

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1320 of 2009

Smt. Suman Sharma W/o Shri Manoj Sharma, Aged about 40 years, R/o Gondpara, Near Rajaram Mandir, Bilaspur, Tahsil and District – Bilaspur, Chhattisgarh .

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Chief Executive Officer, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. District Education Officer, Bilaspur, District – Bilaspur, Chhattisgarh
3. District Panchayat Bilaspur, Through The Chief Executive Officer, Bilaspur, District – Bilaspur, Chhattisgarh
4. Govt. Higher Secondary School, Lalpur, Through The Principal, Block Gourela, District – Bilaspur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Prateek Sharma, Advocate
For State	:	Mr. Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/04/2019

1. The challenge in the present writ petition is to the action on the part of the respondents, whereby they have refused to grant joining to the petitioner inspite of an order of appointment being passed in favour of the petitioner as earlier as on 13.10.2008 (Annexure P/2).
2. The brief facts which are relevant for adjudication of the present dispute is that the respondent/State had issued an advertisement dated 13.01.2008 and which was published in the local newspaper on 14.01.2008 for appointment to the posts of Shiksha Karmi Grade-I & Grade-II. The petitioner had applied for both the posts. The petitioner got selected for both the posts. The order of appointment of Shiksha Karmi Grade-I was issued in favour of the petitioner as Annexure P/2 dated 13.10.2008.

3. Though the order of appointment was issued, but the respondents had not granted joining to the petitioner. Meanwhile, so far as the selection of the petitioner to the post of Shiksha Karmi Grade-II is concerned, she was subsequently intimated that she is ineligible to be appointed as a Shiksha Karmi Grade-II on account of the fact that the petitioner has got more than two living children and third one having being born on or after 26.01.2001. Though, so far as the appointment to the post of Shiksha Karmi Grade-I is concerned, there is no order as per the petitioner declaring her to be ineligible for the said post.
4. In the instant case, the petitioner has questioned condition No.2.2 of the advertisement and has also sought for a direction by way of a writ for issuance of an order of appointment to the petitioner. Condition No.2.2 of the advertisement is that any candidate, who has got more than 2 living children and one among them having being born on or after 26.01.2001 would be ineligible for participating in the recruitment process.
5. The contention of the petitioner assailing the said condition and for seeking the relief of a direction for granting joining to the petitioner is that the advertisement itself very specifically envisaged that the recruitment process was being conducted in accordance with the **Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 2007** (in short "**Rules of 2007**") and the amendments made in the said Rules from time to time.
6. According to the petitioner, the said Rules of 2007 does not have any such condition, which debars or disqualifies a candidate from either participating in a recruitment process or being appointed as an employee under the said

Rules of 2007 on the ground of having more than two children and one among which having being born on or after 26.01.2001.

7. The contention of the petitioner is that since the appointment or the recruitment, which was initiated by the respondents was under the Rules of 2007 and the Rules not having any such condition of disqualification or restrictions of a person from applying in case of his/her having one or two children. The condition put in the advertisement itself becomes contrary to the Rules and the same deserves to be set-aside/quashed.
8. The further contention of the petitioner is that on the date of advertisement under the entire Panchayat Raj Adhiniyam itself, there was no such condition available of any sort of restriction or embargo of appointment or selection to any post under the Panchayat Services on the ground of having more than two children and for this reason the action on the part of the respondents was unjustified and arbitrary.
9. This Court while issuing notice to the respondents in the present writ petition an interim measure vide order dated 25.03.2009 had ordered the respondents to keep one post of Shiksha Karmi Grade-I vacant against the appointment order issued in favour of the petitioner.
10. 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 they 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.

11. 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**”) it is found that it 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.
12. 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."

13. 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.
14. 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 meant 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.

15. 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.
16. 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 also is held to be contrary to the **Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 2007** and the same is therefore struck down as illegal and contrary to Rules.
17. As a consequence, the writ petition deserves to be and is accordingly allowed. The respondents are directed to ensure that the petitioner is giving the joining at the earliest preferably within an outer limit of 60 days. It is also made clear that since the condition to the advertisement and subsequent not granting of joining to the petitioner inspite of an order of appointment being

issued, has been held to be bad in law. The petitioner would be entitled for all consequential benefits of seniority and the respondents in this regard are directed to ensure that the petitioner is granted seniority and placed at par with the persons, who have been appointed on the post of Shiksha Karmi Grade-I from the same recruitment. However, it is ordered that the petitioner would only be granted notional fixation and notional seniority. She would not be entitled for any actual monetary benefits for the previous period and she would be entitled for the same only from the date of joining.

18. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved