

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4955 of 2016**

1. Chandraprakash S/o Shri Puniram Sahu, Aged About 37 Years R/o Village And Post Tusma, Tahsil Nawagarh, District Janjgir Champa Chhattisgarh
2. Lalaram Sahu, S/o Shanker Lal Sahu, Aged About 32 Years R/o Village And Post Kumhari Police Station Gidhouri, Tahsil Kasdol, Distirct Baloda Bazar Bhatapara Chhattisgarh
3. Vijay Singh Mansar S/o Balram Singh, Mansar, Aged About 26 Years R/o Village Parsada, P.O. Banari, Tahsil Akaltara Distirct Janjgir Champa Chhattisarh

---- Petitioners**Versus**

- State Of Chhattisgarh Through The Secretary, Department Of Panchayat, Mahanadi Bhavan, Mantralaya New Raipur District Raipur, Chhattisgarh

---- Respondents

For Petitioners : Shri Ajay Shrivastava, Advocate
 For Respondent/State : Smt. Fouzia Mirza, Additional Advocate General

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per, Ajay Kumar Tripathi, Chief Justice****23.01.2019**

1. Petitioners have preferred the writ application to declare Rule 6(1)(a) of Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Condition of Service) Rule, 2012 (hereinafter referred to as 'the 2012 Rule') to be *ultra vires* the Constitution of India.
2. On 17.08.2012, the 2012 Rule was notified in exercise of power conferred under Section 70 sub-Section (1) as well as Section 53 sub-Section (1) read with Section 95 sub-Section (1) of the Chhattisgarh Panchayatraj Adhiniyam, 1993.
3. The Rule in question was notified to recruit teachers at the Panchayat level across the State with an effort to codify the law and bring some kind of surety to the method of recruitment, appointment and their service conditions.

4. The Rule under attack is Rule 6(1)(a) of the 2012 Rule which reads as under :-

“6. **भर्ती का तरीका.** – (1) इन नियमों के प्रारंभ होने के पश्चात् सेवा में भर्ती निम्नलिखित तरीकों से की जायेगी, अर्थात् :-

(क) मेरिट द्वारा या प्रतियोगी परीक्षा द्वारा चयन के माध्यम से अथवा राज्य शासन द्वारा समय-समय पर जारी किये गये आदेश/निर्देश के अनुसार सीधी भर्ती द्वारा ।”

5. Submission of the counsel for the Petitioners is that in the earlier Rule of 2007, there was a provision that in case the number of applicants are less than the advertised vacancies then the selection will be on the basis of merit, but if the number of applicants are more than the vacancy, then a written examination shall be conducted. However, to dilute the effect of such process of selection, Rule 6(1)(a) has been incorporated where discretion has been granted to the Panchayat to either make selections on the basis of merit or competitive examination. This, according to the counsel for the Petitioners is violative of Article 14 and 16 of the Constitution of India.
6. To buttress his argument further, counsel submits that in actual working some of the Panchayats had made selection of the candidates on merit and most of the selected candidates happened to be from a private University, where candidates are awarded more marks than a Government Institution and to that extent, the merit position become inequitable. He further submits that there are no standardizations in terms of course and conduct of examination of various Educational Institutions or Universities and therefore, merit cannot be judged on the basis of marks obtained by a candidate or awarded to him from different Universities as there is great variance therein.

7. Such submissions cannot become the basis for striking down a Rule or a legislation, where power to make such legislation is not a matter of argument. So far as violation of Article 14 and 16 of the Constitution of India is concerned, Rule 6(1)(a) of the 2012 Rule provides that recruitment will be done either on merit or by competitive examination depending upon the instructions which may be issued by the State administration from time to time with regard to direct recruitment.
8. We fail to appreciate as to how recruitment either made on the basis of merit or by competitive examination can be said to be violative of Article 14 and 16 of the Constitution of India because both the concepts are very much present in matters of recruitment and it will depend upon the number of vacancies, the number of candidates competing in the said recruitment process and other such factors which may necessitate holding of a competitive examination, especially when the applicants far out number the posts which are on offer, in an advertisement.
9. The apprehension of the counsel for the Petitioners that such a discretion conferred upon the Panchayat has every possibility of misuse, because there is no guidelines whether such recruitment should be done on the basis of merit or on the basis of competitive examination seems to be misplaced.
10. The guidelines are inherent and we have also noticed that the process of such recruitment will be decided by the State Government from time to time and appropriate order or direction is required to be issued by the State Government.
11. In addition to that, the law is well settled that mere apprehension of misuse of power by itself cannot become a ground for striking down a legislation to be

ultra vires the Constitution of India. In this regard, reliance has been placed by the learned Additional Advocate General representing the State in case of ***Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha and Others; (2007) 3 SCC 184***, which reads as under :

“698. Finally, it was strenuously urged that Parliament/State Legislature should not be conceded such a drastic power to expel a Member from the House. As Maitland has stated, it is open to Parliament to expel a Member on the ground of “ugly face”. Even in such case, no court of law can grant relief to him. Considering ground realities and falling standards in public life, such an absolute power will more be abused than exercised properly.

699. I am unable to accept the submission. Even in England, where Parliament is sovereign and supreme and can do everything but “make woman a man and a man a woman”, no Member of Parliament has ever been expelled on the ground of “ugly face”. And not even a single incident has been placed before this Court to substantiate the extreme argument. Even Maitland himself has not noted any such instance. On the contrary, he had admitted that normally, the power of expulsion can be exercised for illegalities or misconduct of a serious nature.

700. Again, it is well-established principle of law that the mere possibility or likelihood of abuse of power does not make the provision *ultra vires* or bad in law. There is distinction between *existence* (or availability) of power and *exercise* thereof. Legality or otherwise of the power must be decided by considering the nature of power, the extent thereof, the body or authority on whom it has been conferred, the circumstances under which it can be exercised and all other considerations which are relevant and germane to the exercise of such power. A provision of law cannot be objected to only on the ground that it is likely to be misused.

701. In *State of Rajasthan v. Union of India (1977) 3 SCC 592*, SCC at p. 658 dealing with an identical contention, Bhagwati, J. (as His Lordship then was) stated: (SCC p. 658, para 147)

“It must be remembered that merely because power may sometime be abused, it is no ground for denying the existence of the power. *The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief.*”

(emphasis supplied)

(See also *Ajit Kumar Nag v. GM (PJ), Indian Oil Corpn. Ltd. (2005) 7 SCC 764*)

702. I am reminded of what Marshall, C.J. stated before about two centuries in *Providence Bank v. Alpheus Billings* {29 US 514} : (US p. 563)

“This vital power may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State Governments. *The interest, wisdom, and justice of the representative body, and its relations with its constituents furnish the only security* where there is no express contract against unjust and excessive taxation, as well as *against unwise legislation generally.*”

(emphasis supplied) ”

12. In view of the above stated facts and circumstances, we are not satisfied that a case for striking down the provision of Rule 6(1)(a) of the 2012 Rule has been made out in the writ application atleast on the grounds so urged before us or in the petition.
13. The writ has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge