt. Dhamtari C.G..
4. Arti Soni D/o Bhikham Soni, aged about 24 years, Assistant Grade-III, Nagar Panchayat, Nagri Chhattisgarh.

**---- Respondents.**


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|----------------------|---|---------------------------------------------------------------------------------|
| For Petitioner       | : | Shri Ajay Shrivastava, Advocate.                                                |
| For Respondent/State | : | Shri Adhiraj Surana, Dy. Govt. Advocate.                                        |
| For Respondent No.3  | : | Shri Apurva Shrivastava, Advocate, on behalf<br>of Shri Sushil Dubey, Advocate. |
| For respondent No.4  | : | Shri FS Khare, Advocate.                                                        |

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**Hon'ble Shri Justice P. Sam Koshy****Order On Board****07/04/2017**

1. The present petition has been preferred assailing the order dated 14.02.2012 (Annexure P/1) and the order dated 20.04.2012 whereby the respondent No.3 has issued an order of appointment in favour of respondent No.4 on the post of Assistant Grade-III.
2. Brief facts of the case are that, the respondent No.3 published an advertisement on 27.06.2011 for filling up the post of Assistant Grade-III at Nagar Panchayat, Nagri, Distt. Dhamtari. The minimum qualification that was prescribed in the advertisement was passing of Higher

Secondary Examination certificate or First Year pass of Graduation Course; 25 words per minute Hindi Typing pass from the recognized Board/Institution and one year Diploma Course in Data Entry Operating/Computer Programming from any recognized Board/Institution with 10000 words Key Depression per hour.

3. The petitioner participated for the said post. The petitioner was having all requisite qualifications as per advertisement. However, the respondent vide order dated 20.04.2012 granted appointment to the respondent No.4 on the said post. Annexure P/1 is the document whereby the merit list of the candidates who had undertaken the examination has been published. In the said select list, it is reflected that the respondent No.4 was shown as the selected candidate and the present petitioner was reflected at serial No.1 in the wait list candidate.
4. The petitioner immediately raised an objection that the respondents alleging illegality in the course of granting appointment to the respondent No.4. According to the petitioner, the respondent No.4 do not have requisite qualifications as envisaged in the advertisement so far as qualification of having one year diploma course of Date Entry Operator from a recognized institution is concerned. The certificate on the basis of which the respondent No.4 has been appointed is enclosed in the petition which shows that the respondent No.4 had infact undertaken one year Basic Training Course in the sector of Information Technology. The stand of the respondent No.3 who has granted appointment is that the course which the respondent No.4 had undertaken was a better

course than the course which has been published in the advertisement as minimum qualification prescribed.

5. Though the respondent No.3 in the reply submitted that the course which the respondent No.4 had undertaken was equivalent if not a better course of one year computer course. The reply of all the respondents are silent in respect of the equivalence of the qualification which the respondent No.4 possessed when compared to the qualification prescribed in the advertisement. From the plain reading of the course which the respondent No.4 has undertaken would not reflect any resemblance to the qualification prescribed in the advertisement. Just only on the basis of a subject in a course, the equivalence of a course cannot be determined.
6. At this juncture, counsel for the respondent No.4 makes a statement that pending the petition before this court, the respondent No.4 has resigned from the job and she is no longer interested in contesting the case any further.
7. This court vide order dated 10.03.2016 had issued instructions to the respondent No.3 to file an affidavit as to the current status of the post on which the petitioner is seeking an employment. Based upon this order, the respondent No.3 is said to have filed IA No.7 supported with an affidavit dated 31.03.2016 intimating that the post of Assistant Grade-III at Nagar Panchayat, Nagari, Distt. Dhamtari was lying vacant. Counsel for the respondent No.3 submits that status is still the same.
8. Counsel for the respondent No.3 have not been able to establish before

this court that the respondent No.4 possessed the minimum qualification prescribed under the advertisement. Admittedly, the requisite qualification of one year Diploma course from recognized institution of Date Entry Operating was not in possession of the respondent No.4. The respondents have also not been able to prove that the qualification which the respondent No.4 did possess was equivalent to the qualification prescribed in the advertisement. Thus, this court has no hesitation in reaching to the conclusion that appointment granted to the respondent No.4 was per se illegal. The natural consequence of the appointment of the respondent No.4 being declared as illegal, the petitioner who stood at serial No.1 in the wait list would automatically get a chance for being considered for appointment on the said post as she would thereafter become the most meritorious candidate.

9. There is a categorical statement made by the respondent No.3 in respect of said post lying vacant. It is also not a case where the petitioner has approached this court at a belated stage. The petitioner has filed this petition in the year, 2012 i.e. the moment he came to know the illegality in the appointment being given to the respondent No.4. This petition was also filed before the lapse of one year period of validity of the select list.
10. In the aforesaid factual matrix of the case, this court is of the opinion that the petitioner deserves to be considered for being appointed as Assistant Grade-III in view of the merit list published on 14.02.2012 as the petitioner stood at serial No.1 in the wait list below the respondent

No.4.

11. Accordingly, let necessary order of appointment be issued in favour of the petitioner by the respondent No.3 within a period of 60 days from the date of production of certified copy of this order.

Sd/-

(P.Sam Koshy)  
**Judge**

inder