

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1543 of 2018

Dev Kumar Kashyap S/o Shri Nirmal Kumar Kashyap, aged about 36 years, Presently working as Lecturar Panchayat at Govt. M. Gandhi Higher Secondary School, Bhothiya, Block Jaijaipur, District Janjgir-Champa (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh).
2. Commissioner-cum-Director, Directorate of Panchayat, Naya Raipur, District Raipur (C.G.).
3. Chief Executive Officer, Zila Panchayat, Janjgir-Champa, District Janjgir-Champa.

---Respondents

For petitioner	:	Shri C.Jayant K.Rao, Advocate
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/02/2018

1. The present writ petition have been preferred by the Teacher (Panchayat) and Lecturer (Panchayat) challenging the order dated 23.04.2016 passed by the Department of Panchayat and Rural Development, Government of Chhattisgarh, by which the benefit of revised pay scale on completion of 8 years service has been denied to him on the ground that before joining the service as Teacher (Panchayat) or Lecturer (Panchayat), as the case may be, as a direct recruitee, he has not obtained the No Objection Certificate (henceforth 'the NOC') from the previous

employer. In some cases the consequential order of withdrawal of revised pay-scale already granted to him has also been challenged.

2. The issue brought before this Court concerns the petitioners' entitlement to the revised pay-scale on completion of 8 years service as was ordered by the State Government in its order dated 17.05.2013. In the said order the benefit was made admissible to the Shiksha Karmis who have completed 8 years service from the date of appointment.

3. By subsequent circulars dated 04.12.2013 and 22.01.2014 the State Government clarified that the period of 8 years service shall be counted from the date of joining on the post presently held by the Shiksha Karmis. These two circulars were assailed by Shiksha Karmis before this Court in *Marisha Shrivastava v State of Chhattisgarh & Another* (WPS No.106/2014 decided on 26/09/2014) and other connected matters wherein dealing with this particular issue the Single Bench held that Teacher (Panchayat) who were initially appointed as Assistant Teacher (Panchayat), but later on joined as Teacher (Panchayat) as a fresh recruit are not entitled for counting his length of service of the lower post for the purpose of revision of pay scale pursuant to the order dated 17-5-2013 read with the orders dated 4-12-2013 & 22-1-2014.

4. Thereafter, some of the Shiksha Karmis preferred writ appeal i.e. *Dinesh Kumar Dewangan & Others v State of Chhattisgarh & Others* (WA No. 32/2015 decided on 09/12/2015) and other connected matters, which came to be disposed of with the following observations :

“6. It is significant to keep in mind that the Appellants did not resign but were relieved to join the higher post. The Rules or the advertisement did not provide that past service would not be counted in such situation. Had the Appellants been informed accordingly perhaps many of them may not have opted for direct recruitment to the higher post. Continuity of service on the lower post was also granted to them till the impugned executive instructions came to be issued replacing the earlier executive instruction.

7. It appears that a peculiar situation has been created possibly due to lack of decision taken at the headquarter level before issuance of circulars dated 17.5.2013, 4.12.2013 and 22.1.2014.

On 23.7.2015, we had observed as follows:

“We are of the opinion that the decisions with regard to persons like the Appellants and the claims made by them must have been taken at the Secretariat level in the Capital and merely implemented by the Chief Executive Officers. We therefore find no reason why the policy decision taken by the Respondents cannot be placed before us.”

8. No policy has been brought on record before us with regard to the status of the Appellants as on the date that the advertisements were published, they competed in the examination and were relieved to join their higher posts. The Respondents have not placed any materials on record with regard to the reasons for the

decision to fix an eight year criteria and the justification for grant of higher pay scale, dearness allowance and increments on basis of the same which may or may not be relevant for the present controversy. If the Appellants were drawing a higher pay after direct recruitment on the higher post and pay anomaly has been created by a subsequent decision of the Respondents prejudicially affecting the Appellants the Respondents are required to address the issue with regard to pay protection by removal of the anomaly. It is not an answer sustainable in law as contended by the Respondents that the Appellants will ultimately again start getting higher pay than their juniors and colleagues after completion of eight years on the higher post and till then they must endure a lower pay.

9. We therefore consider it necessary to remand these matters to the Secretary, Panchayat and Rural Development Department to pass a reasoned and speaking order in accordance with law, and if the Appellants so request, grant them a representative hearing.”

5. The State Government, thereafter, considered the issue and provided opportunity of hearing to some of the Shiksha Karmis in representative capacity and, eventually, passed the present impugned order holding that only such Teacher (Panchayat) who have appeared for recruitment to a higher post of Teacher (Panchayat) cadre by obtaining NOC while working in a lower post of Assistant Teacher (Panchayat) cadre will be entitled to count

their previous service on the lower post of Teacher (Panchayat) cadre, however the seniority shall be counted only for pay fixation.

6. The order dated 23.04.2016 as well as consequent action of withdrawal of revised pay-scale or the claim for revised pay-scale is challenged on the ground that in the order passed by the Division Bench in Dinesh Kumar Dewangan (supra) neither the State raised any argument on the strength of non obtaining of NOC nor the Division Bench has ever considered the said issue, therefore, denial of revised pay-scale on the ground of non obtaining of NOC before appearing in the direct recruitment to higher post of Teacher (Panchayat) cadre is wholly arbitrary and illegal, as the same is not sanctioned in law.

7. Learned State counsel would refer to Rule 12 of the Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012 (henceforth 'the Rules, 2012') read with Rule 10 of the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (henceforth 'the Rules, 1999') to argue that when member of Panchayat Service is not eligible to compete for any other post by way of direct recruitment unless he obtains NOC from his present employer, in the same analogy if the petitioners have not obtained individual NOC before appearing in the recruitment process for the higher post, their previous service has rightly been ignored to calculate 8 years service for obtaining the benefit of revised pay-scale. Learned State counsel would next argue that in Dinesh Kumar Dewangan (supra) the Division Bench of this Court has not decided the issue but left it open for the State Government to address the same and

take decision in the matter, therefore, petitioners reliance on the order passed by the Division Bench of this Court in Dinesh Kumar Dewangan (supra) is misplaced.

8. After hearing learned counsel appearing for the parties at length and on perusal of the papers, it clearly appears that in Dinesh Kumar Dewangan (supra) the Division Bench of this Court has dealt with the issue in express terms before remitting back the matter to the State Government for taking fresh decision, however, since the State Government has taken shelter under the Rules, 2012 and the Rules, 1999, I shall briefly refer to those provisions.

9. Rule 12 of the Rules, 2012 speaks about general conditions of service of a member of Teacher (Panchayat) cadre. It says that the conditions of service other than mentioned above shall be the same as applicable to other employees of Zila Panchayat or Janpad Panchayat, as the case may be.

10. Rule 10 of the Rules, 1999 prescribes the disqualifications for appointment to Panchayat service. It provides that no person shall be appointed by direct recruitment to any post if he is an employee of the Central Government or of the State Government or of any local authority or of Central Government, or State Government undertaking or of any Government aided body, unless he obtains no objection certificate of his employer and submits it along with his application.

11. It is the stand of the State Government that if a person is not entitled to be recruited unless he submits NOC of his employer along with his

application, his past service as a member of any lower post in the Teacher (Panchayat) cadre is not to be counted, however, a plain reading of the above referred provisions would not indicate that it applies to an order whereby the service benefit admissible to an employee appointed in violation of Rule 10 (8) of the Rules, 1999 is to be withdrawn even though he is continued in service. If according to the State Government or the concerned Panchayat a person has been appointed in contravention to Rule 10 (8) of the Rules, 1999, it was for them to take the action desirable in law, but the benefit admissible to a serving employee cannot be withdrawn, as there is no express provision to this effect.

12. This rule will not be applicable in the present facts situation also for the reason, which is binding on the Single Bench, inasmuch as in Dinesh Kumar Dewangan (supra) the Division Bench of this Court has observed in para 6 of the judgment that the Rules or the advertisement did not provide that past service would not be counted in such situation. With this observation of the Division Bench, it is not open either for the State or for this Court to consider any submission, which runs contrary to the observation made by the Division Bench.

13. Once it is found that there is no provision under the Rules or the advertisement providing that past services would not be counted in such situation, it is not open for the respondent to create a class of such Shiksha Karmis who have not obtained NOC before being recruited to the higher post of Teacher (Panchayat) cadre. Such norm of eligibility for counting 8 years service is not provided in the order dated 17.05.2013 also.

14. As earlier quoted, the Division Bench has observed, in no uncertain terms, that if the appellants were drawing the higher pay-scale after direct recruitment on the higher post and pay anomaly has been created by a subsequent decision of the respondents prejudicially affecting the appellants, the respondents are required to address the issue with regard to pay protection by removal of the anomaly. The Division Bench, thus, wanted the State Government to consider the issue, on remand, for removal of the anomaly and not to create a separate class of Teacher (Panchayat) cadre to retain the anomaly.

15. It appears, the authority considering the issue has not properly construed the order passed by the Division Bench and treated as if the entire issue has been left open for decision on the merits ignoring the observation made by the Division Bench. There is enough guidance in form of observation or finding in the order passed by the Division Bench, which should have been considered by the State Government in its true perspective, while passing the order.

16. It is also worthwhile to notice that in *Smt. Reeta Singh v. State of Chhattisgarh & Others* (WA 475/2015 decided on 29/10/2015) and other connected matters, the Division Bench of this Court while considering the issue of grant of seniority on voluntary transfer from one Janpad Panchayat to another, it has been held that such previous service prior to transfer shall be counted for eligibility for promotion, but not for seniority, therefore, as a necessary corollary, for counting the period of 8 years service for being

eligible to obtain benefit of revised pay-scale also the previous service in the lower post of Teacher (Panchayat) cadre is to be counted.

17. For the forgoing, this Court is of the considered opinion that the impugned order dated 23.04.2016 runs contrary to the order passed by the Division Bench of this Court in Dinesh Kumar Dewangan (supra), therefore, it deserves to be and is hereby quashed. As a sequel, the writ petitions stands allowed. The petitioner shall be entitled to obtain the benefit of revised pay-scale on completion of 8 years service by including the services rendered by them on a lower post or on the same post.

18. There shall be no order as to costs.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit