

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.S. NO. 4288 OF 2016**

1. Manish Kumar Sahu, S/o Shri Bhola Ram Sahu, aged about 23 years, caste Teli, R/o Village Rampur, Post Patna, District Koriya (CG)
 2. Sulabh Toppo, S/o Hevertus Toppo, aged about 30 years, caste Uraon, R/o Village Bada Galounda, Post Bada Koranja, Tahsil, P.S. and District Jashpur (CG)
- ... Petitioners**

versus

1. State of Chhattisgarh, through Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur (CG)
 2. Engineer in Chief, Public Works Department, Sirpur Bhawan, Raipur, District Raipur (CG)
 3. Chief Engineer, Public Works Department, Surguja Range, Amikapur, District Surguja (CG)
 4. Superintendent Engineer, Public Works Department, Ambikapur Division, Ambikapur, District Surguja (CG)
 5. Chhattisgarh Professional Examination Board, Raipur, District Raipur (CG)
- ... Respondents**

For Petitioners	:	Mr. C.J.K. Rao, Advocate.
For Respondents	:	Mr. D.K. Wankhede, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/10/2018**

1. The present writ petition has been filed seeking for the following relief(s):

“10.1 That this Hon'ble Court be pleased to set aside the advertisement (Annexure P-1) issued by the respondents.

10.2 That this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondents to complete the process of selection in pursuance to advertisement issued on 31.8.13 by way of issuance of appointment order in accordance with law.”

2. Brief facts of the case are that the petitioners on an earlier occasion had participated in the recruitment process for appointment to the post of Assistant Draftsman vide advertisement/notification which was issued on 31.8.2013.

3. Contention of the petitioners is that the petitioners were found meritorious and they were also called for counseling vide notice dated 16.9.2014 and the counseling was held on 8.10.2014. Thereafter, the respondents had not acted upon the said advertisement. Meanwhile, they

have published Annexure P-1, a fresh advertisement, for filling up of the same post and same vacancies. It is this advertisement which is under challenge in the present writ petition.

4. Learned counsel for the petitioners submits that once when there was already a recruitment process initiated and which was also finalized, except for the issuance of the order of appointment, there was no reason whatsoever for the respondents not to act upon the said recruitment process and go in for a fresh recruitment vide Annexure P-1. Contention of the petitioners is that they were found to be meritorious and it was not necessary that they could have still succeeded in the subsequent recruitment process and further there was no illegality or lacuna or shortcomings in the said recruitment process which led to the recalling of the said selection process. Therefore, it was prayed for an appropriate direction of quashment of Annexure P-1 by way of the present writ petition and further prayed for issuance of appropriate directions for the respondents for appointment of the petitioners from the advertisement dated 31.8.2013.

5. Learned State Counsel however opposing the petition submits that they had already taken a decision dated 14.1.2016 as is evident from Annexure R-1 that they did not intend to pursue with the advertisement dated 31.8.2013. Further, there was a specific reason for not proceeding with the recruitment process and the reason being that the advertisement dated 31.8.2013 was not in accordance with the mandate of the 5th Schedule of the Constitution of India wherein the recruitment was for filling up for the post of Class 3 and Class 4 category posts in District Bastar, Surguja Division by way of a direct recruitment to be conducted by the Professional Examination Board, State of Chhattisgarh.

6. State Counsel further submits that at this juncture the petition itself may not be sustainable for the reason that down the line since there was no

stay in favour of the petitioner or against the advertisement, the recruitment process itself has been completed and appointment orders also have been issued in favour of the selected candidates. It is further contended by the State Counsel that merely because the petitioners' name was found in the selection list by itself would not give an indefeasible right claiming for appointment. It was also contended that it is always within the domain of the State Government for cancelling of the recruitment process particularly when it finds that the recruitment process was not in accordance with the rules and regulations or was in violation of the provisions of the Constitution of India. The State Counsel relies upon the following decisions in support of their claim:

- (i) 1991 (3) SCC 47 (Shankaran Dash v. Union of India)
- (ii) 2005 (9) SCC 22 (Punjab SEB v. Malkiat Singh)
- (iii) 2008 (7) SCC 210 (Subha B. Nair v. State of Kerala)
- (iv) 2009 (2) SCC 479 (S.S. Balu v. State of Kerala)
- (v) 2010 (6) SCC 777 (State of Orissa v. Rajkishore Nanda)

7. Having heard the contentions put forth on either side and on perusal of record, this Court is of the view that at this juncture it would not be fair and fruitful to go into the merits of the case for a simple reason that firstly the recruitment process itself has been completed and the candidates selected have already been granted appointment and they have also assumed the duties. None of the selected candidates have been subsequently added as a necessary party to the present writ petition. In the event of the petition being allowed, the rights created in favour of the selected candidates from the subsequent recruitment process or the advertisement under challenge would be adversely affected. If their appointment itself is set aside without hearing them or without giving them an opportunity of hearing would by itself be bad in law and for this ground the present writ petition may not be maintainable.

8. Moreover, from the perusal of record, it reveals that vide Annexure R-1 the State Government had already taken a decision not to proceed with the recruitment process from the earlier advertisement. Thereafter, a formal order has been passed by the State Government on 28.10.2016 cancelling the earlier advertisement dated 31.8.2013.

9. What further has to be taken note of is the fact that the earlier recruitment process was on the basis of the marks obtained on the academics of the candidates whereas the subsequent advertisement and the recruitment process undertaken was by a competitive examination conducted by the Professional Examination Board of the State of Chhattisgarh. Thus, the subsequent recruitment process was after subjecting the candidates to a competitive examination and it was only the meritorious candidates who had been selected.

10. What also needs to be taken note of is the fact that it is not a case where the State Government had no reason for cancelling the earlier advertisement and going in for a fresh recruitment. The subsequent recruitment process was initiated on the basis of the reasons which have been assigned in the order dated 14.1.2016, Annexure R-1, wherein the earlier advertisement was found to be in contravention to the provisions of the Constitution of India.

11. Given the said facts that the earlier recruitment process has been cancelled by the State Government by giving a cogent and justified reason and the subsequent advertisement in due course of time having been finalized and recruitment also having been made by issuance of appointment orders to the selected candidates, coupled with the fact that none of the selected candidates have been made a necessary party to the present writ petition, in the opinion of this Court, the present writ petition in

its present form has no sufficient force calling for an interference with the recruitment process initiated vide Annexure P-1 under challenge.

12. The writ petition thus fails and is dismissed accordingly.

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

/sharad/