

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1137 of 2021**

1. Kamta Prasad, S/o Bhaiya Ram Aged About 27 Years R/o Village - Dhourabhata, Post - Kundel, Tehsil - Magarlod, District Dhamtari Chhattisgarh
2. Pramod Kumar Sahu, S/o Santu Ram Sahu, Aged About 24 Years R/o Village - Chatoud, Post - Dondekala, Block - Arang, District Raipur Chhattisgarh
3. Mukesh Kumar, S/o Chhatradhari Verma, Aged About 32 Years R/o Balodabazar, District Balodabazar - Bhatapara Chhattisgarh
4. Umesh Kumar, S/o Thabeer, Aged About 30 Years R/o Chhichhour Umariya, Tehsil - Pussore, District Raigarh Chhattisgarh
5. Ajay Kumar, S/o Firat Ram, Aged About 29 Years R/o Khutur, Tehsil - Navagarh, District - Janjgir - Champa Chhattisgarh
6. Yugal Kishore Kashyap, S/o Hiramani Kashyap, Aged About 31 Years R/o Ward No. 03, Rahod Nagar Main Road, District Janjgir - Champa Chhattisgarh
7. Somal Kumar, S/o Dhansay Kewat, Aged About 39 Years R/o Village - Tilda, Tehsil - Balodabazar, District Balodabazar - Bhatapara Chhattisgarh
8. Anil Kumar, S/o Jivanlal, Aged About 27 Years R/o Bhardalodhi, Post Office - Bortara, District Bemetara Chhattisgarh
9. Pratima Vaishnav, D/o Ghanshyam Das Vaishnav, Aged About 30 Years R/o Panchdhar, Tehsil - Baramkela, District Raigarh Chhattisgarh
10. Meena Kumari Sahu, D/o Kolbahara Sahu, Aged About 29 Years R/o Mig-45, Gokul Nagar, Korba, District Korba Chhattisgarh
11. Devkumari, D/o Rajaram Sahu, Aged About 28 Years R/o Lig - 53, Sharda Vihar Colony, Korba, District Korba Chhattisgarh
12. Hemnath Yadav, S/o Kheduram, Aged About 31 Years R/o Putpura, Tehsil - Kasdol, District Balodabazar - Bhatapara Chhattisgarh
13. Ghanshyam Lal Sahu, S/o Kashee Ram Sahu, Aged About 31 Years R/o House No. 50, Ward No. 06, Village - Barbaspur, District Rajnandgaon Chhattisgarh
14. Avinash Kumar, S/o Bhuneshwar, Aged About 27 Years R/o Village - Girdhaura, Tehsil - Takhatpur, District Bilaspur Chhattisgarh
15. Ajhar Ali, S/o Husain Ali, Aged About 30 Years R/o Mahamaya Ward No. 06, Thana Road, District Kawardha Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
16. Vivek Nath Yogi, S/o Purshottam Nath Yogi, Aged About 32 Years R/o Ward No. 11, Post Office - Rahod, Tehsil - Pamgarh, District Janjgir - Champa Chhattisgarh
17. Sunil Kumar, S/o Banshi Lal, Aged About 26 Years R/o Village - Bhudeni, Post Office - Bhendri, Tehsil - Magarlod, District - Dhamtari Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through Secretary, Ministry Of School Education Department, Mahanadi Bhavan, Atal Nagar, Raipur Chhattisgarh
2. Directorate Of Public Education, Through Its Secretary, Indrawati Bhawan, New Raipur, District Raipur Chhattisgarh
3. Director, Directorate Of Public Education, Indrawati Bhawan, New Raipur, District Raipur Chhattisgarh
4. National Council For Teacher Education, Through Secretary, New Delhi, Delhi, District : New Delhi, Delhi

---- Respondents

For Petitioner	:	Mr. Soumitra Kesharwani, Advocate
For State	:	Ms. Hamida Siddiqui, Dy. AG

Hon'ble Shri Justice P. Sam Koshy
Order on Board

24/02/2021

1. The challenge in the present writ petition is primarily to the action on the part of the respondents in permitting the candidates with CTET qualification for recruitment to the post of Assistant Teachers and Teachers under the respondents.
2. Most of the petitioners herein on an earlier occasion had filed WPS 5423/2020 along with other similarly placed persons questioning the same action. This Court vide order dated 17.12.2020 had dismissed the writ petition granting liberty to the petitioners for approaching the Court in case any candidate with only CTET qualification for being appointed. For ready reference the observations made by this Court in paragraph 6 of WPS 5423/2020 is reproduced hereinunder :_

“6.It is the further contention of learned counsel for petitioners that the advertisement as such permits only those candidates who have passed the State CTET alone. This ground of the petitioners also would not be sustainable at this juncture when the petitioners themselves are being considered by the respondents for the recruitment. If at all, if the petitioners have grievance in the event of

the petitioners getting disqualified and the candidates who have qualified CTET are appointed, the petitioners would be at liberty to raise their grievance at that appropriate stage.

3. On the same set of facts and for the same relief the petitioners have approached this Court again surprisingly in the instant writ petition no appointment orders issued in favour of the any of the candidates with only CTET qualification have been questioned or challenged, none of the candidates who have been appointed with only CTET has been made a party to the present writ petition. In the absence of either of the same, firstly challenging the appointment order issued for those candidates and secondly those candidates not being made a party to the present writ petition, the present writ petition deserves to be rejected.

4. The view of this Court stands fortified from the decision of the Supreme Court in the case of **Vijay Kumar Kaul & Others Vs. Union of India & Others, (2012) 7 SCC 610**, wherein in paragraph 36 to 39 it was held as under :-

“36. Another aspect needs to be highlighted. Neither before the tribunal nor before the High Court, Parveen Singh and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.

37. In this context we may refer with profit to the decision in [Indu Shekhar Singh & Ors. v. State of U.P. & Ors.](#) [8] wherein it has been held thus: -

“There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.”

38. *In Public Service Commission, Uttaranchal v. Mamta Bisht & Ors.*[9] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: -

“9. *In Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar & Anr.*, AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are applicable. (*Vide Gulabchand Chhotalal Parikh v. State of Gujarat*; AIR 1965 SC 1153; *Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors.*, AIR 1974 SC 2105; and *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors.* AIR 1987 SC 88).

10. *In Prabodh Verma & Ors. v. State of U.P. & Ors.* AIR 1985 SC 167; and *Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors.* (2009) 1 SCC 768 : (AIR 2008 SC (Supp) 824), it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”

39. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard. “

5. A similar view was also taken by the Supreme Court in the Case of **Girjesh Shrivastava & Others V. State of Madhya Pradesh & Others**

in (2010) 10 SCC 707, wherein in paragraph 20 to 23 it was held as under: -

20. *The next point urged by the appellants, that they had never been impleaded in the two petitions, even as orders passed by the High Court had a direct effect on their livelihood, also goes to the root of the matter as it violates the principle of audi alteram partem.*

21. This Court in [Prabodh Verma and others vs. State of Uttar Pradesh and others](#), [(1984) 4 SCC 251 at p. 273] held, "A High Court ought not to decide a writ petition under [Article 226](#) of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents...".

22. Similarly this Court in *Ramarao and others vs. All India Backward Class Bank Employees Welfare Association and others*, [(2004) 2 SCC 76, at page 86] said, "...An order issued against a person without impleading him as a party and thus, without giving an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon."

23. Also in [B. Ramanjini and others v. State of Andhra Pradesh and others](#), [(2002) 5 SCC 533 at pages 542-543, paragraph 19] where selection of certain teachers was challenged without impleading them, this Court held, "Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the respondents concerned ought to

have been dismissed which are more or less in the nature of a public interest litigation."

6. The present Writ Petition is accordingly dismissed only on the ground of non joinder of necessary party and also on the ground of their appointment orders not being challenged or questioned.

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

Rohit