

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2584 of 2012**

Gauri Shankar Naik S/o Shri Murli Manohar Naik, aged about 41 years,
Shiksha Karmi Class-3, R/o Nawapara, Putkapuri, Thana & Tahsil –
Pussour, District Raigarh, CG

---- Petitioners**Versus**

1. State of Chhattisgarh through Secretary, Panchayat and Rural Development Department, D.K.S. Bhawan, Raipur, CG
2. Block Education Officer, Podi, Uroda, District Korba, CG
3. Chief Executive Officer, Janpad Panchayat – Podi Uroda, District Korba, CG
4. Rohit Chandra, Shiksha Karmi Class-3, Branch Officer, Shiksha Karmi Establishment Branch, Janpad Panchayat – Podi Uroda, District Korba, CG
5. Head Master, Primary School, Laingi, Block – Podi Uroda, District Korba, CG

---- Respondents

For Petitioner	:	Shri Upendra Nath Awasthi, senior advocate along with Shri Dhani Ram Patel, Advocate
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer
For Respondent no.3	:	Shri R. S. Baghel, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****03/04/2018**

The present writ petition has been filed seeking the following two reliefs:

- i) For calling the entire records with regard to the appointment of Shiksha Karmi Class-III, recruitment Exam-2009 of Janpad Panchayat, Podi Uroda, District Korba (CG); and

ii) For issuance of a direction against respondent no.3 to allow the petitioner to work as Shiksha Karmi Class-III at Government Primary School, Laingi, Block Podi Uroda, District Korba on the basis of appointment order dated 07.02.2011 and joining dated 17.02.2011.

2. The brief facts of the case is that he has an order of appointment in his favour dated 07.02.2011 whereby he was ordered to be posted as Shiksha Karmi Class-III at Primary School, Laingi, Circle Centre Pasaan, Block Podi Uroda, District Korba. He joined his service on 17.02.2011. Subsequently, on the basis of a false complaint lodged by the respondents, a criminal case was registered against him for the offence punishable under Sections 420 and 467 of IPC and the matter was put to trial before JMFC, Katghora in Criminal Case No.326/2011. The said criminal case resulted in conviction of the petitioner under Sections 420 and 467 of IPC whereby he was sentenced to undergo RI for three years with fine of Rs.500/- in each of the offences. The said judgment of conviction was subjected to appeal before the Additional Sessions Judge, Katghora in Criminal Appeal No. 49/2011. The order of conviction was set aside by the appellate Court on 27.01.2012 granting the benefit of doubt.

3. Contention of the counsel for the petitioner is that subsequent to the order of acquittal, the petitioner reached the respondents for grant of appointment but the respondents have sat upon the application without taking any decision. The respondents have not conducted any departmental enquiry nor have they placed the services of the petitioner under suspension nor is the petitioner being provided even subsistence allowance to sustain. Therefore an appropriate writ be issued to the respondents to immediately take back the petitioner into service as a Shiksha Karmi Class-III granting all consequential benefits for the intervening period.

4. Shri R. S. Baghel, counsel appearing for respondent no.3, the contesting respondent submits that admittedly no enquiry was conducted for the simple reason that, from perusal of the record it was detected by the authorities that the order of appointment produced by the petitioner was a fake document and that the petitioner's name did not appear in the select list nor was he a selected candidate for the post of Shiksha Karmi Grade-III in science faculty. Since it was a fake and forged document, the petitioner cannot be granted employment nor is there any requirement of a departmental enquiry as the fraud which was detected by the Authorities was left for the State Authorities to enquire by lodging an FIR.

5. Given the aforesaid factual matrix of the case what clearly reflects is that along with the writ petition certain documents have been filed. Annexure P-1 is an admit card of the petitioner giving details of his candidature like roll number, the centre where he had appeared for examination etc. The said admit card was issued by the CG Professional Examination Board. Annexure P-2 is the order of appointment dated 07.02.2011 reflecting the name of the petitioner and the place of posting etc. Annexure P-3 is an order of joining and posting issued by the Block Education Officer, Podi Uroda, District Korba (CG). Annexure P-4 is a document which shows that in compliance to Annexure P-3, the petitioner has given his joining to the Head Master at Primary School, Laingi.

6. In addition to the aforesaid documents, the undisputed fact is that the FIR which was lodged against the petitioner resulted in a criminal case being registered against the petitioner where there was initially an order of conviction which was ultimately set aside by the appellate authority vide order dated 27.01.2012 in Criminal Appeal No.49/11 decided by the Additional Sessions Judge, Katghora. Perusal of the record would reveal that apart from

lodging of the FIR, respondent no.3 does not have any other document with which it could be said that they had conducted any sort of preliminary investigation or enquiry or had called upon the petitioner to justify his credential so far as the order of appointment dated 07.02.2011 is concerned.

7. Under the given facts and circumstances, once when the criminal case has resulted in acquittal of the petitioner and the petitioner having reported back to respondent no.3, they should have acted upon the order of acquittal and should have either conducted an enquiry or given the petitioner joining in the light of Annexure P-2 i.e. the order of appointment dated 07.02.2011. This exercise seems to have not been done by the respondents.

8. Taking into consideration the contentions and allegations made by the respondents in respect of Annexure P-2 being a fake document and that the petitioner was never a selected candidate nor an order of appointment was ever issued by the respondents in favour of the petitioner, let respondent no.3 conduct an enquiry in this regard and in the process, the petitioner shall also be called upon by respondent no.3 to give his explanation with regard to Annexure P-2 i.e. the order of appointment dated 07.02.2011. After conducting an enquiry, let an order be passed in respect of the claim of the petitioner seeking appointment to the post of Shiksha Karmi Grade-III on the basis of Annexure P-2 dated 07.02.2011. In the event the respondents find that the order of appointment is genuine or is not fake, the petitioner would be entitled for all consequential benefits. At the same time, if in the course of enquiry the respondents reached to the conclusion that Annexure P-2 has not been issued by respondent no.3 and the same is a fake document and further from the record if it is found that the petitioner was not given an appointment nor was he a selected candidate, the petitioner would not be entitled for any benefit.

9. Let this exercise/enquiry be conducted by respondent no.3 within a period of 90 days from the date the certified copy of .this order is received by respondent no.3.

**Sd/-
(P. Sam Koshy)
JUDGE**

Bhola