

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6773 of 2007**

1. Dr. Krishanamurti Sharma S/o Shri Vishnu Prasad Sharma Aged About 40 Years R/o Rajapara Ward Kanker, Tahsil And District Kanker C. G., Chhattisgarh
2. Namita Jain D/o Shri B. R. Jain Aged About 33 Years R/o Alberapara Ward Kanker, Tahsil And District Kanker C. G., District : Kanker, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through, Secretary Department Of Urban Administration And Development, Mantralaya D. K. S. Bhawan, Raipur C. G., Chhattisgarh
2. Director Urban Administration And Development, R. D. A. Building Raipur C. G., District : Raipur, Chhattisgarh
3. Asstt. Commissioner Department Of Tribal Development Kanker Distt. North Bastar C. G. Member Of D. P. C., District : Kanker, Chhattisgarh
4. Chief Municipal Officer Municipality Kanker District North Bastar C. G. Member Of D. P. C., District : Kanker, Chhattisgarh
5. District Co-Ordinator Department Of Tribal Development Kanker Distt. North Bastar C. G. Member Of D. P. C., District : Kanker, Chhattisgarh

--- Respondents

For Petitioner : Shri Prakash Tiwari with Shri Abhishek Singh, Advocate
 For Respondent/State: Shri Satish Gupta, GA
 For Respondent No.4: Shri Kishore Bhaduri, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****01/05/2018**

Heard.

2. The petitioners, two in number, have filed this petition seeking mandamus for consideration of their cases for promotion to the post of Coach with retrospective effect and all consequential benefits.
3. Briefly stated, the petitioners case is that the petitioners were initially

appointed as Shiksha Karmi Grade II (P.T.I.) on 19-08-1998. Since then, the petitioners continued to work as Shiksha Karmi Grade II (P.T.I.). Their grievance is that despite completion of long period of their service, till filing of the instant petition, the petitioners have not been considered for promotion to the next higher post of Coach. He further submits that various correspondences between the local body/employer of the petitioners and Department of Tribal Development on the issue of consideration of petitioners case for promotion there is no consideration of their cases. According to the petitioners, two post of Coach are lying vacant, against which, the petitioners could have been promoted in view of their seniority and unblemish records.

4. On the other hand, learned counsel for respondent No.4 would submit that the petitioners are substantively appointed as Shiksha Karmi Grade II. According to him, the post of Shiksha Karmi (Physical Training) is only available but there is no post of Coach prescribed under the rules. Learned counsel for respondent No.4, referring to the return, would submit that in the school of the same municipality, other employees were promoted from Shiksha Karmi Grade III to Shiksha Karmi Grade II, because the posts were available but further promotion to the post of Physical Training Instructor (PTI) is not available. The vacant post of Coach at Kanya Krida Parisar, Kanker is a post of Tribal departmental and Shiksha Karmi of any grade cannot be recruited or promoted on the said post. It is further submitted that there is no post of Coach available with the respondent-local body and one post of Coach is not open for consideration of promotion of Shiksha Karmi.

5. The State has not taken any specific stand but has adopted the return filed by the local body.

6. The petitioners' claim for promotion to the post of Coach does not appear

to be based on any of the provisions contained in the applicable rules namely Chhattisgarh Municipality Shiksha Karmi (Recruitment and Condition of Service) Rules, 1998, under which, the petitioners were appointed. In the matter of appointment of Shiksha Karmi, the State framed rules known as Chhattisgarh Municipality Shiksha Karmi (Recruitment and Condition of Service) Rules, 1998 (In short “the Rules of 1998”) for appointment to the teaching post in the schools under the control of Urban Local Bodies. In Schedule I of the Rules of 1998, cadre post created under the rules have been specified which are specified as Shiksha Karmi Grade I, Shiksha Karmi Grade II & Shiksha Karmi Grade III. Schedule II of the Rules of 1998 provides the eligibility qualification for appointment to various posts of Shiksha Karmi Grade I to Shiksha Karmi Grade III. Schedule III of the Rules of 1998 provides for mode of appointment which is both by way of direct recruitment and promotion. Schedule IV of the Rules of 1998 provides for posts which are to be filled up by way of promotion. According to Schedule IV, Shiksha Karmi Grade II is entitled to be promoted as Shiksha Karmi Grade I.

7. In the entire rules, there is no mention of any post like Coach. Curiously enough, even though, in the municipality, there is no post in the name of Shiksha Karmi Grade II (PTI), but at the time of appointment of petitioners, they were shown as having been appointed as Shiksha Karmi Grade II (PTI). It appears that the respondents intended to appoint the petitioners for the purpose of providing Physical Education to students. For that reason, they were named as PTI, but under the rules, the legal status of the petitioners is only that of Shiksha Karmi Grade II, who is entitled to be considered for promotion to the next higher post of Shiksha Karmi Grade I.

8. From various communications made between the Municipality and the

Department of Tribal Development, it is clear that only confusion prevailed in the mind of the authorities with regard to avenue of promotion of the petitioners. It appears that the Sports complex has been developed by the Tribal Development Department which appears to be annexed with the schools run by the local bodies. However, what is the set up of the posts, in such, sports complex of the Department of Tribal Development is not known as there is no material placed before this Court.

9. Be that as it may, even if it is assumed that there exist certain post of Coach attached to Sports complex in the Department of Tribal Development, the petitioners, who were employees of the local bodies, appointed as Shiksha Karmi may not have any such claim for any such post, unless these posts are created under the Local body and that too in the manner that they constitute feeder post for promotion to the post of Coach, if any. Therefore, the petitioners prayer for issuance of mandamus to the respondents to consider their cases for promotion to the post of Coach, cannot be granted by this Court.

10. Learned counsel for the petitioner, during the course of arguments, submitted that the petitioners were sent to Sports Complex for work and they were continued as Shiksha Karmi Grade II (PTI) since last 20 years, without any promotion granted to them whereas number of other Shiksha Karmi Grade II have already received promotion. This argument before this Court is without any factual foundation in the petition.

11. Legally speaking, the petitioners being Shiksha Karmi Grade II, are entitled to be considered for promotion to the next higher post of Shiksha Karmi Grade I, subject to availability of vacancy and seniority position. Whether or not, junior of the petitioners have been promoted, is not stated on affidavit in the petition.

12. Learned counsel for respondent No.4 would submit that some of the Shiksha Karmi Grade II have been promoted, who were juniors to the petitioners. If that be so, the petitioners can raise an issue of supercession by juniors in a separately constituted petition or may represent the matter before the competent authority claiming promotion.

13. With the aforesaid observations, this petition is finally disposed off.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E