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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2060 of 2011**

Atish Kumar Lal S/o Late Shri A. K. Lal, R/o Jarahabhata, Indu Chowk,
Bilaspur, Chhattisgarh

---- **Petitioner****Versus**

1. State of Chhattisgarh through School Education Dept. D.K.S. Bhawan,
Raipur, CG
2. School Education Officer, Bilaspur
3. The Secretary, Chhattisgarh Diocese Board of Education CNI, opposite
Rajbandha Gate No.1, Raipur, CG
4. Principal, Mission Higher Sec. School, near Brihaspati Bazar, Bilaspur,
CG
5. Pankaj Kumar Sharma S/o Shri S. A. Sharma, working as Shiksha
Karmi-3 in Mission Higher Sec. School, near Brihaspati Bazar, Bilaspur,
CG
6. Smt. Greeta Jacob W/o Shri Shalaj Jacob, working as Shiksha Karmi-
3, in Mission Higher Sec. School, near Brihaspati Bazar, Bilaspur, CG
7. Ku. Reeta Franklyn D/o Lejali Franklyn, working as Shiksha Karmi-3 in
Mission Higher Sec. School, near Brihaspati Bazar, Bilaspur

---- **Respondents**

For Petitioner	:	Mr. S. P. Kale, Advocate
For State/Respondents 1 & 2	:	Mr. Sudeep Verma, Dy. G.A.
For Respondent 4	:	Mr. Swajeet Singh, Advocate
For Respondents 5 & 6	:	Ms. Nausina Afrin Ali, Advocate
For Respondent no.7	:	None appears though served

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14.08.2020**

1. The present writ petition was filed by the petitioner on 15.04.2011 seeking the following reliefs:

I. The Hon'ble Court may kindly be pleased to call for the entire records regarding selection of Shiksha Karmi Grade-3 from respondent no.2 & 3.

II. Hon'ble Court may kindly be pleased to direct respondent authorities to appoint petitioner as Shiksha Karmi Grade-3 in respondent no.3 institution. Selection Committee wrongly rejected (not selected) the name of petitioner for the post of Shiksha Karmi Grade-III.

III. Hon'ble Court may kindly be pleased to quash the appointment of Respondent no.5 to 7 dt. 25.09.2009 on the post of Shiksha Karmi Grade-3 (Annexure P-1)

IV. Any other relief, which Hon'ble Court deems fit and proper may also kindly be granted to the petitioner in the interest of justice.”

2. Reading of the relief clause itself would make it evidently clear that the petition was substantially filed challenging the order Annexure P-1 dated 25.09.2009 whereby the respondent no.4 had issued an order of appointment of Shiksha Karmi Grade-III and from which it is the appointment of respondents 5 to 7 which the petitioner was aggrieved of.
3. The brief facts relevant for adjudication of the dispute in the present writ petition are that an advertisement was issued by the respondent no.4 on 14.06.2008 (Annexure P-3) for appointment to the post of

Shiksha Karmi Grade-III. The number of post to be filled as Shiksha Karmi Grade-III was six. In the advertisement, the minimum educational qualification and the eligibility criteria were the same that were applicable in the State Govt. The petitioner finding himself to be eligible for the said post had applied along with others. On due scrutiny of the documents enclosed, the respondents issued a merit list which is available in the pleadings as part of the writ petition i.e. Annexure P-4. Subsequently, the impugned order Annexure P-1 dated 25.09.2009 was issued granting appointment to the meritorious candidates which included respondents 5 to 7.

4. Coming to the pleadings of the writ petition, it appears that the petitioner had primarily challenged the appointment of respondents 5 to 7 on the ground that the petitioner has not been awarded proper marks in the course of assessment being made. If in terms of the criteria fixed by the respondents the petitioner had been awarded marks, he would have scored more marks than the private respondents and he should have been declared selected for appointment to the post of Shiksha Karmi Grade-III. The other ground raised by the petitioner is that the appointment made by the respondent no.4 is arbitrary for the reason that many of the selected candidates were relatives of the School Management Committee. The further contention of the petitioner is that he has not been granted proper marks for the experience that he had so also he has not been granted marks against sports and games. According to the petitioner, if proper marks are granted on this, the marks of the petitioner would have improved substantially and he would have been meritorious for being appointed against the six posts

advertised.

5. Counsel for the petitioner referred to the teaching experience of the petitioner, the copy of which is also enclosed as Annexures to the writ petition. He also referred to various certificates regarding the petitioner's participation in sports and games at various district and national level. As regards the ground of the relatives of the School Management Committee being appointed, reliance has been placed by the petitioner on an inquiry report and a correspondence made by the District Education Officer seeking an explanation from the respondent no.4 on the said subject.
6. During the course of hearing and on perusal of the records, it has been revealed that the petitioner has been wrongly given 4.5 marks for NCC/Scout. Similarly, it has been found that inadvertently for sports & games, the petitioner has not been granted any marks. This means the 4.5 marks given to the petitioner against NCC/Scout can be counted against the marks for games and sports and as such there will be no improvement of total marks on this count.
7. So far as the experience part is concerned, the petitioner has been able to show that he has sufficient experience with which he should have been awarded 12 marks instead of 8 marks as awarded by the Selection Committee. This has not been objected to or opposed by any of the respondents.
8. Taking into consideration the marks given against his experience, if the petitioner is awarded 12 marks instead of 8, his total score would get improved from 51.78 to 55.78 and only this much enhancement of marks has also been conceded by the counsel for the petitioner.

Moreover, on a categorical query being put to the counsel for the petitioner he has admitted the fact that the petitioner does not have any certificate enabling the petitioner to claim marks under the head of NCC/Scout.

9. Coming to the merit position of the petitioner with his improved score of 55.78, it would reveal that the overall ranking of the petitioner may get improved from 14 to 9 as all other candidates placed at serial no. 1 to 8 have scored more than 56 and the person who has placed at serial no.9 is a candidate who has scored 55.64. Hence, the petitioner would have to be treated as having got 9th position in the overall merit as has been referred to in the previous paragraphs.
10. The number of posts of advertisement or appointment of Shiksha Karmi Grade-III was only six. Thus, even with the improved marks of 55.78 the petitioner would not come in the list of top six enabling him to get employment. Another fact which needs to be considered is that respondent no.5 is the person who has been found the most meritorious and is placed at serial no.1 with a score of 65.7%. Likewise, respondent no.6 again is a candidate who has in the overall merit found place at serial no.3 with a total score of 61.85%. Similarly, respondent no.7 is also a candidate who has in the overall merit stood 5th with a score of 58.77%. Further that there is no substantial materials brought on record to allege nor is there any allegation of the private respondents been granted marks wrongly in order to favour them.
11. From the aforesaid facts, it is evidently clear that the respondents 5 to 7 have scored much more than the petitioner even if he is awarded

extra 4 marks for his experience which would improve his percentage to only 55.78. Thus, the respondents 5 to 7 have proved themselves to be better than the petitioner for selection and therefore, their selection and appointment cannot be held to be bad in law or arbitrary.

12. During the course of hearing, counsel for the petitioner conceded this aspect and gave up his challenge to the appointment given to respondents 5 to 7.
13. The next issue raised by the petitioner was in respect of the alleged action on the part of the respondent no.4 in giving employment to the relatives of the members of the School Management Committee. However, there is no specific case highlighted by the petitioner in this case particularly from among the selected candidates. The entire challenge by the petitioner was based upon the correspondence made by the District Education Officer to the respondent no.4 on 20.12.2010 and a preliminary inquiry which seems to have been conducted by the District Education Officer.
14. If we look into the correspondence made by the District Education Officer on 20.12.2010 (Annexure R-1) in the reply of the State, there is a specific order passed by the District Education Officer asking the School Authorities to provide explanation on these allegations and as to the action initiated. Thereafter, there seems to be no further development. The respondent no.4 in their reply have categorically submitted that they have submitted a detailed representation giving all clear details of the recruitment made justifying the appointment made and denying the allegations and findings in the inquiry. Thereafter, the State authorities have also not proceeded any

further which by itself has to be presumed that they have dropped the proceedings there itself. Since the issue involved in the present writ petition is the selection of respondents 5 to 7 which has now been given up by the counsel for the petitioner, it stands established that there is no ground strong enough made out by the petitioner for declaring the impugned order dated 25.09.2009 to be bad in law, arbitrary or malafide.

15. At this juncture, counsel for the petitioner submits that accepting the improved position of the petitioner to be at serial no.9 and the fact that the candidates who stood meritorious at serial no.2, 4 & 6 have not joined therefore there would have been 3 more vacancies created, the next 3 persons in the merit list should have been called and the petitioner would have got an occasion of being considered for appointment.
16. What has to be appreciated is the fact that there was no waiting list as such prepared by the respondent no.4 neither has the respondent no.4 given appointment to any other meritorious persons on the non-joining of 3 candidates whose name appeared at serial no. 2, 4 & 6. Even otherwise the petitioner could have been placed only at serial no.9, and there were candidates who were placed at serial no. 7 & 8 who would have a claim for appointment ahead of the petitioner.
17. Another fact which needs consideration is that when the writ petition was filed, the age of the petitioner was about 42 years as his date of birth is reflected to be 10.07.1969 and by efflux of time today the age of the petitioner is more than 51 years. On this ground also no direction as such can be given to the respondents to consider granting

appointment to the petitioner.

- 18.** It is settled position of law that merely because the name of a person appears in the select list, he does not acquire any indefeasible right for appointment. It does not amount to selection nor does it amount to creating a vested right for appointment. Once the selection process has been initiated, it stands concluded on the date of order of appointment being issued. Until & unless it is specifically mentioned about preparation of a waiting list and also considering of candidates in the waiting list against any unfilled post, merely inclusion of a name in the select list cannot be treated as a reservoir for appointment to be made to fill up the vacancies created in between. On this count also the petitioner would not be able to get any relief from this Court at this juncture.
- 19.** In view of the same, this Court is of the opinion that no strong case has been made out by the petitioner for interfering with the impugned order Annexure P-1 or for granting any relief to the petitioner.
- 20.** The writ petition fails and is accordingly dismissed.

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