

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.6473 of 2011**

- Smt. Seema Devi Patel, W/o Shri Suresh Chandra Patel, Aged About 40 Years, Working as Shiksha Karmi Grade-II, Govt. Middle School, Dumarmooda, Janpat Panchayat Pussore, Distt. Raigarh (C.G.)

----- Petitioner**Versus**

- 1.State of Chhattisgarh through its Secretary, Panchayat and Rural Development, D.K.S. Bhawan, Raipur (C.G.)
- 2.Chief Executive Officer, Zila Panchayat, Distt. Raigarh (C.G.)
- 3.Commissioner, Bilaspur Division, Distt. Bilaspur (C.G.)
- 4.Ishwar Prasad Patel, S/o Dhanaram Patel, aged about 65 years, R/o Village Gudiyadih, Tahsil Sarangarh, Distt. Raigarh (C.G.)

----- Respondents

For Petitioner	Mr. Vinod Deshmukh, Adv.
For Respondent-State	Mr. Soumya Rai, PL
For Respondent No.2	Mr. Pawan Shrivastava, Adv.
For Respondent No.4	Mr. Roop Naik, Adv.

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****01/09/2021**

1. Proceedings of this matter have been taken up through Video Conferencing.

2. The petitioner by way of this writ petition is challenging the legality, validity and the correctness of the order dated 19.10.2011 (Annexure-P/1) passed by the respondent No.1, whereby the revision preferred by the petitioner against the order of the Commissioner dated 24.06.2011 (Annexure-P/10) cancelling petitioner's appointment on the post of Shiksha Karmi Grade-II has been dismissed.
3. The petitioner was initially appointed as Contract Teacher Grade-III (Samvida Shikshak Varg-III) vide order dated 24.08.2002 passed by the respondent No.2 and thereafter she was regularized on the post of Shiksha Karmi Grade-III vide order dated 30.04.2005, to which she joined on 02.05.2005. In the year 2006, the advertisement for appointment on the post of Shiksha Karmi Grade-II was published by the respondent Department, in which the petitioner applied and got selected vide order dated 11.12.2006 (Annexure-P/5) passed by the respondent No.2 and submitted her joining on 19.12.2006 and since then she was working on the said post and was drawing salary. On

28.02.2009 (Annexure-P/8) after about 2 years and 3 months, a complaint was made by the respondent No.4 against the petitioner's appointment on the post of Shiksha Karmi Grade-II, to which the learned Commissioner, the respondent No.3 has taken cognizance and registered a case bearing No.19/B-121/2009-10 against the petitioner under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 *suo motu* and treated the same as an appeal against the order dated 11.12.2006 (Annexure-P/5) passed by the respondent No.2 with respect to petitioner's appointment on the post of Shiksha Karmi Grade-II, in which the petitioner's name finds place at Sr. No.14 and vide order dated 24.06.2011 (Annexure-P/10) cancelled the appointment of the petitioner on the post of Shiksha Karmi Grade-II. Feeling aggrieved by the said order of the Commissioner, the petitioner preferred a revision before the respondent No.1, which has also been dismissed vide order dated 19.10.2011 (Annexure-P/1), against which the petitioner has filed the present writ petition.

4. Mr. Vinod Deshmukh, learned counsel for the petitioner, would make a solitary contention that the respondent No.4 neither being the non appointee nor being the wait listed candidate on the post of Shiksha Karmi-II, he was not the aggrieved person and could claim enquiry against the petitioner, therefore, the complaint was malafide and was not maintainable, to which the learned Commissioner has not taken note of and cancelled the appointment of the petitioner on the post of Shiksha Karmi Grade-II by committing illegality. He would also submit that the said aspect of the matter has also not been noticed by the respondent No.1 while dismissing the revision, therefore, the impugned orders are liable to be set aside.
5. Mr. Soumya Rai, learned State counsel, Mr. Pawan Shrivastava, learned counsel for the respondent No.2 and Mr. Roop Naik, learned counsel for the respondent No.4 would support the impugned orders.
6. I have heard learned counsel for the parties, considered their rival submissions made herein-

above and went through the records with utmost circumspection.

7. It is admitted position on record that the petitioner was appointed on the post of Shiksha Karmi Grade-II vide order dated 24.08.2002 passed by the respondent No.2 and thereafter she was regularized on the post of Shiksha Karmi Grade-III vide order dated 30.04.2005, to which she joined on 02.05.2005. Thereafter by direct recruitment, the petitioner got selected on the post of Shiksha Karmi Grade-II vide order dated 11.12.2006 (Annexure-P/5) passed by the respondent No.2 and joined her duties on 19.12.2006 and since then she was working on the said post and was drawing salary. On 28.02.2009 (Annexure-P/8) after about 2 years and 3 months, a complaint was made by the respondent No.4 against the petitioner's appointment on the post of Shiksha Karmi Grade-II, to which the learned Commissioner has taken cognizance without noticing that the respondent No.4 neither took part in the selection process nor he was appointed on the post of Shiksha Karmi Grade-II in the respondent Department nor

he was anyway connected with the appointment of the petitioner, therefore, he cannot be said to be adversely affected by the appointment of the petitioner and he cannot be said to be the aggrieved person and the appointment can be challenged by the aggrieved person only who has participated in the selection process or is connected anyway with the appointment of a candidate, which is not the case herein.

8. In the matter of R. K. Jain vs Union of India¹, the Supreme Court has held that in service jurisprudence, it is settled law that it is for the aggrieved person/non appointee to assail the legality of offending action. Third party has no *locus standi* to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person/non appointee.
9. Since the respondent No.4 was not the non appointee, therefore, cognizance could not have been taken on his complaint by the learned Commissioner in absence of any claim on the

¹ (1993) 4 SCC 119

post of Shiksha Karmi Grade-II. The said illegality was not noticed and the appeal has been dismissed by the learned Commissioner and thereafter the revision has also been dismissed by the respondent No.1 without noticing the said aspect of the matter. Therefore, in my considered opinion, since the respondent No.4 was neither the aggrieved person/non appointee nor he was prejudiced in any manner by the appointment of the petitioner on the post of Shiksha Karmi Grade-II, therefore, he has no *locus standi* to question the appointment of the petitioner on the post of Shiksha Karmi Grade-II. Accordingly, the impugned orders dated 19.10.2011 (Annexure-P/1) and 24.06.2011 (Annexure-P/10) are hereby set aside.

10. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost (s).

Sd/-

Sanjay K. Agrawal
Judge