

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4390 of 2014**

1. Pemendra Das Manikpuri S/o Girdhari Das Manikpuri, Aged About 40 Years, R/o Village And Post Kuthrel, Tahsil Durg, Distt. Durg. C.G.
2. Vivek Kumar Chandrakar S/o Tirath Ram Chandrakar, Aged About 29 Years, R/o Village Paouwara, Post Tiloda, Tahsil Gunderdehi, District Durg, C.G.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Mantralaya, Naya Raipur, Distt Raipur, C.G.
2. The Chief Executive Officer, Jila Panchayat, Durg, Distt Durg. C.G.
3. The Chief Executive Officer, Janpad Panchyat Gunderdehi, Distt. Durg. C.G.
4. Sanjay Khobragarhe S/o Tulsi Ram Khobragarhe, Posted As A Librarian At Govt. Higher Secondary School, Kalangpur, Distt. Balod C.G.
5. Dharmendra Kumar Sahu S/o Prabhu Lal Sahu, Posted As A Librarian At Govt. Higher Secondary School, Achoud, Distt. Balod C.G.
6. Dinesh Kumar Dubey S/o Late Ramadhar Dubey, Posted As A Librarian At Govt. Higher Secondary School, Mahud B, Distt. Balod C.G.
7. Bhisham Kumar Sahu S/o Hirendra Kumar Sahu, Posted As A Librarian At Govt. Higher Secondary School, Rahud, Distt. Balod C.G.
8. Rakesh Kumar Parate S/o Late C. L. Parate, Posted As A Librarian At Govt. Higher Secondary School, Bhatagaon R, Distt. Balod C.G.

9. Ku. Sangeeta Ambade D/o Late Antram Ambade, Posted As A Librarian At Govt. Higher Secondary School, Bhardakala, Distt. Balod C.G.
10. Smt. Saraswati Verma W/o Jitendra Verma, Posted As A Librarian At Govt. Higher Secondary School, Sikosha, Distt. Balod C.G.
11. Madhu Lal Gayakwad S/o Late Dhaniram Gayakwad, Posted As A Librarian At Govt. Higher Secondary School, Chourel, Distt. Balod C.G.
12. Ku. Lalita Baghel D/o Gajanand Baghel, Posted As A Librarian At Govt. Higher Secondary School, Gorkapar, Distt. Balod C.G.
13. Lokesh Kumar Sahu S/o Shri Champu Lal Sahu, Posted As A Librarian At Govt. Higher Secondary School, Gabdi, Distt. Balod C.G.
14. Deepak Chand Deshmukh S/o Raman Lal, Posted As A Librarian At Govt. Higher Secondary School, Gureda, Distt. Balod C.G.
15. Ku. Roshni Sahu D/o Sundar Lal Sahu, Posted As A Librarian At Govt. Higher Secondary School, Kachandur, Distt. Balod C.G.

---- Respondents

For Petitioners	:	Mr. Shikhar Bakhtiyar, Advocate.
For State	:	Mr. P. Acharya, P.L.
For Respondent No.3	:	Shri Rahul Tamaskar, Advocate
For Respondents 5 to 15:	:	Shri Vinod Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

12.07.2019

1. The challenge in the present writ petition is to the action on the part of

the respondent no.3 in not considering the case of the petitioners for appointment on the post of Shiksha Karmi Grade-III (Librarian).

2. The facts of the case are that the respondent no.3 had issued an advertisement on 24.10.2009 for filling up of the post of Shiksha Karmi Grade-III (Librarian). It is said that the total number of posts advertised were 15. However, the advertisement has not been made available either in the writ petition or during the course of hearing by any of the parties. The petitioners had applied for the said post and they were called upon to participate in the recruitment process. The petitioners were successful in the selection process and secured 9th & 11th position in the order of merit.
3. The grievance of the petitioners is that in spite of having secured 9th and 11th position in the order of merit, the petitioners have not been considered for appointment on the ground that the petitioners do not have the qualification which is otherwise required under the rules. The rule governing the service condition of the petitioners is the Chhattisgarh Non Gazetted Education Services (School Level Services) Recruitment and Promotion Rules, 2008. Schedule-3 of the said Rules provide qualification for the post of Shiksha Karmi Grade-III(Librarian) which under the Rules is known as Librarian Lower Scale. Under the said Schedule, the minimum qualification prescribed for the post is higher secondary certificate and the certificate of having cleared librarian science examination. Both the petitioners before this Court are having degree in Library Science (B.Lib.). The respondents have refused to consider the case of the petitioners on account of the fact that the petitioners do not have the

certificate of having passed Librarian Science Examination and that the degree which they possess is not one which is required for filling up of the post of Shiksha Karmi Grade-III (Librarian). It is this action which is under challenge in the present writ petition.

4. The contention of the counsel for the petitioners is that though the advertisement published was for 15 posts, it is only 12 posts that the respondents have filled up and there are 3 posts still to be filled up by the respondents and those 3 posts are lying vacant. Further contention of the petitioners is that since they have got the degree of bachelor in Library Science, they are better qualified for the said post and non-consideration of the petitioners for the said post is arbitrary, bad in law and illegal. Counsel for the petitioners submits that the petitioners' claim could not have been rejected by the respondents only on the ground that the petitioners are having higher qualification than that is prescribed under the Rules.
5. It is the further contention of the petitioners that the Department meanwhile has granted appointments to various persons who have got the same qualification which the petitioners have from the same recruitment process. This according to the petitioners is arbitrary and is also violative of Article 14 of the Constitution of India. According to the petitioners, they are at par with the private respondents who had also participated in the same recruitment process, therefore, if the respondent no.3 granted appointment to the private respondents, there was no reason why the petitioners could have been left out from being given appointments. According to the petitioners, it is not the case of the respondents that the petitioners do not have merit and

therefore they have not been appointed or selected. Thus, counsel for the petitioners prayed for considering the case of the petitioners also for appointment on the post of Shiksha Karmi Grade-III (Librarian)

6. As regards the stand that the respondents have taken, the counsel representing the private respondents i.e. respondents 4 to 15 does not oppose the petition and in fact he is supporting the claim of the petitioners. So far as respondent no.3 is concerned, a reply has been filed stating that since the petitioners do not have the qualification as is enumerated in the Rules, the petitioners have been left out and unless the Rules are challenged or the petitioners challenge the rejection of their representation on an earlier occasion, the petitioners cannot claim for a relief that they have sought for in the present writ petition and the writ petition as such in the first instance is not maintainable.
7. On a query being put to the counsel for respondent no.3 he fairly admits the fact that respondents 4 to 15 are having the same qualification which the petitioners have. Respondent no.3 in their return have taken a stand that respondents 4 to 15 being appointed contrary to the Rules appropriate action has already been initiated against those candidates. However, the counsel for the respondent no.3 was not able to make a submission as to what decision has ultimately been taken by respondent no.3 on the said aspect.
8. Having heard the contentions put forth on either side and on perusal of the record, what is undisputed is that the two petitioners herein and the private respondents 4 to 15 had participated in the same

recruitment process for filling up of the post of Shiksha Karmi Grade-III (Librarian) against the advertisement that was published on 24.10.2009. The petitioners name appeared at serial no.9 & 11 in the merit list. The petitioners and the private respondents 4 to 15 have the same qualification. Under the undisputed facts and circumstances, this Court is of the opinion that once the respondent no.3 has granted appointment to identically placed persons i.e. respondents 4 to 15, there was no reason why the case of the petitioners could not be considered for appointment subject to their being meritorious and also subject to following the roster system prevailing for appointment. If the respondents 4 to 15 are found to be eligible for appointment, from the same recruitment process and the petitioners also fulfilling the same qualification and criteria, the petitioners are also entitled for being considered for the said appointment. The stand that the respondents have taken that the petitioners do not have qualification as per the rules would not be sustainable particularly when the private respondents from the same recruitment have been given appointment for the same post to which the petitioners had also applied and who too had the same qualification.

9. Accordingly, the action on the part of the respondents in not considering the petitioners is held to be bad in law. The respondent no.3 is directed to consider the case of the petitioners also subject to the availability of vacancy and the petitioners being meritorious and also the petitioners falling for consideration in accordance with the roster system. Let the respondent No.3 comply with the order of this

Court within a period of 3 months from the date of receipt of copy of this order.

10. The writ petition accordingly stands disposed of.

**Sd/-
P. Sam Koshy
Judge**

Khatai