

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 5680 of 2007

Sunil Kumar Arya S/o Late Shankar Lal Arya, aged about 58 years, R/o Panchsheel Ward, Mahasamund, District Mahasamund (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department of Urban Administration and Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur, District Raipur (C.G.).
2. Commissioner-cum-Director, Urban Administration and Development Department, Raipur (C.G.).

---Respondents

For petitioner	:	Shri Sourabh Sharma, Advocate.
For State	:	Shri Syed Majid ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/07/2018

1. The challenge in the present Writ Petition is to Annexures - P/11, P/13 & P/14.
2. Annexure-P/11 dated 22/06/2006 is an order of appointment whereby the petitioner has been inflicted with a punishment of stoppage of two increments with cumulative effect.
3. The said order of punishment was subjected to challenge before the Appellate Authority who in turn vide Annexure-P/13 dated 26/10/2006 rejected the appeal.
4. The order of the disciplinary authority as well as the Appellate Authority was put to challenge in a revision before the Revisional Authority, but again

vide Annexure-P/14 dated 31/05/2007, the Revisional Authority had rejected the revision petition.

5. The counsel for the petitioner submits that, the impugned order of punishment and the subsequent rejection of appeal and revision is per-se illegal for the reason that, the entire basis for initiating of the disciplinary proceedings against the petitioner stands vitiated in the light of the order passed by the High Court in WP No.1589/2002 and other analogous Writ Petitions decided on 02/01/2006.

6. The facts leading to the filing of the Writ Petition is that, there was a recruitment process initiated by the Nagar Panchayat, Chhuikhadan for appointment to the post of Siksha Karmi in the year 1998. The Nagar Panchayat, Chhuikhadan issued a resolution publishing the name of selected candidates on 21/08/1998. The Nagar Panchayat, Chhuikhadan again passed a resolution on 08/09/1998 confirming the selection process and the select list.

7. Lateron, on recommendation being approved by the Collector, the orders of appointment were issued to the selected candidates.

8. Sometimes in the year 2002, a complaint was lodged by one Umakant Mahobia before the Collector and the Collector rejected the same on 21/03/2002.

9. Thereafter, the said complainant filed a complaint again before the authorities of the State Government and the State Authorities thereafter entertaining the complaint made by the complainant finding certain

irregularities cancelled the entire select list and appointments made in the year 1998-1999.

10. This order of cancellation of the appointment of the State Government and the subsequent orders of cancelling the appointments were questioned by the respective Siksha Karmis in a bunch of Writ Petitions leading amongst which being WP No.1589/2002. The Writ Petition finally stood allowed vide order dated 02/01/2006 and all those persons whose appointments were cancelled ordered to be taken back in service and in due course of time, the said order of the High Court attained finality.

11. Lateron, a departmental enquiry was initiated against the petitioner for the alleged irregularity/misconduct committed by the petitioner with the recruitment process for appointment of Siksha Karmi and after the enquiry report was submitted by the enquiry officer, the impugned order Annexure-P/11 was passed and the appeal stood rejected vide the impugned order Annexure-P/13 and the revision also stood rejected vide Annexure-P/14 leading to the filing of the present Writ Petition.

12. The contention of the counsel for the petitioner is that, once when the process of initiation of departmental enquiry/disciplinary proceedings itself does not exists in as much as the High Court had set-aside the order of the State Government cancelling the appointments holding it to be wrongful appointments, the entire disciplinary enquiry ought to had been dropped at the threshold itself without proceeding further. He further submits that, the State Government does not seem to have proceeded further with the

appointments so made then. The appointment orders have never been questioned before any competent court of law, nor has it been subjected to scrutiny subsequent to the order of the High Court and the persons who have been reinstated continue in service.

13. Another aspect which cannot be lost sight of is that, it was not the petitioner alone who had conducted the recruitment, but there were a standing Committee duly constituted in accordance with the Rules applicable and the Committee consisted of 12 members of which the petitioner happened to be one.

14. Moreover, the selection process and the orders of appointment had also the approval of the District Collector.

15. To add with it, the complaint which the complainant has lodged at the first instance before the Collector was scrutinized and the Collector himself did not find any irregularity in the recruitment process or in the constitution of the Committee.

16. The State Government while initiating the disciplinary action against the petitioner is silent upon this development and have only initiated the disciplinary action so far as the petitioner is concerned which according to the counsel for the petitioner is bad in law and not sustainable.

17. The State counsel however referring to the report of the enquiry officer who had conducted the departmental enquiry against the petitioner submits that, the finding of the enquiry report show that there have been much deviation to the recruitment rules while the selection process which was

conducted and that there have been irregularities detected in the course of recruitment process while publishing select list and the punishment based on the enquiry report cannot be interfered with by this Court as a matter of routine and thus prayed for rejection of the Writ Petition.

18. Having heard the contention put forth on either side and on perusal of record, undisputedly, the selection which is under dispute has not been set-aside/quashed after the High Court having entertained the Writ Petition No.1589/2002 decided on 02/01/2006 along with other analogous petitions. The petitioner was not the only member in the selection Committee. He was accompanied by 11 other members in the Committee.

19. There does not appear to be any objection from any of the member so far as the constitution of the Committee or the selection process is concerned.

20. Moreover, the complainant Umakant Mahobia is one of the unsuccessful candidate who being unsuccessful thereafter had turned around and questioned the selection process and the appointments so made.

21. Further it appears that, it is only the petitioner alone who has been subjected to disciplinary proceeding for the alleged recruitment undertaken in the year 1998 which again is nothing but an arbitrary and discriminatory conduct of the State Government.

22. In addition to all these, what also cannot be lost sight of is that, once when the High Court has cancelled the order of the State Government

cancelling the appointments of the selected candidates and the said action having not been further processed and the State Government also after the High Court has passed an order on 02/06/2006 not proceeding further questioning the appointments made after granting an opportunity of hearing to the selected candidates, the same has attained finality in due course of time.

23. Thus, it is difficult to accept that, there was any irregularity or deficiency on part of the petitioner conducting any misconduct in the course of selection process in any manner.

24. The impugned order of punishment Annexure-P/11 thus is not sustainable and the same deserve to be and is accordingly set-aside.

25. As a consequence, the subsequent orders Annexure-P/13-rejection of appeal and Annexure-P/14-rejection of revision petition also stands set-aside/quashed.

26. Consequences to follow.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit