

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1587 of 2009

Smt. Sarita Dwivedi, W/o Santosh Kumar Dwivedi, aged about 36 years, Occupation Service, working on the post of Shikshakarmi Class-III at Primary School Guruchahuwapara, R/o Badi Dafai, South Jhagrakhand, New Ledri, Gram Panchayat Banji, Janpad Panchayat Manendragarh, District Koriya (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Panchayat and Social Welfare Department, D.K.S. Bhawan, Raipur, District Raipur (C.G.)
2. Director Panchayat, Raipur, District Raipur (C.G.)
3. Additional Collector, Manendragarh, District Koriya (C.G.)
4. Chief Executive Officer, Janpad Panchayat Manendragarh, District Koriya (C.G.)
5. Smt. Neelam Tiwari, W/o Vijay Tiwari, aged about 36 years, R/o Bade Dafai, South Jhagarkhand, District Koriya (C.G.)
6. Chief Executive Officer, District Panchayat, Koriya (C.G.)

---- Respondents

For Petitioner: Mr. Faisal Akhtar, Advocate.

For Respondents No.1 to 3 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondent No.4: Mr. Akhilesh Kumar, Advocate.

For Respondent No.5: Mr. Manoj Mishra, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/06/2021

1. Appointment of the petitioner on the post of Shiksha Karmi Grade-III in Janpad Panchayat, Manendragarh, District Koriya, was set aside by the Additional Collector, Manendragarh, which has been affirmed by the Director (Panchayat) by the impugned order and as such, the order of the Director (Panchayat) has been called in question by way of this writ petition.

2. Janpad Panchayat, Manendragarh advertised recruitment for the post of Shiksha Karmi Grade-III in Arts subject for total nine posts in unreserved category out of which three posts were reserved for female in accordance with the Chhattisgarh Panchayat Shiksha Karmi (Bharti Tatha Seva Ki Sharte) Niyam, 2007 and last date for submission of application form (OMR Sheet) was 9-2-2008 and the date of examination was 30-3-2008. Essential qualification, admittedly and undisputedly, as per clause 2.5 of the advertisement, was the candidate must have passed 12th class examination and must have passed D.Ed. Examination. Clause 4.3 of the advertisement prescribes that if the post is not filled up from D.Ed. holder, B.Ed. degree holder will be considered. The petitioner and respondent No.5 both submitted the application form within time and both have filled the OMR sheet and clearly declared that they were not having the degree of D.Ed. Thereafter, on 30-3-2008, both the petitioner and respondent No.5 appeared in the examination for Shiksha Karmi Grade-III conducted by the Professional Examination Board and result was declared by the said Board. The petitioner obtained 47.47 marks with subject rank of 69, whereas respondent No.5 obtained 53.54 marks with subject rank of 32. Accordingly, the Board prepared merit list giving preference to those candidates who possess degree of D.Ed. and thereafter, list was prepared for non-D.Ed. i.e. candidates having B.Ed. degree. Thereafter, merit list was sent to the concerned Zila Panchayat and Janpad Panchayat on 9-6-2008 and time up to 13-6-2008 was provided to the candidates for raising objections before the Janpad Panchayat regarding merit list.
3. Upon consideration, from D.Ed. candidates, out of three posts of unreserved female, two posts were filled up by the candidates who

possess degree of D.Ed. and only one post remained vacant and that has to be filled up from B.Ed. Candidate. Therefore, Janpad Panchayat, Manendragarh prepared list of candidates from non-D.Ed. candidates/B.Ed. candidates (subject Arts, female, unreserved) category, on the basis of merit in which the petitioner was appointed by order dated 4-7-2008 at Janpad Panchayat, Manendragarh after documents verification and on 25-7-2008, she was appointed on probation for two years and she joined the service. Thereafter, on 26-7-2008, respondent No.5 raised objection before the Additional Collector, Manendragarh and on her application, the Additional Collector registered Revenue Case No.14 A/89/2007-08 as suo motu revision under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam read with Rule 5 of the Chhattisgarh Panchayat Raj Appeal and Revision Rules, 1995 and issued show cause notice to the petitioner and to the Chief Executive Officer, Janpad Panchayat, Manendragarh. Ultimately, on 8-10-2008, the Additional Collector passed order by setting aside the appointment order of the petitioner dated 25-7-2008 and directed for issuance of appointment order in favour of respondent No.5 which the petitioner challenged by way of appeal before the Director (Panchayat) and the Director (Panchayat) has dismissed the appeal, however, given liberty to make application to the concerned Janpad Panchayat, if the candidate lower in rank has been appointed, but the petitioner did not move application and directly filed writ petition before this Court under Article 226 of the Constitution of India calling in question the order of the Director (Panchayat) confirming the order of the Addition Collector cancelling her appointment on the ground that her appointment is strictly in accordance with law and she has rightly made application for

appointment to the Janpad Panchayat which has been granted and which is not fault on her part, therefore, her appointment cannot be cancelled.

4. All the respondents have filed return supporting the appointment of respondent No.5 stating that she being more meritorious candidate of non-D.Ed. on the basis of B.Ed. Qualification, she is entitled for the appointment so made and the writ petition deserves to be dismissed.
5. Mr. Faisal Akhtar, learned counsel appearing for the petitioner, would submit that the appointment of the petitioner on the post of Shiksha Karmi Grade-III was strictly in accordance with law as right in time, application was made vide Annexure P-3 and she is entitled for appointment which has been considered and appointed, whereas respondent No.5 did not make any application for her appointment, as such, the writ petition deserves to be allowed quashing the order passed by the Additional Collector and the Director (Panchayat). He makes alternative submission that if the order of the Director (Panchayat) is confirmed, liberty be granted to the petitioner to make application before the Janpad Panchayat, it be kept open to the petitioner.
6. Mr. Ravi Kumar Bhagat, learned Deputy Govt. Advocate appearing for the State / respondents No.1 to 3, and Mr. Akhilesh Kumar and Mr. Manoj Mishra, learned counsel appearing for respondents No.4 and 5, respectively, would submit that the appointment of respondent No.5 is in accordance with law, as she is admittedly and undisputedly, more meritorious than the petitioner on the non-D.Ed. / B.Ed. degree holder and therefore the writ petition deserves to be dismissed.
7. I have heard learned counsel for the parties and considered their rival

submissions made herein-above and also went through the material available on record with utmost circumspection.

8. Essential qualification for appointment on the post of Shiksha Karmi Grade-III is, the candidate must have passed 12th class examination and must possess D.Ed. degree, as per clause 2.5 of the advertisement. Further, as per clause 4.3, it was also provided that if the post is not filled up from D.Ed. degree holder, it will be filled from amongst the B.Ed. Degree holder. In OMR Sheet application form, the petitioner and respondent No.5, both declared that they are not having D.Ed. degree, however, in the OMR sheet it was indicated that they are B.Ed. Degree holders, as such, it was not in dispute that they were not having D.Ed. degree and secondly, their case was not considered under D.Ed. degree holder. When selection and appointment was made only for one post of Shiksha Karmi Grade-III in unreserved category female, which was left, that was decided to be filled from amongst B.Ed. degree holders. Admittedly and undisputedly, the petitioner obtained 47.47 marks and her subject rank was 69, whereas respondent No.5 obtained 53.54 marks and her subject rank was 32. As such, on the basis of record, it could not be disputed by learned counsel for the petitioner that respondent No.5 was standing on the merit list at serial No.32 by obtaining 53.54 marks and the petitioner stood at serial No.69 in the merit list by obtaining 47.47 marks, as such, respondent No.5 was more meritorious, but some how, respondent No.4 called the petitioner for verification of certificates and her certificates / documents were verified and she was appointed on the post of Shiksha Karmi Grade-III ignoring the candidature of respondent No.5.

9. The contention made on behalf of the petitioner at this stage that the

petitioner having made objection which respondent No.5 did not make and therefore the candidature of respondent No.5 has rightly been rejected, deserves to be noticed for rejection, as respondent No.5 did not make any objection prior to 13-6-2008. Mr. Bhagat, learned State counsel, pointed out that the objection invited is with regard to preparation of merit list to the examination result declared by the VYAPAM and it has nothing to do with the candidature of the petitioner and respondent No.5 in B.Ed. Category which appears to be correct also. Once respondent No.5 has made entry in the OMR Sheet clearly indicating that she is non-D.Ed. and having B.Ed. degree, then any other objection, she was not supposed to make. When less meritorious candidate / petitioner was appointed, respondent No.5 made application to the Additional Collector on 26-7-2008 in which after hearing the petitioner, her appointment was cancelled and the Additional Collector directed to appoint respondent No.5 which has been affirmed by the Director (Panchayat).

10. From the aforesaid analysis, it is quite apparent that respondent No.5 was more meritorious candidate than the petitioner having B.Ed. degree and therefore for one vacant post, the candidature of respondent No.5 should have been considered first and in case she is not available or she is not willing to be appointed or her documents were not found in order, then other candidate below respondent No.5 could have been considered. Here, respondent No.5 is admittedly and undisputedly more meritorious and the petitioner being less meritorious has been appointed which has rightly been set aside and rightly been affirmed which is not contrary to material available on record. As such, I do not find any merit in the writ petition and the order of the Director (Panchayat) is hereby affirmed.

11. At this stage, Mr. Akhtar, learned counsel for the petitioner, submits that the Director (Panchayat) had already granted liberty to the petitioner to make application to the Janpad Panchayat for her appointment on the ground that one Abhay Tiwari who has secured less marks than the petitioner has been appointed, that may be kept open to the petitioner.
12. It is made clear that the order of the Additional Collector / Director has not been set aside by this Court as such, liberty is granted to the petitioner to the extent that as per order of the Director (Panchayat) to make application to the Janpad Panchayat is still open, as on account of pendency of writ petition, the petitioner could not avail the liberty granted. As such, since the order of the Additional Collector / Director is not being interfered, the petitioner is at liberty to proceed in accordance with law.
13. With the aforesaid observation, the writ petition stands dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge