**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 4160 of 2020**

- Dharmendra Kumar Rathore, Son of Shri Dhananjay Prasad Rathore, aged about 42 years, working as Vyayam Nideshak/Vyayam Shikashak and posted at Adarsh Higher Secondary School Sakti, District Janjgir-Champa (C.G.)

**---Petitioner**

**Versus**

1. State of Chhattisgarh, Through - Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya New Raipur, District-Raipur (C.G.)
2. Director, Directorate of Chhattisgarh Public Instruction Indravati Bhawan, Naya Raipur, District-Raipur (C.G.)
3. Director, S.C.E.R.T. Raipur, District-Raipur (C.G.)
4. Joint Director, Education Division Bilaspur, District-Bilaspur (C.G.)
5. Collector cum Officiating Chairman Controlling and Managing Committee Government Adarsh Higher Secondary School Sakti, District Janjgir-Champa (C.G.)
6. District Education Officer cum Officiating Secretary Controlling and Managing Committee Government Adarsh Higher Secondary School Sakti, District Janjgir-Champa (C.G.)

**--- Respondents**

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For Petitioner :- Mr. Ajay Shrivastava, Advocate
For State :- Ms. Akanksha Jain, Dy. G.A.

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**Hon'ble Shri Justice Goutam Bhaduri**
**Order**

**16/10/2020**

1. Heard.

2. Learned counsel for the petitioner submits that the advertisement was made on 07.07.2020 by Annexure-P/4 for appointment to the various posts in the English Medium Excellence School which are to be opened in State. In the advertisement, the application was invited for contractual appointment and also the passage was given to the employee of State to apply to be appointed on deputation. It is contented that in the advertisement, in the qualification column for which the petitioner claims is of Physical Training Teacher. It is stated the qualification prescribed was that the candidate must have in hold the degree i.e. should have passed in B.P.Ed. from any recognized university with minimum 50% marks. It is contended the said qualification was prescribed only for contract teachers alone and was not for employees of department who are to be placed by way of deputation.

3. It is contented that the petitioner is a teacher already appointed for last 10 years. It is

stated the petitioner applied for the appointment on deputation as a Physical Training Teacher. However, the application was dismissed on the ground that he is not holding the qualification as prescribed in the advertisement. Learned counsel further submits that the advertisement only prescribed qualification for contract teachers, therefore, the petitioner who claim his appointed on deputation during initial appointment as a teacher was appointed according the Chhattisgarh Non-Gazetted Class III Education Service (School Level Service) Recruitment and Promotion Rules-2008. It is stated the petitioner holds the necessary according to the Rules 2008. The schedule-III of the Rules of 2008 by adhering to which the petitioner was appointed prescribed following qualification for PTI teacher :-

**Schedule III**

[See Rule 2(a)]

| ***S. No. (1)*** | ***Name of the Post (2)*** | ***Minimum age limit (years) (3)*** | ***Maximum age limit (years) (4)*** | ***Educational Qualifications (5)*** | ***Name of Member of Selection Committee (6)*** | ***Remarks (7)*** |
|---|---|---|---|---|---|---|
| *9.* | *PTI Teacher* | *21* | *35* | *1. Pass Higher Secondary Certificate exam or Equivalent ability.*<br>*2. Certificate in Physical Education/ B.P.Ed. Trained.* | *1. District Edu. Officer – Chairman.*<br>*2. Asstt. Director – Member Secty.*<br>*3.Block Edu. Officer – Member*<br>*4. Principal DIET/BTI – Member.* | *-* |

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|---|---|---|---|---|---|---|
| | | | | | *5. Principal Govt. Higher Secondary School - Member* | |

4. He further submits that the petitioner holds both the qualifications according to the Rules of 2008 and is more qualified for the reason that he holds the experience for the object for which the school was formed as against the newly appointed teacher would be with no experience. He submits that when the initial objection was asked for, the petitioner objected to non-selection on the ground that he holds the required qualification for teacher to be appointed on deputation as the required qualification as prescribed in advertisement would not apply to the petitioner as it was only for contractual teacher. It is stated the petitioner being the teacher of the department and wanted to be placed in the post on deputation. It is stated the said objection was decided without any speaking order with a one line rejection that petitioner do not fulfill the qualification. Therefore, it is contended the representation of the petitioner be decided by a speaking order to clarify why the petitioner has been made disqualified. It is stated the disqualification so made is against the advertisement and further prays that till the representation of the petitioner is

decided, the post of one Physical Training teacher may be kept vacant.

5. State counsel would oppose the arguments and submits that the qualification has been prescribed for appointment of the PT teacher and since the petitioner is qualified, prima-facie, he was not entitled to considered.

6. Heard the learned advocates and perused the record.

7. The advertisement dated 07.07.2020 Annexure-P/4, the reading would show that the applications were invited for appointment of the teacher for English Medium Excellence School, Sakti on deputation/contract. The advertisement further states that the teachers of department can also apply to be posted on deputation. In the advertisement with respect to the appointment of Physical Training teacher, the qualification column for Physical Training teacher prescribed as under :-

विज्ञापित पद का विवरण :-

| क्र. | पद का नाम | पदों की संख्या | संविदा नियुक्ति की स्थिति में निर्धारित मानदेय | संविदा नियुक्ति हेतु न्यूनतम योग्यता |
|---|---|---|---|---|
| 6 | व्यायाम शिक्षक | 1 | 35400 | मान्यता प्राप्त विश्वविद्यालय से (न्यूनतम 50% अंको के साथ स्नातक की उपाधि के साथ बी.पी.एड. उत्तीर्ण) |

8. Prima-facie, it shows that the qualification was prescribed for the appointment of the contract teachers and the petitioner who is already in the department holds the qualification as per the Appointment Rules of 2008. Meaning thereby the petitioner as a Physical Training teacher in the department has all the qualifications. Therefore, when the rejection of the candidature of the petitioner is made, it has to be by speaking order and by a simplicitor rejection that “he is not qualified.” No reasons can be assumed. The authority who has rejected the candidature by an order must reflect that due consideration was given to the objection made by petitioner while he was made disqualified. The order needs to be reasoned one specially considering the qualification prescribed in the advertisement qua the contract appointment

9. Under the circumstances for the reasons as stated the respondent No.05-Collector cum Officiating Chairman Controlling and Managing Committee is directed to decide the objection of the petitioner afresh as to why the candidature of the petitioner has been rejected. It is obvious that order should be a speaking order taking into fact the advertisement dated 07.07.2020 wherein

certain qualification was prescribed for appointment of contract teachers. The order on representation should also contain the facts that reason if the candidature of the petitioner is denied. It is expected that said decision would be made within a period of 30 days. It is further directed that till the said representation/right of the petitioner is decided, the respondent may not finalize the appointment to the Physical Training Teacher to the post.

10. With the aforesaid observation, the writ petition stands disposed of.

**Sd/-**
**(Goutam Bhaduri)**
**Judge**

Vijay Sahu