

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 02.12.2019

Judgment pronounced on 28.02.2020

Writ Appeal No. 308 of 2019

(Arising out of Order dated 17.07.2018 passed by Hon'ble Single Judge
in WPS-4604 of 2018)

1. Homanlal Hirwani S/o Shri Guhariram Hirwani Aged About 49 Years
Occupation Shiksha Karmi Grade - II (Physical Education Teacher) At
Government High School Kotagaon, Block And Tahsil Dondi, District
Balod Chhattisgarh
2. Nikhar Santoshwar S/o Shri J.J. Santoshwar Aged About 44 Years
Occupation Shiksha Karmi Grade - II (Physical Education Teacher) At
Government High School Bhainsbod, Block And Tahsil Dondi, District
Balod Chhattisgarh., District : Balod, Chhattisgarh
3. Shivram Vaidya S/o Shri Goverdhan Singh Aged About 50 Years
Occupation Shiksha Karmi Grade - II (Physical Education Teacher) At
Government High School Kallari, Block And Tahsil Dondi, District Balod
Chhattisgarh

---- Appellants

Versus

1. State Of Chhattisgarh Through Its Secretary, Panchayat And Rural
Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur,
District Raipur Chhattisgarh
2. Zila Panchayat Balod Through Chief Executive Officer, Zila Panchayat
Balod, District Balod Chhattisgarh
3. Zila Panchayat Durg Through Chief Executive Officer, Zila Panchayat,
Durg, District Durg Chhattisgarh

-----Respondents

For Appellants : Shri Ajay Shrivastava, Advocate
For Respondents/State : Shri Amit Buxy, Panel Lawyer

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Declining to interdict with the decision of respondent- 2 dated
14.06.2018 by learned Single Judge vide order dated 17.07.2018 in WPS-

4604 of 2018, made the appellants/petitioners to approach this Court by filing this Writ Appeal.

2. Facts of the case, in a nutshell, are that Zila Panchayat Balod/ respondent-2 issued an advertisement calling applications from eligible candidates for appointment on the posts of Shiksha Karmi Grade I, Grade II & Grade III and Physical Education Teachers. In pursuance of the said advertisement, appellants submitted applications for their appointment on the post of Physical Education teacher. Applications submitted by the appellants were rejected on the ground of overage. The action of respondents- 2 & 3 rejecting application for appointment was challenged by way of filing Writ Petition before the High Court mentioning therein that they being Green Card holders (Cards for family planning operation by himself or spouse), were entitled for age relaxation of two years. The case projected by the petitioners in Writ Court in WPS-3065 of 2010 was that they are entitled for benefit of two years' age relaxation as their spouses have undergone Family Planning Operation and are also Green Card holders. The claim was on the basis of Circular dated 30.01.1989 issued by State Government granting benefit of two years' age relaxation in upper age limit to the Green Card holders but respondent- Zila Panchayat has not considered the document ie Green Card annexed along with their application and Circular dated 30.01.1989. The Writ Petitions filed by the appellants were allowed in their favour along with other Writ Petitions on 27.07.2012 and following order was passed by the learned Single Judge:

“16. In view of the above-stated facts and circumstances of the case, if the petitioners, after granting two years age relaxation, come within the prescribed age limit, the petitioners are to be allowed for participation in the selection process for appointment, thereon, in accordance with law and on its own merits.

17. As an upshot, the writ petitions are allowed to the extent indicated above, leaving the parties to bear their own costs.”

3. Pursuant to the above order, appellants were given appointment on 11.02.2013. After being appointed, they continued in their service without any objection of any nature.

4. Appellants/petitioners submitted representation, for the first time on 30.08.2017 for extending benefit of salary and other consequential benefits from 09.07.2010 on the ground that other Shiksha Karmis, who have applied pursuant to advertisement given by respondent- 2, were given appointment orders on 09.07.2010 and further, the High Court has passed an order in their favour and allowed them for participating in same selection proceedings, wherein other Shiksha Karmis were appointed on 09.07.2010 and therefore, they may be granted seniority and pay benefits from that date alone.

5. When the representations submitted by the appellants were not decided, they approached this Court by filing Writ Petition (S)-7325 of 2017, in which learned Single Judge vide order dated 04.01.2018, directed respondent-2 to consider and decide the representation submitted by the appellants strictly in accordance with law. Respondent- 2 on considering the representations submitted by the appellants, rejected their claim

mentioning therein that they were given the benefit as per Clause-2 of their appointment order and in accordance with Chhattisgarh Panchayat Seva (Bharti Tatha Seva Ki Samanya Sharten) Niyam 1999. Aggrieved by the decision of respondent- 2 (Annexure P1), appellants have filed WPS-4064 of 2018, with following reliefs:

- i. That the Hon'ble Court may kindly be pleased to call for the entire records concerning to the petitioners case from the possession of the respondents for its kind perusal.
- ii. That, Hon'ble Court may kindly be pleased to quash and set-aside the impugned order dated 14.06.2018 (annexure-P/1) passed by the respondent no.2 whereby seniority along with service benefits have not been granted to the petitioners from the date of 09/07/2010.
- iii. That, Hon'ble Court may kindly be pleased to direct the respondent authorities to grant seniority and other monetary benefits to the petitioners from the date of 09/07/2010 and also direct the respondents to consider the candidature of the petitioners for sanviliyan as declared by the state government considering the fact that petitioners have completed 8 years of service period.
- iv. Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner, in the interest of justice."

6. Above petition came to be dismissed by impugned order dated 17.07.2019 on the ground that the appellants/ petitioners were granted seniority from the date of their appointment, not sought any relief in WPS-3065 of 2010 as claiming the Writ Petition and they cannot re-agitate the same.

7. Shri Ajay Shrivastava, learned counsel for the appellants submits that the application submitted by appellant was erroneously rejected by respondent- Zila Panchayat. High Court in WPS-3065 of 2010 held that appellants are entitled for age relaxation and directed to provide participation of the appellants in process of appointment. Based on the direction issued by High Court, appellants' applications were considered and ultimately they were given appointment. It is contended that respondent- 3 issued appointment order and since then appellants are working on their respective post but they were not given benefit of pay, seniority or other like benefits from the date of the first appointment order issued to other applicants, ie from 09.07.2010.

8. It is also pointed out that appellants have made an application in pursuance of the advertisement in the year 2009 and other eligible applicants, who made their applications for appointment on different posts of Shiksha Karmis through same advertisement were given appointment on 09.07.2010 and appellants were erroneously excluded from the proceedings of selection. Non-appointment of appellants herein on the said date was due to the mistake committed by respondent- 2 by rejecting their applications on extraneous ground. He further submits that learned Single Judge while deciding their representations, held that appellants are entitled for age relaxation and further appellants were allowed to participate in selection process and by virtue of the said order, appellants were appointed, but other benefits like pay and seniority from the date of first appointment ie from 09.07.2010 were not extended to them. He submits that, as the appellants were appointed in pursuance of

the advertisement issued by respondent- 2 in the year 2009, they are entitled to be treated as appointed when respondent-2 has issued appointment orders /letters to other applicants as Shiksha Karmis. He further submits that learned Single Judge has not taken into consideration the entire facts but only considered the date of their joining and issuance of appointment order while dismissing the Writ Petition, which is liable to be interdicted.

9. Per contra, Shri Amit Buxy, learned Panel Lawyer representing the State submits that the appellants were appointed on the basis of appointment order issued in their favour by respondent- 3 on 11.02.2013 and in the appointment order itself it was mentioned as to how and when the appellants will be entitled for regular pay scale after successful completion of their probation period. He submits that the appellants have accepted their appointment orders as it is and have not challenged the same and therefore, now, they cannot be permitted to raise the issue of granting seniority and pay benefits from the earlier date than the date on which they joined the post in the department. He further submits that the relief sought for by the appellants/petitioners can only be granted from the date of their appointment and the respondents granted the benefits from 11.02.2013 ie the date of their appointment on the post in which there is no illegality or arbitrariness. Learned Single Judge has rightly dismissed the Writ Petition filed by them after considering overall facts and circumstances of the case, which do not call for any interference.

10. We have heard learned counsel for the parties and perused the records.

11. It is not in dispute that the appellants have submitted their applications for appointment on the post of Shiksha Karmi pursuant to advertisement issued by the 2nd respondent, which were rejected on the ground of overage than the maximum age prescribed for the post. Action of rejection of their applications without considering Circular dated 30.01.1989 was challenged by them before the High Court in WPS-3065 of 2010 and connected cases, which were allowed directing the respondents to grant two years' relaxation on account of Green Card and to permit them to participate in the selection process for appointment.

12. Perusal of order Annexure P2 would show that though the Writ Petition was allowed only for permitting them for their participation in the selection process for appointment. No other relief or advantage has been extended to them in earlier writ proceedings. Other applicants in the same recruitment process were given appointment on 09.07.2010. Appellants have also accepted their appointment orders without any demur or objection and continued to work on the said post since 11.02.2013.

13. Normal rule for granting seniority is from the date of appointment and joining the post or as per the service rules under which their services are governed. Appellants' services are governed by the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (for short, '1999 Rules') and Rule 2 provides for application of general conditions of the services and according to it, these rules apply to all posts in Zila Panchayat and Janpad Panchayat, unless otherwise provided in the **Panchayat Raj Adhiniyam, 1993** or any other rules made thereunder.

14. Seniority is provided under 1999 Rules. Rule 31 is reproduced here below for ready reference:

“31. Seniority—(1) Seniority of a directly recruited or promoted employee appointed on probation shall count during his probation from the date of his appointment to the post:

Provided that if more than one person has been selected for appointment on probation at the same time, the seniority of the persons so selected shall be according to the order of merit in which their names are recommended for appointment or promotion by the Selection Committee or Promotion Committee, as the case may be.

(2) The same order of inter-se-seniority shall be maintained on the confirmation after the normal period of probation.

(3) The seniority of persons appointed by promotion shall be according to the order of merit in which their names are recommended by the Promotion Committee.”

15. Rule 31 clearly specifies that seniority to be counted from the date of his/ her appointment to the post which shall continue during the probation of an employee.

16. In view of aforementioned specific Rule for fixing the seniority of an employee in Panchayat service ie from the date of appointment on the post only and not prior to that date. As the seniority can be claimed only when an employee is born in the cadre, unless it is specifically provided otherwise in the order itself.

17. Hon'ble Supreme Court considered the issue of seniority in the matter **Pawan Pratap Vs Reevan Singh** reported in (2011) 3 SCC 267 as below :

“From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure there from in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

18. Yet in another matter **State of Uttaranchal vs Dinesh Kumar Sharma**, (2007) 1 SCC 683 Hon'ble Supreme Court held thus:

“29. In a recent judgment of this Court in Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P (Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ.), this Court was of the view that seniority has to be decided on the basis of rules in force on the date of appointment, no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre. Similar view was taken by this Court in Keshav Chandra Joshi v. Union of India”

19. Seniority has to be decided on the basis of rules in force on the date of appointment and no promotion or seniority can be granted from a date when an employee is not even there in the cadre.

20. The appellants have accepted the orders passed in WPS-3065 of 2010 wherein the High Court has directed only to consider them for their appointment on the post in compliance of order dated 27.07.2012. The respondents have issued appointment order on 11.02.2013 which also contains at Clause 2 in very specific terms for granting them benefit of regular pay etc., on completion of their probation. The appellants if wanted to claim the pay benefits or the seniority from an earlier date, ie 09.07.2010 when other Shiksha Karmis were appointed, then, they could have urged the said benefit as claimed, in Writ Petition itself, ie WPS-3065 of 2010. Further, if they claimed and were not granted, then they could have challenged the order passed in the said Writ Petition before the appropriate forum, but they did not do so.

21. In view of above discussions, we do not find any infirmity or perversity in the order passed by learned Single Judge. The appeal being devoid of any substance, which is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge