

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1200 of 2013

Smt. Shams Banu W/o Shri Mohammad Rafique, aged about 38 years,
R/o Shanti Nagar, Ward No.4, Gali No.2, Near House of Murti Thakur,
P.S. - Chikhali, Rajnandgaon (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Naya Raipur (C.G.).
2. Chief Executive Officer, Zila Panchayat, Raipur (C.G.).

---Respondents

WPS No. 1830 of 2013

Yogesh Kumar Upadhyay S/o Shri N.P.Upadhyay, aged about 40 years,
R/o Bhadesar Post-Dhaneli, P.S. Pamgerh, District Janjgir-Champa
(C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Naya Raipur (C.G.).
2. Chief Executive Officer, Zila Panchayat, Bilaspur, District Bilaspur (C.G.).
3. Assistant Chief Executive Officer, Zila Panchayat, Bilaspur, District Bilaspur (C.G.).

---Respondents

In WPS No. 1200/2013.

For petitioner	:	Shri Mateen Siddiqui, Advocate.
For resp.No.2	:	Shri N.N.Roy, Advocate.

In WPS No. 1830/2013.

For petitioner	:	Ms. Ruchi Nagar, Advocate.
For resp.No.2 & 3	:	Shri B.L.Sahu, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/07/2018

1. These are the two Writ Petitions filed before this Court against the action on part of the respondents in not considering the claim of the petitioners for appointment to the post of Siksha Karmi – Grade-I & II.
2. In both the petitions, the candidature of the petitioners was turned down on the ground that, they are not the second division passed candidates so far as post graduation course is concerned.
3. The petitioner in WPS No.1200/2013 had on an earlier round of litigation filed Writ Petition (S) No. 5403/2010 which got disposed off on 20/09/2010 in the light of the order passed by the division Bench of this Court in the case of **Ram Chandra Ram & Anr. v. State of Chhattisgarh & Ors. [WPS No. 6282/2009 decided on 01/07/2010]** and other analogous Writ Petitions.
4. The case of Ram Chandra Ram (Supra) was disposed off with a direction that the petitioner should approach the State Government by filing a representation seeking for relaxation of the qualification so far as insistence of second division passed in post graduation is concerned and the State Government was further directed to take a decision within a period of 3 months from the date of receipt of representation.
5. Further, the division Bench of this Court had also made an observation that in the event if the qualification part stands relaxed, it would be open for the State Government to take the candidates from the select list or give an opportunity of counseling.

6. Subsequently, the State Government issued a notification on 28/01/2011 whereby the requirement of second division passed in post graduation and the graduation course had been repealed/omitted.

7. Thereafter the case of the petitioner in WPS No.1200/2013 was again considered by the department and have rejected her candidature vide Annexure-P/1 dated 06/03/2013 leading to the filing of WPS No.1200/2013.

8. So far as the petitioner in WPS No. 1830/2013 is concerned, though the petitioner had made a claim to the respondents after the amendment, but no decision has been taken by the respondents till date.

9. The contention of the counsel for the petitioner is that, once when there was an specific direction by the division Bench of this Court in the case of Ram Chandra Ram (Supra) to the extent that in the event if the qualification of second division passed in the post graduation and graduation is relaxed, the candidature of the petitioner ought to have been considered. The respondents could not have rejected it on the ground as mentioned in the impugned order Annexure-P/1 dated 06/03/2013.

10. According to the counsel for the petitioner, the contents of Annexure-P/1 is totally irrelevant to the cause raised by the petitioner and that the said was never an intention of the division Bench while disposing off the case of Ram Chandra Ram (Supra). The only requirement for the respondents to consider for appointment was in the event if the qualification of second division passed stands repealed, the petitioner would be eligible for being considered for appointment. Undoubtedly both the petitioners have passed their post

graduation or graduation courses and subsequent to the amendment dated 28/01/2011 there was no impediment so far as the eligibility of the petitioners are concerned for the said post.

11. So far as the counsel appearing for the respondents are concerned, they take a stand that, since the notification was published on 28/01/2011, for all practical purpose it has to be presumed that the amendment has come into force only on 28/01/2011 and the said amended provision cannot be made applicable so far as the present recruitment is concerned which was undertaken in the year 2009-2010 i.e. prior to the amended provision come into force.

12. Having heard the contentions put forth on either side and on perusal of record what is relevant at this juncture is to take note of the observations of this Court passed in the case of Ram Chandra Ram (Supra) wherein in paragraphs 4 to 8, it has been held as under:-

“4. By notification dated 13.08.2008, issued by the Govt. of Chhattisgarh, new rule namely Chhattisgarh School Education Gazetted Service (School Level Service) Recruitment and Promotion Rules, 2008, came into force, in which the qualification for the post of Lecturer was post graduation with second division, B.Ed and five years experience only for promotion has been mentioned for the post of Lecturer of High School (Gazetted), but later on by amendment dated 28.08.2008 the condition of second division post graduation has been repealed and only post graduation has been substituted.

5. The contention of learned counsel appearing for the petitioners is that since the condition of second division in post graduation has been

repealed for Shiksha Karmi who are lower than that, fixation of second division graduation should also be repealed.

6. Keeping in view short listing , fixation of qualification as second division graduation with an intention to get Teachers of good quality is the domain of State Government which is not a subject of judicial review. However, since the petitioners are raising a grievance mentioning that for the post of lecturer, condition of second division has been repealed, we are of the opinion that the petitioners should approach the State Government by filing a representation and if such representation is filed, the same shall be considered and proper decision shall be taken thereon as early as possible preferably within a period of three months from the date of production of a copy of this order alongwith representation.

7. Needless to mention here that in case second division condition is relaxed, it will be open for the State Government to take the candidates from the select list or give an opportunity of counseling as the case may be, but we make it clear that we cannot interfere in the decision of the State Government.

8. It is further made clear that the candidates who were not allowed to participate in the examination because of above condition, if the same is relaxed, in that case they will be allowed to participate in future and if they are over age in-between, the relaxation of the same shall be considered."

13. Reading the observations in the aforesaid portion of the order passed in the case of Ram Chandra Ram (Supra) and if we take into consideration the contents of the impugned order Annexure-P/1 what reflect is that, the authority concerned perhaps have misconstrued the order passed by the

division Bench and have decided the claim of the petitioner on entirely different grounds.

14. Further, the impugned order dated 06/03/2013 also does not reflect the grounds which the State Counsel during the course of arguments had addressed. Thus, the said ground would not be applicable in the instant case.

15. Moreover, once when the division Bench of this Court had in very categorical terms held that, in the event of there being a relaxation in the rules, the candidature of the petitioners had to be considered and the same having not been challenged any further, the authorities concerned were duty bound to consider the claim of the petitioners in the light of the directions given in the said order. That the only further recourse available to the respondents was to ensure whether the petitioners infact have the requisite qualification of having passed post graduation/graduation in the respective subject and whether they had B.Ed degree or not.

16. The authorities could not have considered any other ground while considering the claim of the petitioners.

17. The impugned order so far as WPS No. 1200/2013 thus is bad in law and not sustainable and the same deserve to be and is accordingly set aside.

18. It is directed that the respondents shall forthwith consider the case of the petitioner for appointment as Siksha Karmi – Grade-I.

19. So far as the petitioner in WPS No.1830/2013, since his candidature has till date not been decided by the respondents in the light of the order passed in the case of Ram Chandra Ram (Supra), they shall consider the case of the petitioner also forthwith in accordance with the amended provision as it stands on 28/01/2011 and shall pass an appropriate order.

20. Let the respective respondents carry out the exercise required within a period of 90 days from the date of serving of the copy of this order.

21. In case if the petitioner does not have the other essential educational qualifications, their candidature can still be rejected.

22. Both the Writ Petitions accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit