

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4406 of 2011

Shesh Ram Sahu, S/o. Indal Sahu, Aged about 53 years, Assistant Grade-III, R/o. Village Siwani (Champa), Tahsil Champa, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Its Secretary, General Administration Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. The Upper Secretary, General Administration Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
3. The Collector-cum-District Election Officer, Janjgir-Champa, Collectorate Janjgir-Champa, Chhattisgarh
4. The Executive Engineer, Minimata Bango Canal Division No.02, Champa, District Janjgir-Champa Chhattisgarh

---Respondents

For Petitioner	:	Mr. Vineet Kumar Pandey, Advocate
For State	:	Ms. Abhyunnati Singh, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/08/2019

1. The challenge in the present writ petition is to the orders Annexure P/1 and P/2. Annexure P/1 is an order passed by the respondent No.2, whereby they have directed the respondent No.3 to ensure that all the daily wage employees, who have been subsequently re-deployed as regular appointees in the State Government and who have been illegally appointed without having proper qualification are removed from service. Annexure P/2 is the order passed by the respondent No.3 canceling the order of appointment dated 08.11.2004 issued in favour of the petitioner and deploying him back as daily wage employee i.e. on the post where he was working prior to the order of appointment dated 08.11.2004 was issued.

2. The facts of the case is that the petitioner as such was working as a daily wage employee under the respondents since 01.07.1985. The petitioner was discharging the duties as a Copyist on daily wages at the initial stage. Subsequently, the services of the petitioner was brought to the office of the respondent No.3 i.e. the Collector, Janjgir-Champa. While working as a daily wage employee, the State Government vide order dated 16.09.2003 issued a fresh new setup in the office of the Collector, Janjgir-Champa and in the process the new post of Data Entry Operators along with a post of Election Supervisor, Assistant Grade-II, Assistant Grade-III and post of peon were created.
3. Considering the length of service that the petitioner had rendered on the post of Copyist as a daily wage employee, the respondent No.3 vide Annexure P/7 dated 08.11.2004 granted an appointment order in his favour appointing him on the post of Assistant Grade-III in the pay-scale of 3050-75-3950-80-4590 and was posted him in the Election Cell under the respondent No.3. The petitioner uninterruptedly worked on the said post till the impugned orders Annexure P/1 & P/2 have been issued. In the course of issuance of Annexure P/1, the reason assigned was that the petitioner in addition of having the qualification of Hindi Typing does not have the required computer diploma certificate as per the Rules applicable and therefore the appointment order issued in favour of the petitioner would become illegal and the respondent No.2 thereby directed the respondent No.3 vide Annexure P/1 dated 26.05.2011 to take appropriate steps for canceling the appointment orders of all those persons, who do not have the computer diploma certificate.

4. Pursuant to the Annexure P/1 dated 26.05.2011, the respondent No.3 has issued an order Annexure P/2 dated 21.07.2011 canceling the order of appointment of the petitioner dated 08.11.2004 and deploying him back to the post of daily wage employee that he was discharging prior to the issuance of the order dated 08.11.2004.
5. The present writ petition was filed immediately on 29.07.2011 and this Court by way of an interim protection dated 08.08.2011 ordered for maintaining status-quo, so far as the petitioner is concerned. The counsel for petitioner submits that pursuant to the interim protection granted by this Court on 08.08.2011, the petitioner is still discharging the duties of Assistant Grade-III.
6. The petitioner submits that he is attaining the age of superannuation in July, 2020 i.e. he has got less than one year's of service left for retirement. The State authorities were issued notice and they have filed their return. Along with the return, they have filed a document, whereby it is referred that the eligibility criteria for appointment to the post of Assistant Grade-III stood amended vide circular of the State Government dated 09.01.2006 and the requirement was for having a diploma certificate of one year from a recognized institute on the post of Data Entry Operator/Programming along with the speed of data entry at 10,000 depression per hour.
7. The State counsel referring to the said circular submits that it is this circular, which was the basis for issuance of the Annexure P/1 and therefore, it cannot be said to be wrong or illegal in any manner.
8. Having heard the contentions put forth on either side and on perusal of record, admittedly, the petitioner was working as a daily wage employee on the post of Copyist since 1985 under the respondent No.3. The respondent

No.3 down the line on the creation of the post of Assistant Grade-III considered the suitability of the petitioner and granted him an order of appointment on 08.11.2004 vide Annexure P/7.

9. The petitioner uninterruptedly continued to work on the said post from 2004 till the impugned order was passed on 26.05.2011 and 21.07.2011. The basis for issuance of the impugned order seems to be the circular dated 09.01.2006. It would be relevant at this juncture to refer to the operative part i.e. clause 3 of the said circular, which would make things quite clear:

“अतः भर्ती नियमों में उपरोक्तानुसार संशोधन की कार्यवाही तत्काल की जाय। इन निर्देशों के जारी होने के दिनांक के पश्चात् कोई भी नियुक्ति पूर्व प्रावधान अनुसार नहीं की जाय।”

10. The aforementioned clause 3 clearly reflects that the effect of the circular dated 09.01.2006 would have been only prospective, it could not have been retrospective. The petitioner was appointed vide order dated 08.11.2004. The circular has been issued on 09.01.2006 i.e. after about 2 years from the date the petitioner was appointed. Thus, it is apparently clear that the said circular dated 09.01.2006 could not have been brought into force for holding the appointment of the petitioner to be bad in law. If we look at the qualification, which was otherwise required for appointment to the post of Assistant Grade-III as is reflected from the circular dated 09.01.2006 itself, it would reveal that the petitioner had all the qualifications that were required under the Rule on the date of appointment.
11. Given the said facts that the petitioner did have all the qualification on the date of appointment i.e. 08.11.2004, the finding in Annexure P/1 that the petitioner did not have the required qualification of computer diploma seems to be without any basis. Minus the qualification of the computer diploma certificate, which is reflected in Annexure P/4 there does not seem to be any

- other disqualification, which the petitioner faces for his appointment to be declared illegal or irregular in any manner. The impugned order Annexure P/1 dated 26.05.2011 therefore is not sustainable and is accordingly set-aside/quashed and as a consequence Annexure P/2 dated 21.07.2011 also stands set-aside/quashed. The petitioner's appointment dated 08.11.2004 thus has to be accepted as proper, legal and justified and he would be entitled to work on the post of Assistant Grade-III based on the order of appointment Annexure P/7 dated 08.11.2004 with all consequential benefits.
12. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved