

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4805 of 2015**

Sanjay Kumar Sarthi, S/o Ram Kumar Sarthi, Aged about 28 years, Occupation Service, Presently posted at Government ITI, Surajpur, Distt. Surajpur, R/o Village & Post Kotra, Tahsil & Distt. Raigarh (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. 4784 of 2015**

Chandra Kumar Yadav, S/o Chhattar Singh Yadav, Aged about 27 years, Occupation Service, presently posted at Government ITI, Koni, Bilaspur, District Bilaspur, R/o village Chhuchipali, Post Patelpali, Tahsil and District Raigarh (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. 4780 of 2015**

Tupti Pagare, D/o Krishna Pagare, Aged about 34 years, Occupation Service, presently posted at Government ITI, Pendri, District Rajnandgaon, R/o Station Para, Ward No. 13, Shitla Gali, Distt. Rajnandgaon (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. 4806 of 2015**

Tripti Chandrakar, S/o Durga Prasad Chandrakar, Aged about 27 years, Occupation Service, Presently posted at Government ITI, Durg, District Durg, R/o Street No. 15/B, Quarter No.7, Sector 2, Bhilai, Distt. Durg (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. 4809 of 2015**

Sita, D/o Kailashpuri Goswami, Aged about 30 years, Occupation Service, Presently posted at Government ITI, Berla, District Bemetara, R/o Quarter No.2, ITI Campus, Berla, District Bemetara (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. 4786 of 2015

Bhanumati Thakur, D/o Govindram Thakur, Aged about 35 years, Occupation Service, presently posted at Government ITI, Magarlod, District Dhamtari, R/o Camp-1, Teendarshan Mandir, G.E. Road, Saksharta Chowk, Nandu Auto Repair Shop, Bhilai, Distt. Durg (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

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 and 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 others¹, the Supreme Court has held that if any decision is

¹ (2011) 5 SCC 435

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.

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, respondent No. 2 has taken a decision to issue show cause notice only on the basis of instruction of the State Government

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

dated 1.8.2015 *whereas* competent authority/appointing authority of the petitioners is respondent No. 2 - Director, Technical Education. The respondent No. 2- Director, Technical Education has already permitted the petitioners to produce permanent driving licence of Light Motor Vehicle at the time of joining, which the petitioners had already filed and, therefore, respondent No. 2- Director, Technical Education is absolutely unjustified in acting upon the direction of the State Government and taking steps for cancelling the appointment of the petitioners on the ground that the petitioners' driving licence have been issued after 31.08.2010 i.e. the date of issuance of advertisement, it ignores the decision, which was earlier, taken by respondent No. 2 that the petitioners will produce their permanent driving licence (LMV) at the time of joining.

(11) 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.

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

