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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 29/11/2018****Judgment Delivered on : 07/01/2019****Writ Appeal No. 215 of 2017***{Arising out of order dated 19.04.2017 passed in Writ Petition (S) No. 1436 of 2015 by the learned Single Judge}*

Harnarayan Yadav, age 44 years, S/o Shri Tanaram Yadav, R/o
Nayaganj Road, Sanjay Ward, Bhatapara, Post Office and PS
Bhatapara, District Balodabazar Bhatapara, Chhattisgarh.

---- Appellant**Versus**

1. Chhattisgarh Public Service Commission, Raipur, Through Secretary, Chhattisgarh Public Service Commission, Raipur, Shankar Nagar Road, Bhagat Singh Chowk, Raipur, District Raipur Chhattisgarh.
2. The State of Chhattisgarh, Through Principal Secretary, Law and Legislative Affairs Department, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Appellant : In person.

For Respondent No. 1 : Shri B. D. Guru, ADvocate.

For Respondent No.2/State: Shri Prasoon Bhaduri, Government Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C.A.V. Judgment****Per Ajay Kumar Tripathi, Chief Justice**

1. The Appellant has appeared in person to assail the order dated 19.04.2017 passed by a learned Single Judge wherein his writ application has been dismissed refusing to grant him benefit of age relaxation for appointment on the post of Civil Judge (Entry Level) Examination 2014.

2. The Appellant was appointed as a Shiksha Karmi Grade-III (now re-designated as Assistant Teacher Panchayat). The appointment was made on the basis of the order dated 10.07.2008 issued by the Chief Executive Officer, Janpad Panchayat, Bhatapara. The appointment is supposed to be governed by what is known as Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Services) Rules, 2007 (for short 'the 2007 Rules') notified under the power exercised under Section 70(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (*for short 'the Act of 1993'*).

3. While working as a Panchayat Teacher, the Appellant responded to the advertisement dated 26.02.2014 issued by the Chhattisgarh Public Service Commission for the post of Civil Judge (Entry Level). He claimed benefit of age relaxation in terms of Clause (iv)(c) of the terms and conditions of the advertisement dated 26.02.2014, which reads as under:

"(Four) Age Limit:-

The candidate must have completed the age of 21 years but he/she must not complete 35 years of age as on the **1st day of January 2015**.

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xxx

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(c) The upper age limit for Government Servant whether permanent or temporary, shall be relaxable upto further 3 years in addition to the relaxations available as above."

4. It is his case that he was allowed to appear in the written examination and he cleared preliminary and mains examinations, but at the time of interview he was informed that since he was over age, he cannot be considered for appointment. The age relaxation which the Appellant was looking at is only available to a Government Servant for a further period of three years and since he was not a State Government employee by virtue of being a Panchayat Teacher, the relaxation provided for in Clause (iv) sub-Clause (c) of the advertisement cannot be extended to him.

5. For that alone reason, the Appellant filed the writ application. Before the learned Single Judge, it was the submission of the Appellant that since the Government Servant has not been defined in the advertisement or in the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006, therefore, definition contained in Rule 15 of the Chhattisgarh Public Service Commission Rules as well as definition contained in Rule 2(a)(iii) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (*for short 'the Rules, 1966'*) would be applicable. He further contended that after his appointment as a Panchayat Teacher he was posted and placed at the disposal of the State Government in Government Primary School, Mopki, Tehsil Bhatapara, District - Balodabazar and therefore, he is a Government Servant and entitled to age relaxation in terms of the advertisement.

6. The stand of the State, however, before the learned Single Judge was that the Appellant was appointed by the Chief Executive Officer of the Janpad Panchayat in terms of the 2007 Rules. Not only the appointment, but the control and disciplinary authority for such Panchayat Teachers is in the hands of Chief Executive Officer of the Panchayat. Under Section 70 of the Act of 1993, every Panchayat is entitled to make appointment of its officers and servants. The 2007 Rules was also notified in exercise of power under Section 70(1) of the Act of 1993 and the said Rule has not been framed in exercise of powers conferred under Article 309 of the Constitution of India. It was the stand of the State that by no stretch of imagination, a Panchayat Teacher appointed by a Panchayat can be treated as a Government Servant and therefore, the age relaxation of additional three years provided in the advertisement in terms of clause (iv) (c) is misplaced.

7. The stand of the Chhattisgarh Public Service Commission was more or less in similar lines as the State. Besides that, it was also argued that

the definition contained in Section 2(a)(iii) of the Rules, 1966 would not be attracted to treat a Panchayat Teacher as a Government Servant, therefore, he was rightly not extended the age relaxation by additional three years.

8. The learned Single Judge after examining the contentions and the law on the issue recorded his opinion as under:

"9. In order to decide the question whether Shiksha Karmi Grade-III is the government servant and entitled for age relaxation at par with the government servant, the Constitution Bench judgment in **State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and others** (1980) 4 SCC 653 deserves to be noticed. In the aforesaid case, the Constitution Bench of the Supreme Court while considering the question whether members of Gujarat Panchayat Service are government servant laid down certain factors, which would indicate relationship of master and servant. It was observed as under:-

"27. We have to first consider the question whether the members of the Gnjarat Panchayat Service are Government Servants. Earlier we have already said enough to indicate our view that they are Government Servants. We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not."

10. In the matter of **State of Gujarat Vs. Raman Lal Keshav Lal** {(1980) 4 SCC 653} the Constitution Bench of the Supreme Court has held as under:-

“14. The first question is whether the Panchayat Service constituted under the Panchayats Act is a civil service of the State. The expressions 'civil service' or 'civil post' are not formally defined. Entry 70 of List I of the Seventh Schedule to the Constitution refers to Union Public Services and All India Services, and Entry 41 of List II of that Schedule refers to State Public Services. Part XIV of the Constitution deals with services under the Union and the States. In Art. 309 of the Constitution, we find reference to persons appointed to public services and posts in connection with the affairs of the Union or of any State. Art. 310 of the Constitution distinguishes the defence service from the civil service when it refers to members of a 'defence service or of a civil service'. But all persons who are members of a defence service or of a civil service of the Union or of an all-India service or persons who hold any post connected with defence or any civil post under the Union are treated as persons serving the Union and every person who is a member of the civil service of a State or holds any civil post under a State is treated as a person serving a State. The factors which govern the determination of the question whether a person holds a civil post or is a member of civil service were considered by a Constitution Bench of this Court in *State of Assam v. Kanak Chandra Dutta*⁵ and *Bachawat, J.* speaking for the Bench observed thus :-

"There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment.

A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 and 311. The heading and the subheading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

15. According to the above decision, the true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wage and remuneration. It further held that the relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances. Applying these tests, this Court held that a Mauzadar in the Assam Valley who was engaged in the work of collection of land revenue and other Government dues and in the performance of certain other special duties was a person holding a civil post under the State. Following the above decision in **Superintendent of Post Offices v. P. K. Rajamma** (1977) 3 SCC 94 this Court held that persons who were working as extra departmental agents of the Posts and Telegraphs Department were persons holding civil posts."

11. Likewise, in the matter of **Union Public Service Commission Vs. Girish Jayanti Lal**

Vaghela and others (2006) 2 SCC 482 the Supreme Court held that Girish Yayanti Lal Vaghela was working on short term contract basis, he was not a Government servant and was not eligible for any relaxation in the upper age limit.

12. In the matter of **Union Public Service Commission Vs. Dr. Jamuna Kurup and others** (2008) 11 SCC 10 Their Lordships of the Supreme Court while relying upon other two judgments of the Supreme Court in **Roshan Lal Tandon Vs. Union of India** {AIR 1967 SC 1889} and **Dinesh Chandra Sangma Vs. State of Assam** {(1977) 4 SCC 441} have held that employment under the Government is a matter of status and further held that contract employees of the Government were governed by the terms of contract and did not possess the status of government servants, nor were governed by the Rules framed under Article 309 of the Constitution, nor enjoyed the protection under Article 311 and further held that municipal employees are not government servants governed by Articles 309 to 311.

13. The High Court of Madhya Pradesh in the matter of **Arun Singh Bhadouriya Vs. State of M.P. and others** {2009(2) M.P.H.T. 277 (DB)} while considering the case of Samvida Shala Shikshak Class II of Zila Panchayat has held that the petitioner is not a government servant and therefore, not entitled to claim age relaxation of upper age limit provided in Second Proviso to Rule 7 of the M.P. Lower Judicial Service (Recruitment & Conditions of Service) Rules, 1994.

14. Thereafter, in the matter of **Gajpalsingh Rathore Vs. State of M.P. and others** {2012(4) M.P.H.T. 542} the High Court of Madhya Pradesh has relied upon the matters of **Arun Singh Bhadouriya** (supra) and **Girish Jayantilal Vaghela** (supra) and held that that employee working as Shiksha Karmi on contractual basis is not a government employee.

15. Applying the principle of law laid down by the Supreme Court and the Madhya Pradesh High Court in the aforesaid judgments, if the facts of the present case are examined, it is quite apparent that the petitioner was appointed on the post of Shiksha Karmi Grade-III (now re-designated as Assistant Teacher Panchayat) under the Rules of 2007. The said Rules were promulgated under Section 70(1) read with Section 95 of the Act of 1993. That rules were not framed in exercise of powers conferred under proviso to Article 309 of the Constitution of India. It is also apparent that the petitioner was appointed on the post of Shiksha Karmi Grade-III by Janpad Panchayat, Bhatapara, his appointing as well as disciplinary authority is the Chief Executive Officer, Janpad Panchayat, Bhatapara and as such,

full administrative and disciplinary control vest in Janpad Panchayat, Bhatapara. Merely because he has been placed under the disposal of school owned by the State Government, he cannot claim that he is a government servant. It is also not in dispute that the petitioner is not entitled for protection under Article 311 of the Constitution of India. Viewed from any angle, it cannot be held that the petitioner was appointed under the Rules promulgated under Article 309 of the Constitution of India and as such, the petitioner having been appointed by Janpad Panchayat, Bhatapara pursuant to the Rules framed under the Rules promulgated under Section 70(1) of the Act of 1993 and admittedly not entitled for protection under Article 311 of the Constitution of India. It cannot be held that the petitioner is government servant and is entitled for age relaxation."

9. For the reasons as noted above, the learned Single Judge dismissed the writ application holding that the Appellant was not a Government Servant and therefore, could not be extended the benefit of age relaxation.

10. The Appellant while assailing the order of the learned Single Judge submits that for all practical purposes, the Appellant is required to be treated as a Government Servant. He has the attributes of a Government Servant even though he had been appointed by the Panchayat but since he is being made to work in a Government School, therefore, he has to be treated and extended the benefit of relaxation of age.

11. The question, therefore, which arises for consideration is whether the Appellant is holder of a civil post under the State Government by virtue of his appointment as a Shiksha Karmi in Panchayat or not? If it is held that he is not a holder of a civil post under the State which has been done by the learned Single Judge, the Appellant would not have a case for age relaxation over and above what had been prescribed for in the advertisement which is otherwise available to a Government Servant.

12. At the very outset, the Court has to take notice that as per the 73rd Constitutional Amendment Act, 1992, a new chapter i.e. Part IX was added or incorporated in the Constitution of India. Under Article 243(d), a Panchayat has been defined to mean an institution (by whatever name called) of self-government constituted under Article 243B for the rural areas.

13. Article 243B of the Constitution of India, also having relevance, is reproduced hereinbelow:

"243B. Constitution of Panchayats. - (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs."

14. The composition of Panchayat has been laid down in Article 243C of the Constitution which also is required to be reproduced:

"243C. Composition of Panchayats. - (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation—

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of—

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof."

15. Article 243G of the Constitution of India is also of significance, therefore, the same is also reproduced hereinbelow:

"243G. Powers, authority and responsibilities of Panchayats. - Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the

appropriate level, subject to such conditions as may be specified therein, with respect to—

(emphasis ours)

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

16. If the above constitutional provisions are taken into consideration, then it is abundantly clear that a Panchayat is a unit of self governance and it has complete independence of action and decision making within its domain.

17. In terms of the scheme of things, the Chhattisgarh Panchayat Raj Adhiniyam, 1993 was promulgated vesting and devolving the power on the Panchayat to function as an independent entity of self governance. Under the Act of 1993, the establishment of a Gram Panchayat or a Janpad Panchayat or a Zila Panchayat has been contemplated under Section 10. Section 11 states that the Gram Panchayat, Janpad Panchayat, Zila Panchayat will be a body corporate having perpetual succession and seal.

18. Section 53 of the Act of 1993 has a bearing and therefore, the same is reproduced for ready reference:

53. Powers of State Government in relation to functions of Panchayats. - (1) (a) Subject to such

conditions as may be specified by general or special order issued by the State Government, the Panchayat at the appropriate level shall have the powers and authority as may be necessary to enable them to function as institutions of self Government in relation to matters listed in Scheduled IV, including preparation of plans, implementation of schemes for economic development and social justice, and other duties and functions assigned to them under Sections 49, 49-A, 50, 52 and Chapter XIV-A.

(b) The State Government may, by notification, endow Panchayats at the appropriate level with

powers and responsibilities for the selection, recruitment, appointment and management of any cadre or cadres of employees required for the efficient implementation of schemes, subject to the staffing pattern approved by the State Government and such other conditions as it may deem fit.

(emphasis ours)

(2) The State Government may, by general or special order, add to any of the functions of Panchayats or withdraw the functions and duties entrusted to such Panchayatas, when the State Government undertakes the execution of any of the functions entrusted to Panchayat. The Panchayat shall not be responsible for such functions so long as the State Government does not re-entrust such functions to the Panchayats."

19. The other important Section is Section 70 of the Act of 1993 which provides for officers and servants of the Panchayat. Section 70 reads as under:

"70. Other officers and servants of Panchayat. -

(1) Subject to the provisions of Section 69 every panchayat may with previous approval of prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties.

(2) The qualification, method of recruitment, salaries, leave, allowance and other conditions of service including disciplinary matters of such officer and servants shall be such as may be prescribed."

20. In exercise of power conferred under Section 70 of the Act of 1993, the Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 2007 was notified by the State. The said Rule gives power to the Panchayat to make selection and appointment of Panchayat Shiksha Karmi or a Panchayat Teacher.

21. Keeping the totality of the various constitutional provisions and the corresponding enactments including the Act of 1993 and the 2007 Rules

relating to appointment of the Panchayat Teachers, this Court has no hesitation in coming to the same conclusion as the learned Single Judge that the Appellant cannot be treated as a Government Servant as he is not holder of a civil post under the State but an appointee of a Panchayat which is an independent entity and has its own enactments and rules governing such appointees. The concession therefore which had been provided for in the advertisement of age relaxation of additional three years to a government servant cannot be extended to the Appellant as he is not holder of a civil post under the State and cannot be treated to be a government servant to derive the benefit of age relaxation.

22. The appeal therefore fails and stands dismissed accordingly.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE