

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.7080 of 2007Order reserved on: 25-6-2021Order delivered on: 7-7-2021

Romanch Ram Yadav, Aged about 42 yrs, S/o Shri Vidyadharam  
Yadav, R/o Vill. Jaikari, Tah. Kunkuri, Distt. Jashpur Nagar (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, School Education Department, D.K.S. Bhawan, Raipur (C.G.)
2. District Education Officer, Jashpur, Distt. Jashpur (C.G.)
3. Head Master, Durga Krishi Higher Secondary, Jaikari, Tah. Kunkuri, Distt. Jashpur Nagar (C.G.)
4. President, Lakshi Kumari Seva Samiti, Jashpur Nagar, Distt. Jashpur Nagar (C.G.)

---- Respondents

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For Petitioner: Mrs. Meena Shastri, Advocate.

For Respondents No.1 and 2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondents No.3 and 4: -

Mr. A.K. Prasad, Advocate.  
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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. By way of this writ petition, the petitioner seeks reinstatement on his post of Assistant Teacher and also seeks salary from 1-1-1996 till the date of reinstatement along with interest.
2. It is the case of the petitioner that he was appointed by respondents No.2 & 3 on the post of Assistant Teacher in the pay scale of ₹ 1200 – 2040/- on 1-1-1996 which he joined on the same day i.e. 1-1-1996 and thereafter, his services were regularised by the District Education Officer, Jashpur on 4-9-1999, but he was not allowed to mark his

attendance in the attendance register on 2/3-7-2001 and he was not allowed to teach in the school also and his salary is not being paid from 1<sup>st</sup> of July, 2001 to which he has represented to various authorities till 2006 and ultimately, this writ petition has been filed on 26-11-2007 seeking reinstatement along with back wages from 1-1-1996.

3. Return has been filed particularly by respondents No.2 & 3 clearly stating that the petition suffers from delay and laches of six years and the petitioner was appointed as Assistant Teacher (Science / Mathematics) on an unsanctioned post on temporary basis and he was not appointed in accordance with law, neither advertisement was issued nor due procedure for recruitment was followed and without there being any vacant post, the petitioner was appointed; only three vacant posts of Teacher (Science / Mathematics) was sanctioned of which three Teachers were already working and no post of Teacher (Science / Mathematics) was available, therefore, the petitioner cannot continue in service in absence of vacant post. Particularly, the school where the petitioner was working is an unaided school and salary is not being disbursed by the District Education Officer. Therefore, the petition is liable to be dismissed.
4. Rejoinder has also been filed by the petitioner highlighting certain facts mentioned in the return clearly stating that his salary for the months of January, 1996 to June, 1996 has not been paid.
5. Mrs. Meena Shastri, learned counsel appearing for the petitioner, would submit that the petitioner is a duly appointed regular Assistant Teacher as it reflects from Annexure P-3 dated 4-9-1999 and he has worked for five years, but no salary has been paid for that period which is clearly arbitrary and therefore appropriate writ be issued

directing reinstatement of the petitioner along with full salary and back wages.

6. Mr. A.K. Prasad, learned counsel appearing for respondents No.3 & 4, would submit that the petitioner was appointed on unsanctioned post and there is delay of six years in filing the writ petition and therefore the writ petition deserves to be dismissed. He would further submit that the petitioner was appointed on unsanctioned post of Assistant Teacher without issuance of advertisement and without following due procedure, as such, the appointment was not in accordance with rules and on account of unavailability of sanctioned post and non-payment of salary from the Government, it would not be possible to further continue the petitioner in service, as such, the writ petition deserves to be dismissed.
7. Mr. Ravi Kumar Bhagat, learned State counsel, would also oppose the writ petition.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
9. It is true that the grievance of the petitioner is that he was not paid salary from 1-1-1996 to 2-7-2001 and with effect from 1-7-2001, he was not allowed to work, but thereafter, from time to time, representations have been made, however, the fact remains that the writ petition was filed with delay on 26-11-2007; though representations have been made, but filing of representations would not explain the delay in filing the writ petition.
10. It is the case of respondents No.2 and 3 that the petitioner was appointed on unsanctioned post and no advertisement was issued before making appointment on the subject post as per para 5 of the

return, but while filing rejoinder, it has not been controverted and nothing has been brought on record to show that the petitioner was appointed in accordance with the rules by issuing advertisement and by considering the candidature of the petitioner and other candidates, particularly when the school is a Government aided school and all eligible persons were entitled to participate in the process. Not only this, the respondents have clearly stated that three posts were available for Science/Mathematics and three teachers were already working on the date of the petitioner's appointment, therefore, the petitioner cannot be allowed to continue in absence of sanctioned post.

11. Be that as it may, since the petitioner was not appointed on the sanctioned post and his appointment was not in accordance with the rules and regulations by issuing advertisement and following other requirement of rules, in the considered opinion of this Court, no order of the petitioner's reinstatement can be passed in view of the aforesaid finding. However, if the petitioner has worked from 1-1-1996 to July, 2001, on the petitioner's representation, respondents No.2 to 4 would consider payment of salary for that period if representation is made within 30 days from today and dispose of the same by a speaking and reasoned order, whether the petitioner has worked in that school during that period or not and if he has worked, entitlement for salary be considered in accordance with law.

12. With the aforesaid direction, the writ petition stands finally disposed of.  
No order as to costs.

Sd/-  
(Sanjay K. Agrawal)  
Judge