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HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (SERVICE) 4947 OF 2014**

1. Suresh Kumar Kurre, S/o Shri P.L. Kurre, aged about 30 years, working as Assistant Grade-3, R/o Village Sihad, Post Bhakhara, Police Station Bhakhara, Tahsil Kurud, District Dhamtari (CG)
2. Surendra Kumar Sahu, S/o Shri D.R. Sahu, aged about 27 years, working as Assistant Grade-3, R/o Village Charbhata, Post Nari, PS Kurud, District Dhamtari (CG)
3. Swati Ghatge, W/o Shri P.R. Ghatge, aged about 32 years, R/o Village and Post Hasda, PS Magarlod, District Dhamtari (CG)

... Petitioners**versus**

1. State of Chhattisgarh, through Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur (CG)
2. The Director, Health Services, Raipur (CG)
3. The Collector, Dhamtari, District Dhamtari (CG)
4. The Chief Medical and Health Officer, Dhamtari, District Dhamtari (CG)

... Respondents**WRIT PETITION (SERVICE) 1316 OF 2015**

1. Chhatrapal Singh, S/o Late Ghirpal Singh, aged about 32 years, R/o PG College Road, Ratnabandha, near the Reliance Tower, Dhamtari, District Dhamtari (CG)
2. Heeralal Sahu, S/o Shri Shobhit Ram Sahu, aged about 39 years, R/o Housing Board Colony, Jr. MIG 165, Hatkeshwar Ward, Dhamtari (CG)
3. Pokhan Lal Dewangan, S/o Shri Kartik Ram Dewangan, aged about 26 years, R/o Brahma Chowk, Nayapara, Dhamtari, District Dhamtari (CG)
4. Smt. Kavita Sahu, W/o Pravin Kumar Sahu, aged about 28 years, R/o Pandit Deen Dayal Upadhyay Nagar Nagari, District Dhamtari (CG)
5. Devendra Kumar Sahu, S/o Jeevrakhan Lal Sahu, aged about 28 years, R/o Village Bhanpuri, Post Demar, Tahsil and District Dhamtari (CG)
6. Smt. Usha Sahu, W/o Shri Purushottam Sahu, aged about 25 years, R/o Sonpairi, Post Mohandi, Tah. Magarlod, District Dhamtari (CG)
7. Ku. Kiran Bharti, D/o Shri Ashok Bhari, aged about 20 years, R/o PWD H-Type Qtr. No.05, Civil Lines, Gariyaband, District Dhamtari (CG)
8. Chandan Singh Katlam, S/o Purushottam Singh, aged about 29 years, R/o Jr. MIG No.03, Hatkeshar Colony, District Dhamtari (CG)
9. Paras Ram Sahu, S/o Shri Sewa Ram Sahu, aged about 23 years, R/o behind CG Nagar, Prakash Swimming Pool, Op. Advocate Chandrakar Sahu Kirana Stores, Tikrapara, Raipur (CG)
10. Rajesh Kumar Meria, S/o Umashankar Meria, aged about 22 years, R/o Village Chirwali, Pos Kodekasa, Tahsil Dondilohara, District Balod (CG)

11. Ashok Kumar Chinda, S/o Lachhuram Chinda, aged about 29 years, R/o Community Health Centre, Bade Kileyar, Tahsil Bastanar, District Bastar (CG)
12. Shailendra Kumar Netam, S/o Gendlal Netam, aged about 25 years, R/o Village and Post Phagundah, District Balod (CG)
13. Narottam Singh Thakur, S/o Kaushal Singh Thakur, aged about 27 years, R/o Village Khuteri, Post Barekelai, Parthara, District Mahasamund (CG)

... Petitioners

versus

1. State of Chhattisgarh, through Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur (CG)
2. The Director, Health Services, Raipur (CG)
3. The Collector, Dhamtari, District Dhamtari (CG)
4. The Chief Medical and Health Officer, Dhamtari, District Dhamtari (CG)

... Respondents

For Petitioners :

1. Ms. Sharmila Singhai, Advocate, in WPS No. 4947/2014.
2. Mr. Ashish Shrivastava, Advocate assisted by Mr. Aman Saxena, Advocate, in WPS No. 1316/2015.

For Respondents :

Mr. V.R. Tiwari, Additional Advocate General assisted by Mr. Rahul Jha, Govt. Advocate & Mr. Sudeep Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 05/01/2021

Pronounced on : 07/06/2021

1. Aggrieved by the Order dated 12.9.2014, Annexure P-1, passed by the District Collector, District Dhamtari, whereby the appointment of Petitioners on the post of Assistant Grade-III has been cancelled, the present two Writ Petitions have been filed by the respective Petitioners.
2. Since the impugned Order and the contentions and stand taken on either side are common in nature, the two Writ Petitions are being decided by this common order.
3. The relevant facts for the disposal of the present two Writ Petitions are that the Respondents had floated an advertisement on 29.1.2014 inviting

applications from the candidates for filling up of 19 vacant posts of Assistant Grade-III by way of direct recruitment. According to Petitioners, since they possessed the requisite qualification and eligibility criteria, they had applied for the said post and after due scrutiny of their eligibility they were subjected to skill test and finally a merit list was published wherein the name of the respective Petitioners was also reflected. Thereafter, objections were called from among the participants in respect of the merit list and thereafter the Petitioners were appointed vide Order dated 2.8.2014. On receiving the order of appointment, few of the Petitioners gave their joining also, however, the joining of some of the Petitioners was held back. Immediately thereafter, the District Collector, Dhamtari had received certain complaints in respect of various illegalities, irregularities and lacunas in the selection process of the Petitioners to the post of Assistant Grade-III. The District Collector ordered for an enquiry on the complaints and appointed the Additional Collector to enquire into the matter. Subsequently, the District Collector vide the impugned Order dated 12.9.2014 cancelled the entire appointments, which includes the appointment of the Petitioners, on the ground that the appointments were made either in contravention or in violation of the rule position as it stands.

4. The primary contention which the learned Counsels appearing for the respective Petitioners have raised was that once when the order of appointment has been issued the same could not have been cancelled without affording an opportunity of hearing. Next contention of learned Counsels for Petitioners is that the order of appointment would also not be sustainable as the Petitioners were also not given the three months' notice or in lieu thereof three months' salary which otherwise stipulated

in the order of appointment itself before it was cancelled. Further contention is that there was no irregularity, illegality or any flaw in the recruitment process undertaken by the Respondents and therefore the cancellation of appointments is bad in law.

5. It was also the contention of learned Counsels of Petitioners that before issuance of the order of appointment, the authorities in fact had called upon objections from the other participants and it was only thereafter the order of appointment was issued and therefore there was no occasion for the authorities to subsequently cancel the order of appointment or hold it contrary to the recruitment rules. They also contended that the order of appointment was per se in total contravention to the basic principles of natural justice inasmuch as no opportunity of hearing was provided to the Petitioners; nor were they taken into confidence by the Additional Collector in the course of enquiry and while submitting his report to the District Collector.
6. Per contra, learned Counsel appearing for Respondents opposing the present Writ Petition submits that it is a case where immediately on the order of appointment being issued on 2.8.2014, the District Collector received a large number of complaints and on receipt of such complaints the matter was subjected to enquiry and the enquiry was handed over to the Additional Collector. The Additional Collector in the course of examining the complaints and its veracity found a large number of irregularities in the course of recruitment process and it was on the basis of the said findings of the Additional Collector that impugned Order was passed. According to learned Counsel for Respondents, since the irregularities were so glaring and per se not in accordance with the usual mode of recruitment as is required, the findings of the Additional

Collector so also the consequential cancellation of the appointments does not warrant any interference. That, since the entire order of appointment has not been acted upon for this reason also the impugned order would not warrant any interference. Further that, based upon the enquiry report of the Additional Collector, the District Collector thought it proper for cancelling the entire recruitment process and going for a fresh recruitment. Learned Counsel for Respondent, therefore, prayed for the dismissal of the present Writ Petition.

7. Having gone through the contentions and the pleadings put forth on either side, some of the admitted factual matrixes of the case are that an advertisement for filling up of the post of Assistant Grade-III was issued on 29.1.2014. After the completion of the selection process, 19 candidates were selected and appointed vide order dated 2.8.2014. Immediately on the appointment orders being issued, a large number of complaints were received by the District Collector. The District Collector immediately ordered for an enquiry to the allegations in respect of the alleged irregularities in the course of recruitment process.
8. The foremost complaint was in respect of non-publication of proper notice with regard to the change of date of the skill test. As per the findings of the Additional Collector, the skill test was originally scheduled for 2.6.2014 and thereafter it was changed for 9.6.2014; but the information about the change of date of the skill test has not been properly intimated to all the candidates who were eligible for participation. At the same time, while receiving the application form, the Respondents had received an envelope affixed with the requisite postal stamps meant for sending information with regard to date of skill test and, in addition, a Demand Draft of Rs.220/- was also submitted by each

of the applicants, yet the scheduled date of skill test was changed and many other candidates were not intimated, thereby they could not participate and were deprived of being considered for selection. Similarly, the finding of the Officer enquiring into the matter was also that though as per the advertisement the requirement of typing was only reflected to Hindi Typing with limit of 5000 depression but when the skill test was conducted it was also conducted for English Typing. This also has caused much prejudice to the interest of many of the candidates. Likewise, there was also certain irregularities and illegalities detected so far as the collection of Demand Drafts from a nationalized Bank from eligible candidates. Similarly, the Additional Collector in the course of enquiry also found that some of the Petitioners were found to have been awarded unusual high marks like 99 and in some cases 99.5 marks were also awarded which also smacked favoritism. The finding of the Additional Collector also was that the rules governing the field *that is* the Chhattisgarh Health and Family Welfare (Directorate of Health Services), Class-III Non-Ministerial Service Recruitment Rules, 1989 were violated to the extent of not reserving the posts for candidates who could have participated from among the Class-IV employees in the department for whom there was a reservation of 20% seats.

9. Given the aforesaid categorical findings in respect of the lacunas which occurred in the course of recruitment process, it cannot be said that the decision of the District Collector in cancelling the entire recruitment process and ordering for a fresh recruitment is, in any manner, illegal, arbitrary or unconstitutional; rather, it is a fair, reasonable and a justifiable decision on the part of the District Collector.

10. As regards the contention of learned Counsels for Petitioners insofar as the principles of natural justice not being followed, what is to be appreciated is the fact that on 2.8.2014 the order of appointment was issued. In less than a month's time from the date of joining of few of the Petitioners, the order of cancellation of appointment was issued. What is also to be taken note of is the fact that there has been no interim order granted in favour of any of the Petitioners. Right from the impugned Order was passed, the Petitioners are out of service and many of them in fact have not given their joining. In any case, the appointment of the Petitioners was immediately stayed by the District Collector vide order dated 8.8.2014 which also shows that there was a prompt decision at the level of the District Collector. Since there was a stay of the order of appointment by the District Collector issued as early as on 8.8.2014 that is before the majority of the Petitioners could give their joining, this Court has no hesitation in reaching to the conclusion that no prejudice as such has been caused to the Petitioners.

11. Further, from the pleadings of the learned Counsels for Petitioners, there does not seem to be any substantial material which the Petitioners have brought on record to establish that the finding of the Additional Collector in respect of illegalities and irregularities in the recruitment process is bad. From the arguments which have been enclosed along with the Rejoinder filed by the Petitioners also it is evident that those documents have been issued tailor-made for benefitting the Petitioners as most of the other candidates who had applied had not been properly noticed or informed well in advance in respect of requirement of Demand Drafts from a nationalized Bank, change of schedule of the skill test etc., etc.

12. Given the aforesaid facts and circumstances of the case, particularly taking note of the order of appointment dated 2.8.2014 which was immediately stayed by the District Collector on 8.8.2014 coupled with the fact that most of the Petitioners had not been able to give their joining and before that itself it was stayed by the District Collector, no prejudice as such has been caused to the Petitioners. Moreover, no indefeasible right as such had accrued in favour of the Petitioners. One must not forget the fact that what is illegal at its inception would be illegal till the end and any benefit that accrues on the basis of an illegal act could also be per se null and void as the same is on the basis of an illegal foundation which otherwise is not tenable in the eyes of law.
13. In view of above, the Petitioners have not been able to make out a strong case warranting interference with the impugned Order, Annexure P-1, dated 12.9.2014.
14. The two Writ Petitions thus being devoid of merits deserve to be and are accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**

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