

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 3892 of 2011

Suresh Kumar Pandey S/o Shri Shankar Lal Pandey, R/o Near Hanuman Mandir, Itwari Bazar, Dhamtari, District Dhamtari, CG

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Department of Panchayat and Social Welfare, D. K. S. Bhawan, Mantralaya, Raipur, district Raipur, CG
2. Collector, Dhamtari, District Dhamtari, Chhattisgarh
3. Chief Executive Officer, Zila Panchayat, Dhamtari, District Dhamtari, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Siddharth Dubey, Advocate
For State	:	Mr. Chandresh Shrivastava, Dy. A.G.
For Respondent no.3	:	Mr. Sanjay Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

30.08.2019

1. The challenge in the present writ petition is to the order Annexure P-1 dated 06.06.2011 whereby the services of the petitioner from the post of Shiksha Karmi Grade-I were terminated. The ground for termination was that the petitioner had suppressed the fact that he had 3 children at the time of his appointment.
2. The facts of the case are that the petitioner had applied for the post of Shiksha Karmi Grade-I pursuant to the advertisement which was published on 07.10.2009. On being found meritorious, the petitioner was selected and granted appointment vide order dated 07.09.2010. The petitioner immediately assumed his duty and worked for a period of about

10 months when abruptly the impugned order Annexure P-1 was passed terminating his services with immediate effect.

3. The contention of the counsel for the petitioner is that the impugned order has been passed without affording an opportunity of hearing and the same is also contrary to **the Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 2007**. He submits that the rule governing the field does not have any such condition which disqualifies a person from being appointed if he has more than 2 children and the last one having born after 26.01.2001. He submits that neither does the rule nor does the act have any such provision disqualifying a person from applying for employment in the event of having more than 2 children. Thus, the impugned order is per se illegal. Further contention of the petitioner is that by efflux of time, realizing the error the State Govt. themselves vide amendment dated 23.07.2017 amended the Madhya Pradesh Civil Service Conduct Rules and omitted the proviso clause of Rule 22 declaring having more than 2 children the third one having been born after 26.01.2001 to be a misconduct. According to the petitioner, this all the more strengthens the contention of the petitioner.
4. Counsel appearing for the respondents, however, opposing the petition submits that the disqualification of the petitioner was in terms of the Conduct Rules 1965 where there was a specific proviso holding the fact that the persons having more than 2 children to be a misconduct in case if the third child was born on or after 26.01.2001. Further contention of the respondents is that the amendment which has been brought into force in the year 2013 would not have retrospective effect so far as the

petitioner is concerned if the misconduct was detected and the order of dismissal was passed prior to the amendment coming into force.

5. The State counsel in support of their stand submits that the action on the part of the respondents was based on the Chhattisgarh Panchayat (Recruitment and General Conditions of Service) Rules, 1999 which envisages a restriction for appointment under the said Rules on those persons who have more than two children one of whom is born on or after 26.01.2001. According to the State counsel, during the course of verification of records it has been found that the petitioner has got more than two children and one of the children was born after 26.01.2001 and therefore, in terms of the advertisement, the petitioner was found ineligible. The State counsel further argued that since it was a condition in the advertisement and the petitioner had not challenged the condition to the advertisement at the first instance, he cannot now turn around and challenge the terms of the advertisement at this stage when the petitioner has been found ineligible for the said post and thus, prayed for rejection of the writ petition.
6. Having heard the contentions put forth on either side and on perusal of record, this Court finds that recently in somewhat similar if not identical matter i.e. WPS No. 3876 of 2018 decided on 22.04.2019 this Court had considered the similar issue and aspect and while deciding the same, in paragraphs 10 to 16 has held as under:

“10. Having heard the contentions put forth on either side and on perusal of record, on verification of the statutory provisions particularly the Panchayat Raj Adhiniyam as also the Rules framed therein particularly the **Chhattisgarh Panchayat (Recruitment and General Conditions of Service) Rules, 1999** (in short “**Rules of 1999**”) does not provide any such provision which creates a restriction of

appointment under the said Rules only on the ground of having more than two children and one of which having being born on or after 26.01.2001.

11. It would be relevant at this juncture to refer to Rule 10 of aforementioned Rules of 1999, which provides for disqualification for appointment to the Panchayat service. For ready reference the different conditions under which a person would be disqualified for an appointment under the Panchayat service is reproduced herein under:

“10. Disqualifications for appointment to Panchayat Service.- No person shall be appointed by direct recruitment to any post.-

(1) Unless he is a citizen of India or a subject of Nepal or Bhutan and permanent original resident of Chhattisgarh.

(2) If he has been dismissed for misconduct from service of Central Government, State Government, Zila or Janpad Panchayat or Gram Panchayat or any other local authority or a Co-operative Society or any Public Sector Undertaking under the control of Central Government or State Government.

(3) If he has been convicted of an offence which involves moral turpitude;

(4) If he has been convicted of an offence against women torture;

Provided that where such case is in pending in a Court against candidate, his case of appointment shall be kept pending till the final decision of the Criminal Case;

(5) If he has more than one wife living, and in case of a female candidate, if she has married to a person having a wife living already;

(6) If he has convicted of criminal offence punishable with simple or rigorous imprisonment exceeding six months shall be presumed to be unsuitable for employment:

Provided that if a person has been so convicted but has been let off only with a warning and has not been sentenced to undergo any punishment, such conviction shall not be taken into account;

(7) If he does not possess minimum prescribed qualification for the post; or

(8) If he is an employee of the General 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.”

12. From the plain reading of the aforesaid conditions, it would clearly reveal that there is no such disqualification prescribed of a person from being appointed under the Panchayat service on his having more than two children and one among whom having being born after 26.01.2001. The only amendment that was ever brought in under the Panchayat Raj Adhiniyam was in Section 36(m) of the Panchayat Raj Adhiniyam, 1993, which provided for certain disqualification for being an office bearer of Panchayat. It would be relevant at this juncture to mention that the said amendment i.e. Section 36(m) brought in under the Act of 1993 itself was subsequently omitted by the State Government on 23.05.2008 and as such the said restriction also was not available as a defense for the State Government beyond May, 2008.

13. What is relevant at this juncture to take note of is that even if the said amendment is taken note or that would not come in aid of the respondent/State for the reason that, that was specifically complied for election as an officer bearer of a Panchayat that was not and would not be automatically made applicable for appointment made under the Panchayat service.

14. So far as the judgment which has been relied upon by the State counsel i.e. **(2003) 8 SCC 369 (Javed and Others v. State of Haryana & Others)** that again is a judgment, which was confined to the amendment brought in to the Panchayat Raj Adhiniyam, wherein the enactment of disqualification for being elected as an office bearer of Panchayat was under challenge. It was not a judgment which was passed or where the appointment under the Panchayat services were under consideration and therefore the said judgment and the ratio laid down in the said judgment cannot be applied in a straight jacket formula in the present writ petition for the reason that firstly the Rules governing the service conditions of a Shiksha Karmi Grade-I or Grade-II does not envisage any such disqualification or restriction. Secondly, there has been no amendment brought in at any point of time by the State Government under the said Rules, with which the petitioner could have been disqualified or declared ineligible for the said appointment.

15. For the said reasons, the action on the part of the respondents in not granting joining to the petitioner is bad in law and the condition No.2.2 in the advertisement as also condition No.12 in the order of appointment dated 21.06.2010, both are held to be contrary to the **Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 2007** and the same are therefore struck down as illegal and contrary to Rules.

16. As a consequence, the writ petition deserves to be and is accordingly allowed. The order of termination dated 21.06.2012 and the subsequent order of the respondent No.4 dated 25.09.2017 (Annexure P/1) both being contrary to the Rules governing the service conditions of the petitioner are not sustainable and the same stand set-aside/quashed.”

7. The similar view has also been taken by this Court in the case of Suman Sharma Vs. State of Chhattisgarh & others in WPS No. 1320 of 2009 decided on 22.04.2019.
8. Given the aforesaid decision that this Court has rendered in similar circumstances, this Court is inclined to take the same view and allow the writ petition. Accordingly, the impugned order Annexure P-1 would not be sustainable and the same deserves to be and is accordingly set aside/quashed.
9. As a consequence, the petitioner would be reinstated in service. Considering the fact that the petitioner was out of service for all these years, applying the principle of “No work no pay”, the petitioner would not be granted the benefit of back wages. However, the entire period would be treated as period spent on duty treating it to be continuous service. The petitioner would be entitled for all consequential benefits notionally to be granted to him. The order of this Court shall be complied with within a period of 60 days from the date of receipt of copy of this order.
10. With the aforesaid observation, the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge