

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 3446 OF 2011**

Lochan Singh Sidar, S/o Shri Heera Singh Sidar, aged about 21 years,
Occupation- Siksha Karmi Grade-III, R/o Harda, Nawagaon, Post Bade
Sajapali, District Mahasamund (C.G.)

... Petitioner**versus**

1. State of Chhattisgarh, through Secretary, Social Welfare, D.K.S. Bhawan, Raipur (C.G.)
2. The Commissioner, Raipur (C.G.)
3. The Collector, District Mahasamund (C.G.)
4. Chief Executive Officer, District Pithora (Mahasamund)

... Respondents

For Petitioner	:	Ms. Indira Tripathi, Advocate.
For Respondent 1 to 3-State	:	Mr. Arvind Dubey, Panel Lawyer.
For Respondent 4	:	Mr. Pushkar Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/07/2019**

1. Challenge in the present writ petition is to the order dated 14.6.2011, Annexure P-1, passed by the Commissioner, Raipur Division, Raipur in Appeal Case No. 5/A-89/2010/11.
2. Vide the said impugned order, the Commissioner has affirmed the order dated 6.9.2010 passed by the Collector, Mahasamund in Revenue Case No. 109/A-89/year 2009-10 rejecting the first appeal preferred by the Petitioner.
3. Facts of the case are that the Petitioner had applied for the post of Shiksha Karmi under the Respondent No.4. The Petitioner was found selected in the select list, Annexure P-3, which was published initially. Based upon the select list, the Petitioner was issued with an order of appointment and the Petitioner assumed his duties as Shiksha Karmi on 27.6.2007. Subsequent to the Petitioner having put in about two years of service, there was an alleged complaint lodged against the Petitioner of having obtained employment on the basis of forged and fake documents or

the appointment of the Petitioner being bad in law as there was another person namely Bhismedeo Diwan also scored the same marks as that of the Petitioner and that the said Bhismedeo Diwan was senior to the Petitioner and he was eligible for the appointment and not the Petitioner. Without conducting any enquiry whatsoever on the said complaint, the Respondent No.4 cancelled the appointment of the Petitioner

4. This order of Respondent No.4, dated 10.6.2009, Annexure P-7, was subjected to challenge before this Court in W.P.S. No. 3665/2009. The said writ petition stood disposed of on 22.7.2009 whereby the Petitioner was directed to approach the Collector by way of an appeal and till the appeal was heard, an interim protection was granted by the High Court.

5. The Petitioner immediately approached the Collector and by virtue of the interim protection he continued to discharge his duties. The Collector, however, after considering the facts of the case, rejected the appeal of the Petitioner vide Annexure P-2, dated 6.9.2010. The finding of the Collector was that since the Petitioner and Bhismedeo Diwan had scored same marks, however, by virtue of the fact that Bhismedeo Diwan was older than the Petitioner in age, he has been declared senior and eligible for appointment.

6. The Petitioner immediately preferred a revision petition before the Commissioner, Raipur and the Commissioner vide its order dated 12.10.2010 granted an interim protection continuing the employment of the petitioner. The Commissioner finally vide order its dated 14.06.2011, Annexure P-1, rejected the revision petition affirming the order of the Collector. It is these two orders passed by the Commissioner as well as the Collector, Annexure P-1 and Annexure P-2 respectively, which are under challenge in this writ petition.

7. The contention of the petitioner is that the cancellation of the appointment per se is bad in law, for the reason that from the document available on record it would clearly reveal that the Petitioner and one Bhismedeo Diwan both have scored 52.64 marks whereas there are a large number of persons, who have scored less than the Petitioner as well as Bhismedeo Diwan and who also belong to the same ST category to which the Petitioner belongs, and who have been granted appointment. According to the Petitioner since the Petitioner and Bhismedeo Diwan have scored more, both of them should have been granted appointment and the persons who have scored less should not have been appointed.

8. Perusal of the record would show that in fact the cancellation was on the basis of some alleged complaint in respect of using forged and fake documents for the purpose of appointment. After an enquiry was conducted, a second merit list was again prepared by the department and in the second merit list again the name of the Petitioner finds place. Yet, the respondents have cancelled the appointment of the Petitioner vide Annexure P/7, dated 10.06.2009. Perusal of the record, however, reveals that the only ground on which the Petitioner's appointment has been cancelled is that there was another person having same score of marks as that of the Petitioner and he happened to be older in age and therefore he has been considered.

9. Taking into consideration the reply filed by the Respondents, there does not seem to be any other ground which has been raised by the Respondents to justify the cancellation of appointment. Now, so far as two persons scoring same marks is concerned, this Court is of the opinion that, that analogy could have been applied if the Petitioner and other person i.e. Bhismedeo Diwan were the last persons who were appointed. However, the

select list would show that there are candidates, who have scored much less than what the Petitioner has, being placed in the select list for appointment.

10. At this juncture, the Counsel for the Petitioner also submits that in the select list, there is the name of one Harihar Singh Thakur who has resigned from the post and as such that post is also lying vacant and therefore, the Respondents can accommodate the Petitioner against the said vacant post even today.

11. Perusal of the returns filed by the Respondents would show that except for the comparison between the Petitioner and Bhismedeo Diwan, there is no other ground raised by the Respondents with which it could be said that the Petitioner was not entitled for appointment as Shiksha Karmi.

12. Having gone through the entire record, admittedly, the Petitioner had participated in the recruitment process and had scored 56.64 marks. In spite of the case of the Petitioner being scrutinized on the second occasion, the Petitioner has been found meritorious and his name again reflected in the select list. There is also no dispute as to the fact that the persons who have scored less than the Petitioner have been granted appointment.

13. This Court, therefore, is of the firm view that since there are persons who have scored less than the Petitioner and who belong to the same category to which the Petitioner belong, the cancellation of appointment of the Petitioner only because there was another person having same score, is not justified at all. The Collector while hearing the first appeal has totally left out this aspect as to whether the Petitioner could have still be accommodated in spite of Bhismedeo Diwan being granted appointment or not. The duty casted upon the first Appellate Court is also to look into the

factual aspect of the case. It appears that the first Appellate Court and the Revisional Authority both confined themselves and scrutinized the case of the Petitioner only by making comparison between the Petitioner and Bhismedeo Diwan.

14. The two orders, therefore, are not sustainable at all. The impugned order dated 10.06.2009, Annexure P-7, and the order passed by the Collector on 6.09.2010, Annexure P-2, as well as the order passed by the Revisional Authority, the Commissioner Raipur, on 14.06.2011, Annexure P-1, are bad in law and are not sustainable and the same deserve to be and are accordingly set aside/quashed.

15. It is ordered that the Petitioner should be permitted to be taken back in service immediately, directing the Respondents to initiate appropriate steps for accommodating the Petitioner. It is made clear that the Respondents would have a liberty of conducting an enquiry as to whether there is anybody who has scored less than the Petitioner in ST category and thereafter take appropriate steps. The Respondents are also free to consider granting appointment to the Petitioner against any vacant post, so as to avoid any further termination of service of any person who has scored less than the Petitioner.

16. The Writ Petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge