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HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 4028 of 2011

Order Reserved on 18.6.2021

Order Passed on 30.6.2021

1. Shrikant Awasthi aged about 29 years, S/o. Shri Ambika Prasad Awasthi, R/o. Village Podi, Tehsil Kawardha, District Kabirdham, Chhattisgarh.
2. Mohan Kumar Dhankar, aged about 25 years, S/o Shri Govind Ram Dhankar, R/o. Village Dhaba, post Gandai, tehsil Chhuikhadan, District Rajnandgaon, Chhattisgarh.
3. Anamika Balle, D/o Gajanand Balle, R/o. Police line, Kawardha, District Kabirdham, Chhattisgarh.
4. Sudarshan Vishwakarma, aged about 30 years, S/o. Shri Ghanshyam Prasad, R/o. Village Nirtu, post Ghutku, District Bilaspur, Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh through its Secretary, Department of Panchayat and Rural Development, Mantralaya, DKS Bhawan, Raipur.
2. The Commissioner, Raipur Division, Raipur.
3. The Collector, District Kabirdham, Chhattisgarh.
4. Chief Executive Officer, Election Observer, Akhil Janpad Panchayat, Bodla, District Kabirdham, Chhattisgarh.
5. Block Education Officer, Block Bodla, District Kabirdham, Chhattisgarh.
6. Panchayat Avam Samaj Shiksha Sangathak, Bodla, Tehsil Bodla, District Kabirdham, Chhattisgarh.
7. Ku. Archana Singh Rajput, D/o Devnarayan Singh, R/o Ward No. 9, Kawardha, District Kabirdham, Chhattisgarh.
8. Anil Kumar Porte, S/o Chandrabhan, R/o village Chamari, post Dangatwar, Tehsil Bodla, District Kabirdham, Chhattisgarh.
9. Amarlal Dhruw, S/o. Budhram, R/o. Village Barbaspur, post Samnapur, Tehsil Bodla, District Kabirdham, Chhattisgarh.
10. Jugat Singh Pendran, S/o. Ramcharan, R/o. Village Chhuhi, tehsil Bodla, District Kabirdham, Chhattisgarh.
11. Prabha Yadav, D/o Punaram Yadav, R/o near Vanopajnaka, Bodla, Tehsil Bodla, District Kabirdham, Chhattisgarh.

---- Respondents

AND

WP(S) No. 93 of 2012

1. Anil Kumar Porte, aged about 32 years, S/o Chandrabhan, R/o village Chamari, post Dangatwar, Tehsil Bodla, District Kabirdham, Chhattisgarh.
2. Amar Lal Dhruva, aged about 38 years, S/o. Budhram, R/o. Village

Barbaspur, Tehsil Bodla, District Kabirdham, Chhattisgarh.

3. Jugut Singh Pendran, aged about 32 years, S/o. Ram Charan, R/o. Village Chhuhi, tehsil Bodla, District Kabirdham, Chhattisgarh.
4. Prabha Yadav, aged about 25 years, D/o Punaram Yadav, R/o near Forest Barrier, Bodla, Tehsil Bodla, District Kabirdham, Chhattisgarh.

---- **Petitioners**

Versus

1. State of Chhattisgarh through its Secretary, Department of Panchayat and Rural Development, Mantralaya, DKS Bhawan, Raipur.
2. The Commissioner, Raipur Division, Raipur.
3. The Collector, District Kabirdham, Chhattisgarh.
4. Chief Executive Officer, Janpad Panchayat, Bodla, District Kabirdham, Chhattisgarh.
5. Block Education Officer, Block Bodla, District Kabirdham, Chhattisgarh.
6. Panchayat and Social Education Organizer, Bodla, Tehsil Bodla, District Kabirdham, Chhattisgarh.
7. Ku. Archana Singh Rajput, aged about 23 years, D/o Devnarayan Singh, R/o Ward No. 9, Kawardha, District Kabirdham, Chhattisgarh.
8. Mohan Kumar Dhankar, aged about 25 years, S/o Shri Govind Ram Dhankar, R/o. Village Dhaba, post Gandai, tehsil Chhuikhadan, District Rajnandgaon, Chhattisgarh.
9. Anamika Basle, aged about 26 years, D/o Gajanand Basle, R/o. Police line, Kawardha, District Kabirdham, Chhattisgarh.
10. Sudarshan Vishwakarma, aged about 30 years, S/o. Shri Ghanshyam Prasad, R/o. Village Nirtu, post Ghutku, District Bilaspur, Chhattisgarh.
11. Shrikant Awasthi aged about 29 years, S/o. Shri Ambika Prasad Awasthi, R/o. Village Podi, Tehsil Kawardha, District Kabirdham, Chhattisgarh.

---- **Respondents**

For the Petitioners (In W.P.(227) No. 4028 of 2011.	:	Shri Neeraj Choubey, Advocate
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For Petitioners (In W.P.(S) No. 93 of 2012)	:	Shri Ravindra Agrawal, Advocate
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For the Respondents/State	:	Shri Sameer Uraon, G.A.
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

1. These petitions under Article 227 of the Constitution of India have been brought seeking quashment of the impugned order dated 10.6.2011

(Annexure-P/1) passed by respondent No.2 – The Commissioner, Raipur Division, Raipur.

2. It is submitted by counsel for the petitioners that the petitioners in W.P. (227) No. 4028 of 2011, who are respondents No.8 to 11 in W.P.(S) No.93 of 2012 and the petitioners in W.P.(S) No. 93 of 2012, who are respondents No.8 to 11 in W.P.(227) No. 4028 of 2011 were selected as Siksha Karmi Grade III for Janpad Panchayat, Bodla, District Kabirdham and their selection list was published on 30.6.2009 although they all were kept in waiting list. Vide memo dated 30.6.2009 (Annexure-P/2), it was informed that the appointment order shall be issued after receiving instructions from the higher office. No appointment orders were issued, the petitioners then made a representation but the same was rejected by the order dated 29.6.2010. The petitioners then preferred a writ petition before this High Court which was disposed of by the order dated 26.7.2010 granting liberty to the petitioners to challenge the order dated 29.6.2010 before the Collector, District Kabirdham. The petitioners then preferred an appeal before the Collector, District Kabirdham, which was dismissed on 26.8.2010. The petitioners being aggrieved by this order preferred a revision under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 before the Commissioner, Raipur Division, Raipur, the same was also rejected. It is also submitted that after the publication of the select list, respondent No.1 is bound to issue the appointment orders according to Rules 7 (ten) of the Chhattisgarh Panchayat Siksha Karmi (Bharti Tatha Sewa Ki Sharten) Niyam, 2007.
3. Placing reliance on the judgment of High Court of Rajasthan in the case of **Madanpuri vs. Dungarpur Banswara Kshetriya Gramin Bank and Ors.** reported in **1991 SCC Online Raj 130**, it is submitted that the petition be allowed and the relief be granted to the petitioners.

4. Respondent No.7 in both the cases is not represented.
5. Learned State counsel opposes the submissions made in this respect. It is submitted that the petitioners have appeared in the exam conducted by the Professional Examination Board. When the result was declared, the name of the petitioners were reflected in the waiting list. The waiting list published was valid for one year, which was further extended for one more month. Subsequent to which, the waiting list is no longer in force, therefore, the petitioners in both the cases have no entitlement for any appointment. It is also submitted that a candidate in the waiting-list has no right to be appointed unless some vacancies arise due to non-joining of an appointed candidate.

Reliance has been placed on the judgment of Supreme Court in the case of **Surinder Singh and Ors. vs. State of Punjab and Another**, reported in **(1997) 8 SCC 488**, in which the Supreme Court has upheld the decision of the High Court for setting aside the appointment of the teachers over and above the posts advertised. It has been similarly held in the case of **State of Orissa vs. Sasmita Pattnaik**, reported in **(2018) 17 SCC 311** that the claim in excess to the notified vacancies is unsustainable, therefore, the writ petitions are unsustainable.

6. In reply, it is submitted by counsel for the petitioners in W.P.(227) No.4028 of 2011 that although the petitioners were in the waiting list, the vacancies were available, therefore, the appointments could have been made. Hence, respondent No.1 was required to make such compliance in accordance with the Chhattisgarh Panchayat Siksha Karmi (Bharti Tatha Sewa Ki Sharten) Niyam, 2007. Learned counsel for the petitioners in W.P.(S) No. 93 of 2012 submits that the validity of the expiry of the waiting list is under question for this Court. The rules mentioned herein-above do not provide for any date for expiry of the

waiting list.

7. Considered the submissions. It is not denied that the name of the petitioners in both the petitions was included in the waiting list. Rules 7 (eleven) provides that the whole waiting list and the select list published shall be valid for a period of one year and in this duration, if any, new posts are sanctioned, then the appointment can be made of the candidate in the waiting list. There is no such admission from the respondents' side that any post was sanctioned or created during the tenure of the waiting list. Hence, considering that there is a specific rule regarding the period of validity of the waiting list and that any candidate from such list can be appointed only if some necessary arises either due to non-joining of candidate in the select list or on sanction for new posts. Other than that right for selection is contingent upon the vacancy, expires after the expiry of the time duration fixed by the Rules, 2007. Hence, both the petitions have no substance, which are dismissed and disposed of accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge