

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6551 of 2014

1. Gavendra Kumar And Ors. S/o Shri Tulsi Ram Aged About 30 Years
R/o Village Nartha, Tah And Thana Magarlod, District Dhamtari,
Chhattisgarh
2. Vikas Kumar Kosare S/o Shri Prakash Chand Kosare Aged About 23
Years R/o Village Chipli, Tahsil Nagri, Thana Nagri, District Dhamtari,
CG
3. Laxmi Kumar Bhat S/o Shri Chandan Singh Bhat Aged About 30
Years R/o Village Jhikabahal, Post Libra, Tehsil And Thana Tamnar,
District Raigarh, CG
4. Parshottam Kumar Yadav S/o Shri Nand Lal Yadav Aged About 26
Years R/o Village Ugetra, Tehsil Abhanpur, Thana Aarang, District
Raipur, CG
5. Dinesh Kumar S/o Shri Bhuneshwar Aged About 33 Years R/o Village
Bhatheli, Post Bhakhara, Tehsil Kurud, Thana Bhakhara, District
Dhamtari, CG
6. Narendra Kumar Sahu S/o Shri Tikaram Sahu Aged About 25 Years
R/o Village Ouchbhatti, Post Sailar, Tehsil Bilaspur, Thana Seepat,
District Bilaspur, CG
7. Johit Ram S/o Shri Dewarika Aged About 26 Years R/o Village
Jaitatola, Post And Tehsil Bodla, Thana Bodla, District Kabirdham,
CG
8. Pushkar Kumar Patel S/o Shri Krishna Kumar Patel Aged About 26
Years R/o Village Saraipali, Tehsil Pithora, Thana Pithora, District
Mahasamund, CG
9. Shalindra Kumar Patre S/o Shri Bhagwat Kumar Patre Aged About
23 Years R/o Village Rangiyapara, Post Daukapa, Tehsil And Thana
Lormi, District Mungeli, CG
10. Lekhendra Kumar Mahipal S/o Shri Hinchha Ram Mahipal Aged
About 27 Years R/o Village Biranpur, Tehsil Chuhikhadan, Post And
Thana Gandai, District Rajnandgaon, CG

11. Kanhaiya Das Mahant S/o Shri Suman Das Mahant Aged About 26 Years R/o A-53, Irrigation Coloney, Darii, Tehsil Kathghora, Thana Irrigation Colony, Darri, District Korba, CG
12. Amit Kumar Suryavansi S/o Shri Dhani Ram Aged About 24 Years R/o Village Khamtarai, Post Baima Nagoi, Tehsil Bilaspur, Thana Sarkanda, District Bilaspur, CG
13. Krishna Kumar Sahu S/o Shri Bisahu Ram Sahu Aged About 31 Years R/o Village Bugbuda, Tehsil Baloda Bazar, Thana Kasdol, District Baloda Bazar- Bhatapara, Cg, District : Balodabazar-Bhathapara, Chhattisgarh
14. Krishna Kumar Singroul S/o Shri Sewa Ram Singroul Aged About 26 Years R/o Hanuman Mandir Para, Saihamalagi, Tehsil Pandariya, Thana Kunda, District Kabirdham, CG
15. Smt. Godavari Sahu W/o Shathavedan Kumar Sahu Aged About 32 Years R/o Pandari Pathra, Tehsil Churiya, Thana Gaindatola, District Rajnandgaon, Cg, District : Rajnandgaon, Chhattisgarh
16. Smt. Vachan Kaiwart W/o Shri Nandu Ram Kaiwart Aged About 28 Years R/o R.P.F. Colony, Q.No. 227/2, Budhwari Bazar, Tehsil Bilaspur, Thana Torwa, District Bilaspur, CG
17. Smt. Jambovati Patel W/o Shri Pitambar Patel Aged About 33 Years R/o Mouharibhata, Behind Primary School, Ward No. 13, Mahasamund, Thana Mahasamund, Tehsil And District Mahasamund, CG
18. Manoranjan Patel S/o Shri Tularam Patel Aged About 31 Years R/o Village Parsakol, Tehsil And Thana Sarangarh, District Raigarh, CG
19. Bharat Lal Chandal S/o Shri Gaiind Lal Chandal Aged About 25 Years R/o Villae Kohlatola, Tehsil And Thana Chuhikhadan, District Rajnandgaon, CG
20. Ram Kishun Bharti S/o Shri Heera Lal Bharti Aged About 28 Years R/o Village Katalvahi, Tehsil And Thana Dongergarh, District Rajnandgaon, CG
21. Hari Shankar Yadav S/o Shri Ramavatar Yadav Aged About 28 Years Village Sattipara, Tehsil Thakhatpur And Thana Koni, District Bilaspur, CG

22. Ghanshaym S/o Shri Ballu Aged About 26 Years Village And Post Goindri, Tehsil And Thana Pathariya, District Mungeli, CG
23. Smt. Pratima Verma W/o Shri Kamal Narayan Verma Aged About 29 Years R/o Om Prakash Verma, Om Sai Kirana Store, Dubey Colony, Mova, Tehsil And Thaan Dharseva, District Raipur, CG
24. Ku. Pemeshwari Sahu D/o Shri Vijay Lal Sahu Aged About 25 Years R/o Village And Post Bagod, Tehsil And Thana Kurud, District Dhamtari, CG
25. Smt. Neeta Devwangan W/o Shri Ramadhar Devwangan Aged About 31 Years Village And Post Daverbeeja, Tehsil And Thana Bemetara, District Bemetara, CG
26. Jitendra Kumar S/o Shri Shravan Banjare Aged About 24 Years R/o Tikoniya Gali, Near Minimata Chowk, Satnami Para, Gudiyari, Thana Gudiyari, Tehsil And District Raipur, CG
27. Girish Kumar Jaiswal S/o Shri Heera Ram Jaiswal Aged About 42 Years R/o Post And Thana Bamnideah, Tehsil Choupa, District Janjgir-Champa, CG
28. Toshan Patel S/o Shri Chandra Shekhar Patel Aged About 22 Years R/o Village And Post Pasradeh, Tehsil And Thana Sarangarh, District Raigarh, CG
29. Pinesh Kumar Sakare S/o Shri Dij Kumar Sakare Aged About 26 Years R/o Village Daffotala, Tehsil Ambagarh Chowki, Thana Chilhaati, District Rajnandgaon, CG
30. Ku. Gayatri Sahu D/o Shri Chavan Ram Sahu Aged About 35 Years R/o Village Khairjhiti, Post Girod, Tehsil And Thana Magarlod, District Dhamtari, CG
31. Vikram Singh Baghel S/o Malik Ram Baghel Aged About 36 Years Village Bandhanpur, Tehsil Dharamjaigarh, Thana Kapu, District Raigarh, CG
32. Kheerendra Bahadur Patel S/o Shri Chintamani Patel Aged About 23 Years R/o Village Bagrail, Post Sapos, Tehsil And Thana Dabhara, District Janjgir Champa, CG

33. Yogesh Kumar S/o Kunj Lal Aged About 30 Years R/o Village Kodva Tehsil And Thana Palari, District Baloda Bazar- Bhatapara, CG
34. Smt. Versha Quraishi W/o Shri Kamil Quaraishi Aged About 34 Years R/o Gilli Chowk, Sheetla Para, Tehsil And Thana Kanker, District Kanker, CG
35. Chaman Lal Sahu S/o Fagu Ram Sahu Aged About 33 Years R/o Village Rajankata, Tehsil Chura, Thana Panduka, District Gariyaband, CG
36. Yogendra Kumar Sahu S/o Shri Pawan Kumar Sahu Aged About 29 Years R/o Village And Post Kandel, Tehsil Dhamtari, Thana Arjuni, District Dhamtari, CG
37. Ku. Malti Sahu D/o Shri Prithavi Sahu Aged About 26 Years R/o Village Bhoring, Thana Tumgaon, Tehsil And District Mahasamund, CG
38. Smt. Nikeshwari Sahu W/o Shri Purnanad Sahu Aged About 31 Years R/o Village Rajim, Tehsil And Thana Rajim, District Gariyaband, CG
39. Smt. Gum Dhiver W/o Shri Meghnath Dhiver Aged About 33 Years R/o Village Raja Mohgaon, Tehsil And Thana Saja, District Bemetara, CG
40. Gayaram Soni S/o Gangadhar Soni Aged About 27 Years R/o Village Gadpatni, Tehsil And Thana Basna, District Mahasamund, CG
41. Umesh Kumar Verma S/o Shri Ram Krishna Verma Aged About 25 Years R/o Village Junvani, Tehsil And Thana Pathariya, District Mungeli, CG
42. Pramod Kumar Singh S/o Ekadashiya Singh Aged About 31 Years R/o Village And Post Birnipali, Tehsil Baramkela, Thana Dongripali, District Raigarh, C
43. Ramesh Kumar Adile S/o Bund Ram Adile R/o Bhilai Bazar, Kusmunda, Tehsil Kathghora, Thana Kusmunda, District Korba, CG

---- Petitioners

Versus

1. State Of Chhattisgarh And Anr. S/o Through Its Secretary, Department Of Urban Administration And Development, Mahanadi

Mantralaya, Naya Raipur, Post Office And Police Station Naya Raipur, Chhattisgarh

2. Commissioner Nagar Nigam, Raipur, Distt Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Umakant Sharma, Sr. Advocate With Kunal Das, Advocates
For State	:	Mr. Jitendra Pali, Dy. AG
For Res. Municipal Corporation	:	Mr. H. B. Agrawal, Sr. Advocate With Iturani Mukherjee, Advocates

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/04/2019

1. The challenge in the present writ petition is to the order Annexure (P-6) dated 29/11/2014 whereby the respondent No. 2 has cancelled the order of appointment issued in favour of the petitioner on 15/10/2014 (Annexure P-4).
2. The brief facts of the case relevant for adjudication of the present dispute is that the petitioners had applied for the post of Assistant Teachers in the different subjects for appointment under the respondent No. 2 in the different schools run by the Municipal Corporation, Raipur vide advertisement issued on 02/06/2013(P-1).
3. After undergoing the entire selection process as is required under the Government service Conditions of the Assistant Teachers under the respondent No. 2, a formal order of appointment was issued in favour of each of the petitioners vide Annexure P-4 dated 15/10/2014. It is said that each of the petitioners had immediately joined their duties. All the petitioners herein has put in about 45 days of work on the post that they were appointed as when abruptly the impugned order Annexure P-6 dated 29/11/2014 was issued and the appointment

orders issued in favour of the petitioners was cancelled. It is this order which is under challenge in the present writ petition.

4. The contention of the learned senior counsel appearing for the petitioner is that the said impugned order firstly is bad in law for the reason that the same has been passed in total contravention to the rules governing the field i.e. the Rules framed by the Municipal Corporation the Teachers which is known as (Chhattisgarh Shikshak Nagri Nikay) Samvarg (Recruitment and Condition of Service) Rules, 2013 (in short 'the rules of 2013'). Learned senior counsel referred to rule 11 which deals with the termination from service, which for ready reference reproduced hereinunder :-

“Termination of service :- Services of the Shikshak (Municipal) Cadre may be terminated by giving one month notice in writing by the employee to the Appointing Authority or by Appointing Authority to Shikshak(Municipal) Cadre or by the depositing one month salary by the employee.”

5. The second main ground which the petitioner has raised was that the impugned order is bad in law for the reason that the same is hit by the doctrine of discrimination in as much as from other Assistant Teachers and Teachers who were appointed from the same recruitment process and in whose favour the order of appointment were issued either prior to the appointment orders issued in favour of the petitioners and also appointment orders issued subsequent to the appointment orders issued in favour of the petitioners have not been removed from employment though they also suffer from the same alleged defects. Counsel for the petitioners referred to the Annexure P-2 dated 15/01/2014, Annexure P-3 dated 03/03/2014 which are the orders of appointment prior to the petitioners who were appointed on

15/10/2014 and the said appointment vide Annexure P-2 and P-3 was also made from the same recruitment process. Counsel for the petitioner further referred to the Annexure P-9 (along with rejoinder) dated 28/07/2014 which is specific order of appointment issued in favour of 8 persons and the said order of appointment has been issued subsequent to the appointment of the petitioners being made on 15/10/2014. It has been specifically stated by the petitioners that all these three appointment orders dated 15/01/2014, 03/03/2014, 28/07/2014 have not been recalled by the respondent and it is only the appointment order dated 15/10/2014 whereby the petitioners were appointed which has been cancelled. Thus, According to the petitioners, it is a clear case of discrimination as no justification has been provided by the respondent for cancelling the appointment of the petitioners, at the same time, not cancelling the appointment made through the aforesaid three Annexures.

6. Counsel for the petitioner further submits that the order of appointment dated 15/10/2014 issued in favour of the petitioners has been after due consideration by the Selection Committee and has also been passed following the procedure prescribed under the Municipal Corporation Act and the Rules framed therein which includes the approval of the Mayor in Council. Whereas, the impugned order Annexure P-4 has been issued without the same being routed through the Mayor in Council or process required for cancellation of appointment but has been straight way issued by the respondent No. 2 unilaterally. The same is also contrary to the Rules of 2013 framed by the department under which the appointment orders were issued.

7. Counsel for the Municipal Corporation makes a submission that the action on the part of the respondent No. 2 was pursuant to the order passed by the State Government on 22/05/2014 and therefore since the action of the Municipal Corporation was based on the order of the State Government, it is the State Government which has to justify issuance of the impugned order Annexure P-4.
8. Shri Jitendra Pali, Dy. AG submits that the writ petition itself is not sustainable for the reason that the impugned order Annexure P-4 has been issued based on the order of the State Government dated 22/05/2014 and the said order dated 22/05/2014 is not under challenge in the present writ petition. Therefore, since the basis on which the impugned order has been passed itself is not under challenge, the writ petition would not be sustainable and no relief can be granted to the petitioners. He further submits that as far as the grant of discontinuance raised by the petitioners are concerned, the same would not be applicable in the instant case for the reason that the two orders Annexure P-2 & P-3 dated 15/01/2014 and 03/03/2014 are two orders which have been passed prior to the issuance of the order dated 22/05/2019 and therefore it could not have been cancelled and there was no requirement for the cancellation of those appointments.
9. State counsel further referring to the contents of the reply to the petition that State has filed and submitted that the stand of the State Government or the reason for cancellation of the appointment orders issued in favour of the petitioners was on the ground that since there were sufficient number of Assistant Teachers available with the Municipal Corporation, Raipur in the schools run by the respondent

No. 2. The need for issuance of the order dated 22/05/2014 and the impugned order dated 29/11/2014 arose. As such the State counsel tried to submit that there is no illegality or discrimination on the part of the respondent in the issuance of the impugned order.

10. Having heard the contentions put forth on either side and on perusal of the record, some of the admitted factual petition as it reveals from the records, that are produced before the Court is that the recruitment process for filling up the post of Assistant Teachers and Teachers were initiated on 02/06/2013. Pursuant to the recruitment process various appointment orders were issued time to time. Some of which are the orders dated 15/01/2014 (P-2) 3/3/2014 (P-3), 15/10/2014(P-4) and 28/07/2014(P-9). All these appointment orders were issued arising out of the same recruitment process. All these appointment orders pertained to the appointment to the post of Teachers/Assistant Teachers. Undisputedly, it is only the order dated 15/10/2014 (P-4) which has been cancelled by the impugned order dated 29/11/2014(P-6). There is no denial or rebuttal to the averment made by the petitioner that the persons who have been appointed vide Annexure P-2, P-3 and P-9 have not been cancelled and the appointees from these order are still working under the respondent. Going to the rules governing the field, the plain reading of the appointment orders issued in respect of the petitioners as well as the persons appointed vide Annexure P-2 , P-3 & P-9 would show that the appointment orders have been made invoking the provisions of Rules of 2013.

11. As has been reproduced in the preceding paragraph, Rules dealing with termination of service of persons appointed as Shikshak and

Sahayak Shikshak under the Municipal Corporation, there are certain conditions which are required to be followed under Rules 11. Admittedly before issuance of the impugned order Annexure P-6) dated 29/11/2014, none of the conditions prescribed have been followed by the respondent particularly the respondent No. 2 and as such this Court has no hesitation in reaching to the conclusion that the cancellation of the appointment of the petitioners or the impugned order dated 29/11/2014 is in contravention to the rule 11 of the rules of 2013.

12. So far as the reason or the stand taken by the respondent that there were sufficient number of teachers available in the schools run by respondent No. 2 which led to the cancellation of the appointment of the petitioners is concerned.

13. It would be relevant to refer to the paragraph 6 of the return filed by the State Government which for ready reference is reproduced hereinunder :-

“It is further submitted that before the petitioners appointment have been made, the Department of Panchayat and Rural Development vide order no. Pancha./697/Pagravivi/22/2014/999 New Raipur dated 25/04/2014 (Annexure P/8) directed to suspend the appointment to the post of Assistant Teachers and to keep the entire process in abeyance till further orders due to enough number of assistant teachers in the cadre and therefore till further proper assessment of the strength is not done, the process was suspended till further orders. It is further submitted that in Primary and Middle School of the State the ratio of Teacher-Student is 1:23 and if in the said ratio the permanent teachers are to be included then the Teacher-Student ratio would be 1:19, from the perusal of the said ratio it is crystal clear that in the State has enough

number of Teachers. Therefore, in light of the aforesaid circumstances an overview of the total sanctioned and vacant posts of the school Education Department and Tribal Welfare Department is necessary and the same is being done.”

14. Plain reading of the aforesaid stand that the State has taken in their reply would show that the crux of the stand taken by the State Government is that there are sufficient number of Teachers available with the respondents and there was no requirement for an additional intake of teachers/ Assistant Teachers which has led to the cancellation of the appointment orders issued so far as the petitioners are concerned. This Court vide its order dated 05/08/2015 had directed the State authorities to file an affidavit by the Secretary Urban Administration and Development giving the following details:-

“(1) Total number of schools run under the control of local bodies in the State.

(2) Total number of posts of teacher in all these schools.

(3) Total number of teachers working in these schools as on 22/05/2014 and 31/07/2015.”

15. In response to the order passed by this Court on 05/08/2015 Principal Secretary Government of Chhattisgarh Urban Administration and Development department has filed an affidavit on 25/08/2015 and has submitted the same before the High Court and in the said affidavit the Principal Secretary has submitted that against total 5003 posts of Assistant Teachers working strength of Assistant Teachers as on 22/05/2014 and 31/07/2015 was only 3562 which would clearly reveal that there was vacancies of 1441 and as on 31/07/2015 the vacancy stood at 1616. The said affidavit which the principal Secretary has

filed would show that the ground or the stand taken by the State Government that there were enough number of teachers available, which led to the cancellation of the appointment of the petitioner to be without any basis and contrary to the factual data that was available with the State.

16. Another aspect which cannot be loose sight of is that the order dtaed 22/05/2014 seems to have been passed keeping in view the earlier order dated 25/04/2014 which was passed by the Panchayat and Rural Development Department of the State Government. The said order dated 22/05/2014 and the 25/04/2014 Annexure P-7 & P-8 with the writ petition make things more clear that the order dated 25/04/2014 was one which has been issued dealing with the Panchayat and Rural Development Department. The factual situations which is prevailing in the Panchayat and Rural Development Department is entirely different than which is prevailing in the schools run by the local bodies. Moreover, very issuance of the order dated 22/05/2014 was based on order issued by the Panchayat and Rural Development Department itself seems to be without taking into consideration the ground realities and the factual data that was available in the schools run by the local bodies. Coupled with the fact that the stand of the State Government or the respondent NO. 2 in the issuance of the order dated 29/11/2014 seems to be hit by the Principle of the discrimination and as such violative of Article 14 for the reason that the appointment made from the same recruitment process Annexure P-2, P-3 & P-9 have not been cancelled, whereas it is only the appointment of the petitioners made vide Annexure P-4 dated 15/10/2014 which has been cancelled. No justification

whatsoever has been provided either in the pleadings of the respondent or in the submissions which have been made by the learned State counsel for restricting the cancellation of appointment only that of the petitioners. What also is to be borne in mind is that the orders of appointment issued in respect of the similarly placed persons are both which have been issued prior to the issuance of the appointment to the petitioners and there are also orders which have been issued subsequent to the appointment orders being issued to the petitioners and appointment orders both were issued prior to the subsequent to the order of State Government dated 22/05/2014. If the stand which the State Government has taken of there being enough teachers available then the subsequent appointment order dated 28/07/2014 also ought to have been cancelled. Having not done so and permitting the other teachers /Assistant Teachers to work clearly reflects that the impugned order is discriminatory and is therefore not sustainable.

17. For the aforesaid reasons, this Court is of the opinion that the impugned order Annexure P-6 dated 29/11/2014 is not sustainable and the same deserves to be and is accordingly set aside/quashed and the respondents are directed to immediately take back all the petitioners into service on the respective posts and subject that they were appointed . Considering the fact that petitioners in fact had not been discharging their duties during the intervening period applying the principle of no work no pay, the petitioners would not be entitled for the monetary benefits for the intervening period. However, the petitioner would be entitled for all the benefits of the intervening period by way of notional fixation and the petitioners would be entitled for the

consequential benefits of seniority, length of service and continuity in service by giving them notional benefits from the date they were out of employment till the date they are taken back in service.

18. The writ petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
Judge

Rohit