

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 4171 OF 2008**

• Gainda Ram Chandrakar, aged- 48 years, S/o Shri Arjun Lal Chandrakar, Deputy Director, Department of School Education, Raipur, presently working as- Joint Director, Rajiv Gandhi Shiksha Mission, Raipur, R/o J.R. Dani Govt. Girls Hr. Sec. School, Campus, Raipur, District Raipur (CG) **... Petitioner**

versus

1. State of Chhattisgarh, through: the Secretary, Department of School Education, Mantralaya, D.K.S. Bhawan, Raipur (CG)
 2. The Under Secretary, State of Chhattisgarh, Department of School Education, Mantralaya, D.K.S. Bhawan, Raipur (CG) **... Respondents**

For Petitioner	:	Mr. R.K. Kesharwani, Advocate.
For Respondents	:	Mr. S.P. Kale, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/07/2018**

1. Challenge in the present writ petition is to the charge-sheet dated 10.7.2008, Annexure P-6, issued by the respondents.
2. The crux of the charges which have been levelled against the petitioner is that the experience certificate which has been produced by the petitioner was either false or fake on the basis of which he has obtained employment.
3. Challenge to the impugned charge-sheet is on the ground that the selection of the petitioner was already subjected to challenge in judicial scrutiny in two of the writ petitions i.e. W.P. No. 312/2005 and W.P. No. 599/2005.
4. So far as W.P. No. 312/2005 is concerned, the selection of the petitioner was under dispute on the ground of the petitioner has not produced his caste certificate at the time of his employment and therefore the appointment gets vitiated. W.P. No. 599/2005 was filed assailing the selection of the petitioner as one of the respondents on the ground that he does not fulfill the eligibility criteria of the requisite experience as required under rules and the advertisement.
5. According to the learned counsel for the petitioner, the two writ petitions were decided vide a common order dated 16.11.2005 and so far as the selection of the petitioner is concerned, in both these writ petitions, the High Court was of the view that the selection of the petitioner was not faulty and that the petitioner did possess all the eligibility criterias and had also produced all the requisite documents to

support his candidature. According to the learned counsel for the petitioner, once when the selection of the petitioner has been subjected to challenge by the High Court and the High Court has given its seal of approval of the appointment being proper, the respondent-State subsequently cannot issue a charge-sheet on the same set of fact and the same would be hit by the doctrine of res judicata and estoppel. According to the learned counsel for the petitioner, it is a case where subsequent to the disposal of the writ petitions on 16.11.2005, the respondent officers have issued Annexure P-4, dated 12.7.2006 and Annexure P-5, dated 19.12.2007, wherein they had on the basis of the judgment of High Court dated 16.11.2005 held that the appointment of the petitioner was proper, legal and justified and does not warrant any interference. According to the learned counsel for the petitioner, this Court has already granted an interim protection to the petitioner in the present writ petition and on account of which the petitioner is continuing in service and by efflux of time he has already reached the age of superannuation and therefore the charge-sheet needs to be dropped at this juncture. It was also the contention of the petitioner that the respondents are precluded from questioning the credentials of the petitioners when it has already produced the relevant documents and records before the High Court and the High Court had also scrutinised those documents and found the petitioner to be suitable for appointment and also reached to the conclusion that there was no illegality so far as the appointment of the petitioner is concerned.

6. Learned Counsel for the Respondents however submits that the impugned charge-sheet and the contents of the charges would by itself reveal that they are on different grounds than the grounds on which his appointment was challenged in the two writ petitions i.e. W.P. No. 312/2005 and W.P. No. 399/2005. Therefore, the charge-sheet at this juncture does not warrant any interference by this Court. It was also the contention of the learned State Counsel that even otherwise the High Court itself in the order dated 12.8.2008 in the contempt petition in very clear terms held that the respondents have all the authority to conduct an enquiry so far as the genuineness of the documents produced by the petitioner on the basis of which he has obtained employment. He thus prayed for the rejection of the writ petition.

7. Having heard the contentions put forth on either side and on perusal of record, what would be relevant at this juncture is, to consider the nature of allegations which have been levelled against the petitioner. For ready reference, the contents of the

charge-sheet, Annexure P-6, would be relevant to be reflected for better understanding of dispute in the present case, which is as under:

“1. शा0उ0मा0 विद्यालय अमलीपदर	दिनांक 17-9-86 से 7 माह दिनांक 16-5-87 29 दिन
2. शा0 शिक्षा महाविद्यालय रायपुर (बी0एड0 प्रशिक्षण अवधि)	दिनांक 19-5-87 से 11 माह दिनांक 2-5-88 13 दिन
3. शा0 हाईस्कूल रायपुरा जिला- रायपुर	दिनांक 3-5-88 से 8 वर्ष 11 माह दिनांक 9-4-97 6 दिन

इस प्रकार आपके द्वारा हायर सेकेण्डरी की कक्षा में 10 वर्ष पढ़ाने संबंधी प्रस्तुत अनुभव प्रमाण-पत्र में उपरोक्त वास्तविक तथ्यों को छुपाया गया है। जारी किये गये अनुभव प्रमाण-पत्र में उपरोक्त तीनों संस्थाओं में कार्यरत अवधि को शासकीय उच्चतर माध्यमिक विद्यालय अमलीपदर, जिला-रायपुर में कार्यरत होना दर्शाकर उच्चतर माध्यमिक विद्यालय की कक्षा में 10 वर्ष के अध्यापन अवधि की पूर्ती होना अंकित है, जो कि सत्य से परे है।”

8. At this juncture, it would be relevant to take note of the observations of the High Court in the two writ petitions in which the selection of the petitioner was also under challenge, i.e., WP No. 312 of 2005 and WP No. 399/2005. The relevant portion of the order of the High Court while disposing of those writ petitions wherein the petitioner was also one of the respondents is reproduced herein below:

“6. The petitioners in W.P. No.312/2005 are the 7 successful candidates who had appeared in the interview for respective posts.....Selection of Gand Ram Chandrakar (respondent no.6) has been challenged on the ground that his caste certificate of the State of Chhattisgarh was not produced.....

7.Apart from this, they have also challenged the selection of Sh. G.R. Chandrakar (respondent no.5) who has been selected in O.B.C. category for the post of the Deputy Director alleging it to be contrary to the Rules as according to the petitioners, the respondent no.5 does not fulfill the eligibility criteria of administrative experience as required under the rules and the advertisement”

9. Thereafter the High Court proceeded to decide the bunch of writ petitions and after due perusal of the records which were produced before the authorities concerned, the High Court finally vide its order in paragraph 24 touching both the writ petitions i.e. W.P. No. 312/2005 and WP No 399/2005 dealing with the selection of the petitioner held as follows:

“24. ...His selection has also been challenged in W.P. No.599/2005 on the ground that he was not having requisite experience, as he had worked as Assistant Director. Vide Annexure R-5/1 of his return he has shown about his entire Service career. The perusal of this document would show that he had worked as Principal Higher Secondary School for 1 year, 4 months and 29 days and had also worked as District Education Officer for 2 years, 3 months and 6

days, which are the administrative posts. Apart from this he had worked on various other posts also. The arguments advanced on this ground cannot be accepted. The selection of respondent no.6 Gand Ram Chandrakar cannot be set aside on these grounds.”

10. The plain perusal of the aforesaid observation by itself would mean that the High Court while deciding those two writ petitions pertaining to the selection of the petitioner has only held that, from the documents which have been produced before the High Court by the respondents it appears that the petitioner did not lack either qualification or experience and it is also a case where the petitioner did submit all the documents required to establish his caste status and it was under this circumstances that the High Court held that the appointment/selection of the petitioner cannot be set aside. Subsequently, the charge-sheet has been issued on entirely different grounds which were not subjected to enquiry or scrutinized by the High Court in the aforementioned two writ petitions.

11. What is also relevant to take note is the fact that, after the impugned charge-sheet was issued the petitioner had preferred a contempt petition before the High Court alleging that the act on the part of the respondents in issuing the charge-sheet would amount to contempt as the High Court had already found his selection to be proper and legal. The contempt Court while disposing of the said contempt petition made the following observations:

“From perusal of paragraph-24 of the order of Annexure C/1, it appears that the petitioner's selection was questioned by the unsuccessful candidates by way of filing W.P. No.312/2005 & 599/2005 on the ground that he, being a person belonging to creamy-layer, does not experience. This Court, on the basis of documents i.e. certificates filed by the petitioners regarding his caste, which stood un rebutted, held that he belongs to “Kurmi” caste, which falls under the category of OBC. Challenge to the experience was also rejected by this Court on the basis of experience certificate annexed by the petitioner along with his return.

However, from perusal of the show-cause notice of Annexure C/7, it is observed that the petitioner has been called upon to show cause as to why departmental enquiry should not be initiated against him for the alleged misconduct under the Chhattisgarh Civil Services Conduct Rules, 1965 as he procured appointment by submitting a forged experience certificate by practicing deception. Challenge to the selection of the petitioner as Deputy Director has been rejected by this court relying upon the experience certificate file by the petitioner along with his return. However, there is no order by this Court in favour of the petitioner, whereby the State has been

restrained from conducting any enquiry with regard to genuineness of experience certificate submitted by the petitioner for procuring appointment and the employer has every right to conduct enquiry into genuineness of the certificates submitted by the candidates with their applications for appointment.

For the aforesaid reasons, this Court is of the considered opinion that no case is made out for initiation of contempt proceedings against the respondents for alleged violation of the observations made by this Court in the order of Annexure C/1. The petition deserves to be dismissed and is accordingly, dismissed by imposing exemplary cost of Rs.5,000/-.”

12. In the light of the observations made by the High Court which had decided the writ petition on an earlier occasion while also disposing of the contempt petition, it clearly reflects that the High Court had itself in very categorical terms held that so far as the judicial review of the selection of the petitioner was concerned, the two writ petitions filed were under different factual matrix and those were decided only on the basis of the documents which have been produced before the Court by the State as well as by the petitioner who was the respondent therein. The High Court further in the contempt petition has held that the judicial scrutiny by the High Court was not so far as the genuineness of the documents which were furnished by the petitioner. It further reflects that the High Court had also made it clear that the decision of the High Court dated 16.11.2005 would not come in the way of the respondents if they intend to choose to conduct an enquiry so far as the genuineness of documents is concerned in a departmental enquiry to be initiated against the petitioner.

13. Under the circumstances, in view of the categorical observations made by the High Court in the contempt petition particularly when it is by the same Hon'ble Judge who had decided the two writ petitions challenging the selection of the petitioner is concerned, this Court has no hesitation in reaching to the conclusion that the charge-sheet in the instant case would not be hit by the doctrine of res judicata or estoppel, as the perusal of the charges would reveal that the alleged charges against the petitioner were entirely different than that were levelled against the petitioner in the two writ petitions.

14. As regards the contention of the petitioner so far as Annexures P-4 and P-5 is concerned, this Court is of the opinion that the observations made in both these annexures were exclusively on the basis of the finding of the writ Court with no discussion whatsoever so far as the genuineness of the documents.

15. So far as the judgment of this Court in the case of **R.N. Singh v. State of C.G. & Others, 2006 (2) C.G.L.J. 23** is concerned, this Court is of the opinion that the ratio of law laid down in the said case was under entirely different factual matrix of the case when compared to the facts of the present case inasmuch as, the observations of the Hon'ble Supreme Court in the case of *Escorts Farms Ltd. v. Commissioner, Kumanon Division, Nainital and Others* were in respect of a judicial proceeding which had already been finalized and the authorities intended to reopen and reagitate the same the second time. Whereas, in the present case, if the nature of the impugned charge-sheet is taken note of, the said ground was never in question in the said writ petition and the High Court also had never ventured into the enquiry of the genuineness of the experience certificate produced by the petitioner for obtaining the employment. Thus, the said judgment itself is distinguishable.

16. For the foregoing reasons, this Court does not intend to interfere with the charge-sheet, the writ petition thus being devoid of merits deserves to be and is accordingly dismissed thereby vacating the interim relief earlier granted.

17. Needless to mention that the authorities concerned while proceeding with the departmental enquiry would strictly consider all the documents which the petitioner has produced at the time of appointment and the enquiry also would be conducted after due following the procedure of law.

18. The writ petition accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge