

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2296 of 2011**

Smt. Rachana Dwivedi D/o Shri Rammani Dwivedi, Post & Tah :
Ambagarh Chowki, Rajnandgaon, District Rajnandgaon, Chhattisgarh

Versus

1. The State of Chhattisgarh through the Secretary to the Govt. of CG,
Panchayat and Rural Development Department, D.K.S. Bhawan,
Mantralaya, Raipur, CG
2. The Chief Executive Officer, Jila Panchayat, Kabirdham, District
Kabirdham, CG
3. The Selection Committee through : The President, Selection
Committee, Zila Panchayat, Kabirdham, CG
4. Ku. Swati D/o Shri Hanuman Das, Gram – Salhebazar, Post-
Kherdhabazar, Tah- Doundilohara, Durg, District Durg, CG

---- Respondents

For Petitioner	:	Mr. Abhishek Sharma, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11.06.2020**

1. The present writ petition has been filed seeking quashment of
Annexure P-1 dated 17.03.2011 whereby the representation of the
petitioner has been rejected by the respondents.
2. The facts of the case are that the respondents had issued an
advertisement on 05.10.2009 for filling up of the posts of Shiksha Karmi
Grade-I & II. The petitioner had also applied for the said recruitment
vide her application dated 05.11.2009. The petitioner was eligible and

she did to participate in the recruitment process. The results were declared and on the basis of merit, respondent no.4 was granted appointment as Shiksha Karmi Grade-II in Hindi subject.

3. The grievance of the petitioner in the present writ petition is that in the advertisement which was published on 05.10.2009 there was no vacancy advertised for the subject Arts. However, inadvertently, Arts was the subject filled up by the petitioner in Column No.23 which denoted the subject against which the petitioner intended to seek appointment. This according to the petitioner, was an inadvertent mistake on her part for which she had moved an application for correction of the same on 17.05.2010 which the respondent authorities had not acted upon nor had they considered the case of the petitioner on merits. Subsequently, the petitioner filed a writ petition i.e. WPS No. 167/2011. This writ petition was disposed of on 13.01.2011 whereby the petitioner was granted liberty to represent before the respondent authorities and the respondent authorities in turn were directed to take a decision at the earliest. It is thereafter that Annexure P-1 dated 17.03.2011 was passed which is under challenge in the present writ petition.
4. The point of contention on behalf of the petitioner is that vide a circular dated 04.05.2010 the Govt. of Chhattisgarh, Department of Panchayat and Rural Development had permitted for correction of the subject which the candidates had erroneously filled up in the form. It is this circular dated 04.05.2010, on the basis of which, the petitioner had approached the authorities on 17.05.2010 for correction but the same was not considered on merits. According to the petitioner, once there

was a circular of the State Govt. permitting correction to be made, there was no reason why the respondent authorities should not have considered the request of the petitioner seeking for correction of her subject on the application that she had made. According to the petitioner, she had scored marks equal to the marks scored by respondent no.4 and by virtue of she being elder than respondent no.4 in age, the petitioner was entitled for being considered for appointment ahead of respondent no.4 and it is for this reason, the respondent no.4 has been impleaded as a necessary party.

5. State counsel, on the other hand, opposing the petition submits that it is a case where the petitioner had with wide open eyes filled up her application form. That on account of the mistake that the petitioner had committed in filling up the subject in which she had sought appointment, she could not have been considered against Hindi subject. Moreover, it was argued by the State counsel that the respondent no.4 has not committed any mistake or fraud in getting employment nor has she played any role in denying the petitioner's claim for appointment in the process of her selection. State counsel further submits that even before the circular dated 04.05.2010 was issued, the select list was already published and as such a right was already created in favour of the respondent no.4 who had been found selected for appointment as a Shiksha Karmi Grade-II in Hindi subject. Thus, the right which has been accrued in favour of the respondent no.4 on her own merits, cannot be taken back under any circumstances. It is the further contention of the State counsel that only because the respondent no.4 has also scored the same marks

that the petitioner has obtained, it cannot be said that the respondent no.4 is in any manner inferior to the petitioner. It is lastly contended by the respondents that the writ petition otherwise stands squarely covered by the decision of this High Court itself in an identical set of facts i.e. WPS No. 5194/2008 which stood decided on 17.10.2008. State counsel thus prayed for rejection of the writ petition.

6. Having considered the submissions put forth on either side, the factual matrix as it stands admitted is that an advertisement was issued on 05.10.2009. The recruitment was for appointment to the post of Shiksha Karmi Grade-I & II. So far as the appointment of Shiksha Karmi Grade-II is concerned, no post was advertised for the subject Arts. Undisputedly, the petitioner had applied for the said recruitment. However, her application that she had made was against Arts subject. Thus, the petitioner could not find place in the select list as she had not applied for any of the posts advertised.
7. The fact which needs consideration at this juncture is that undoubtedly there does not appear to be any error or mischief on the part of the respondent no.4 being played in the select list neither is there any extra favour shown to the respondent no.4 in getting appointment nor is it a case where there is an allegation of the respondents being responsible for not considering the case of the petitioner for appointment. The respondent no.4 stood appointed as early as in December, 2010. Since then she has been put in about 10 years of service which is a considerable period of service.
8. From the aforegiven factual matrix it is clear that equity stands in favour of the respondent no.4 who has firstly rightly been given appointment.

That there is no allegation of any fraud or mischief played in her appointment either on the part of the State or on the part of the respondent no.4. The only claim which the petitioner makes is a circular dated 04.05.2010 which itself was issued much after the first select list was issued by which time the claim of the respondent no.4 for appointment in Hindi subject had already fructified.

9. Moreover, it is also difficult to determine as to how the petitioner could be considered under "Hindi" subject as there could be other subjects also where the petitioner could be eligible. She now must be claiming Hindi subject considering the marks the respondent no.4 has obtained or may be she would not be selected in any other subject.
10. Another aspect which needs consideration is that the representation of the petitioner which stood decided vide Annexure P-1 and which was at the behest of an order passed by this Court in WPS No. 167/2011 dated 13.01.2011 was by a Selection Committee which was duly authorized under the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Services) Rules, 2007. Thus, the decision has been taken by a statutory body in accordance with the statute. The circular which is being relied upon by the petitioner is only an administrative instruction which as such may not have a statutory force of law.
11. There is another angle which has to be looked into is that admittedly the petitioner had applied on 05.11.2009. The first application which the petitioner had moved for correction of subject was on 17.05.2010 i.e. after about 6-7 months of period. This itself shows that there was a considerable period of time in between when the petitioner had not

taken any recourse for correction of her application. That it is only after the select list was issued and when the subsequent circular dated 04.05.2010 was published that the petitioner woke up from her slumber and filed an application on 17.05.2010.

12. It would be relevant at this juncture to take note of the decision of this High Court passed in WPS No. 5194/2008 which again was under somewhat similar circumstances but the High Court vide its judgment dated 17.10.2008 had dismissed the writ petition on the ground that the candidates cannot be permitted to take advantage of the circular after declaration of the results.

13. For all the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order. The writ petition fails and is accordingly dismissed.

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