

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.1775 of 2012**

Dilip Kumar Kashyap S/o Shri Arjun Prasad Kashyap, aged about 29 years, R/o near Mission Hospital, Kedarpur, Ambikapur Distt. Surguja, CG.

...Petitioner(s)

Versus

1. State of Chhattisgarh through the Secretary, Urban Administration and Development Department, DKS Bhawan, Raipur (CG).
2. Collector, Surguja, Ambikapur, District Surguja (CG).
3. Commissioner, Municipal Corporation, Ambikapur, District Surguja (CG).
4. Vikram Raj Sahu S/o Ganesh Prasad Sahu, R/o Bilaspur Road Manipur, Ambikapur, District Surguja (CG).

... Respondent(s)

WRIT PETITION (S) NO.1776 of 2012

Dushyant Kumar Bajaj, S/o late Baidyanath Prasad Gupta, aged about 40 years, R/o School Road, Ambikapur Distt. Surguja, CG.

...Petitioner(s)

Versus

1. State of Chhattisgarh through the Secretary, Urban Administration and Development Department, DKS Bhawan, Raipur (CG).
2. Collector, Surguja, Ambikapur, District Surguja (CG).
3. Commissioner, Municipal Corporation, Ambikapur, District Surguja (CG).
4. Vikram Raj Sahu S/o Ganesh Prasad Sahu, R/o Bilaspur Road Manipur, Ambikapur, District Surguja (CG).

... Respondent(s)

For Petitioners	:	Shri VK Pandey, Advocate.
For Respondent-State	:	Shri Ashutosh Pandey, PL.
For Respondent No.3	:	Shri Manoj Mishra on instructions of Shri Bhupendra Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/05/2018

1. These are two writ petitions which are of identical nature where the impugned orders and the facts also being the same, this court proceeds to decide these petitions by this common order.

2. The challenge in these petitions is to the order dated 20.04.2012 (Annexure P/2) passed by the Commissioner, Municipal Corporation, Ambikapur. Challenge is also to the order dated 09.12.2012 (Annexure P/1) passed by the Collector, Surguja, which was the basis for issuance of the order dated 20.04.2012.
3. The brief facts of the case is that an advertisement was issued for filling up of the post of Assistant Engineer (Civil) vide Annexure P/3 dated 21.10.2011. Both the petitioners fulfilling the requisite eligibility criteria applied for the post and were duly found to be suitable and placed in the order of merit. Thereafter, an order of appointment was issued on 16.12.2011 (Annexure P/5) and on the basis of which the petitioners gave joining and resumed their respective charges. In the due course of time it is alleged that a complaint was received by the Collector somewhere in February, 2012 made by the respondent No.4 alleging discrepancy in recruitment process. On receipt of such complaint, the Collector ordered for an enquiry and appointed the Commissioner, Municipal Corporation, Ambikapur, to conduct an enquiry.
4. In due course of time, the Commissioner conducted an enquiry and submitted report on 22.02.2012. In his report, he has stated that there is no illegality or irregularity or discrepancy which has arisen in the selection process where the petitioners have been found to be meritorious. It was also submitted by the enquiry officer in his report that the entire complaint was baseless and has been filed only after the complainant having participated in the selection process could

not succeed. Therefore, he has made all sorts of baseless complaint.

5. Though the Commissioner had given a report of there being no irregularity or discrepancy in the selection process, the Collector, Surguja on 13.03.2012 issued a show cause notice to the Commissioner alleging discrepancy in the advertisement and the selection process. The Commissioner, in turn, issued a show cause notice to the petitioners on 10.04.2012 calling explanation of the petitioners alleging the appointment being made wrongly and there being discrepancy in the selection process. To the said show cause notice, the petitioners sought for certain clarifications from the Commissioner as to what is the alleged discrepancy or irregularity said to have been committed in the course of petitioners appointment. The respondent-Commissioner gave reasons that on the date of submission of application, the petitioners did not have a valid caste certificate in their favour and the one which they had produced as proof of their caste status was infact a temporary certificate and the validity of which had already lapsed. Thereafter, the petitioner submitted their detailed reply to the show cause notice. Along with reply to the said notice, they have also provided the permanent caste certificate issued by the competent authority establishing the fact that the petitioners infact belonged to the Other Backward Class category.
6. Inspite of making available the permanent caste certificate issued in favour of the petitioners along with reply to the show cause notice, the Collector issued an order on 09.04.2012 (Annexure P/1) holding

that the conditions to the eligibility criteria as fixed in the advertisement was not followed while scrutinizing the documents submitted by the petitioners and as such there was a discrepancy in the selection process and accordingly the appointment so made being bad in law, ordered for cancellation of the appointment of the petitioners and also ordered for the appointment orders to be given to the other meritorious candidates. Based on the order of the Collector dated 09.04.2012, the Commissioner, Municipal Corporation issued the impugned order dated 20.04.2012 (Annexure P/2) cancelling the appointment of the petitioners, leading to filing of the present writ petitions.

7. The writ petitions were immediately filed and the petitioners were granted interim protection in their favour staying the effect and operation of the impugned orders and since then they continue to discharge their duties with the respondent-Municipal Corporation.
8. The contention of the petitioners are that the reasons assigned for cancellation of the appointment of the petitioners is totally baseless and misconceived. There has been no irregularity or discrepancy to have occurred in the course of selection process. It was further submitted that the respondents ought to have refused to accept the said caste certificate produced by the petitioners at the time of filling up of forms, but the fact that subsequently the petitioners have produced the duly issued permanent caste certificate from the competent authority and which was later on also verified by the High Power Caste Scrutiny Committee (in short, the Committee) constituted by the State, cures or satisfies the genuinity of the

petitioners' caste status which would further strengthen the case of the petitioners.

9. It was further contended that it is not a case where the petitioners had not supported their claim applications with a certificate issued from the competent authority. They had in possession a caste certificate issued by the competent authority. The only technicality which may come in way was that it was a temporary certificate. According to petitioners, on earlier occasions it was only temporary certificates which were issued by the authorities concerned and which was in possession of the petitioners. Even otherwise, as per advertisement itself the petitioners had six months time from the date of appointment to produce before the authorities a duly verified report of the Caste Scrutiny Committee. However, even before six months period got lapsed, the respondents have initiated an enquiry of its own without referring it to the Committee and had issued an order on 20.04.2012 which is bad in law.
10. Counsel for the petitioners further submits that in due course of time before the expiry of six months itself, the petitioners have got the certificate issued from the Committee and which has also been produced before the department so also has been placed on record of these writ petitions along with rejoinder. Thus, for all these reasons, the counsel for the petitioners pray for setting aside of the impugned orders.
11. The State counsel and the counsel for the Municipal Corporation however submit that at the time of submission of the application form the petitioners could provide only temporary caste certificate issued

by the competent authority and the said temporary certificate had also lost its validity period. Thus, on the date of submission of the application, the petitioners were not duly eligible. This being the discrepancy which was detected in the enquiry, order of cancellation of appointment of petitioners cannot be found fault with and the same was justified. So far as the stand of the Municipal Corporation is concerned, their contention is that the Municipal Corporation has issued the impugned order cancelling the appointment only as per the directions of the State Govt. i.e. Collector and so far as its role is concerned, the Commissioner has already conducted an enquiry and submitted a report before the Collector.

- 12.** Having heard the contentions put forth on either side and on perusal of records, from the facts narrated in the preceding paragraphs and which are not disputed by any of the parties to the petitions are, admittedly the petitioners while filing the application for recruitment had enclosed their application along with a caste certificate issued by the competent authority so far as their caste status is concerned. The said certificate was a temporary certificate. The certificate was duly accepted by the respondents and permitted the petitioners to participate in the recruitment process and on completion of which the petitioners were found meritorious and were granted appointment.
- 13.** It appears that a person who was unsuccessful in the selection process lodged a complaint doubting the caste status of the petitioners and alleged irregularity/discrepancy to have been committed in the course of selection. What cannot be brushed aside

is the fact that the petitioners did have a caste certificate in their favour though it might be temporary certificate or the validity of which must have been lapsed, but the fact still remains that the petitioners had certificate so far as their caste status is concerned and that it is nobody's case that the petitioners have obtained employment using fake documents in respect of their caste status.

- 14.** In addition to the aforesaid facts, what also strengthens the claim of the petitioners is that before expiry of six months period and before the impugned orders were passed by the respondents, the petitioners had obtained the caste certificate issued by the competent authority and which was produced before the authorities concerned so also was brought to the notice of the respondents while submitting the reply to the show cause notice issued before the impugned orders were passed. In addition to this, the petitioners have also got their caste certificates duly verified from the Committee constituted by the State in this regard. Further, the law of equity also is in favour of the petitioners inasmuch as the petitioners have been continuously working since their appointment.
- 15.** In view of the aforesaid factual matrix of the case it does not appear to have a case of false representation made by the petitioners at the time of submission of their claim application for recruitment to the post of Assistant Engineer (Civil). The authorities concerned also in due course of time found the petitioners to be meritorious in the selection process and had been granted appointment. The petitioners also got their caste certificate duly verified from the Committee in addition to have obtained permanent caste certificate.

16. Thus, for all these reasons, both the petitions deserve to be and are accordingly allowed. The impugned order dated 09.04.2012 (Annexure P/1) issued by the Collector and the impugned order cancelling the appointment dated 20.04.2012 (Annexure P/2) stand set aside/quashed.

Sd/-
(P. Sam Koshy)
Judge