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HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 09.09.2021****Order delivered on 24/09/2021****WPS No. 7312 of 2010**

- Sudarshan Dhar Diwan, aged 36 years, S/o Shri Santosh Dhar Diwan, Shiksha Karmi Varg -2, Vyayam Shikshak, Govt. Hr. Sec. School, Dahi, Distt. Dhamtari (CG)

Presently residing at House No. J-6, Shatabdi Nagar, Behind, Telibandha, Raipur (CG)

---- Petitioner**Versus**

1. The State of Chhattisgarh, through The Secretary, Panchayat Avam Gramin Vikas Vibhag, Mantralay, DKS Bhawan, Raipur (CG)
2. The Chief Executive Officer, Zila Panchayat Dhamtari, Distt. Dhamtari (CG)

---- Respondents

For Petitioner	:	Mr. Surendra K Dewangan, Advocate
For Respondent No.1	:	Mr. Vimlesh Bajpai, Govt. Advocate
For Respondent No.2	:	Mr. Sanjay Patel, Advocate.

SB: Hon'ble Mr. Justice Parth Prateem Sahu**C A V Order**

1. Petitioner aggrieved by the order of cancellation of his appointment on the post of Shiksha Karmi Grade-2 (Physical Instructor) has filed this writ petition seeking for following reliefs:-

“10.1. That this Hon'ble Court may pleased to quash the impugned order dated 21.09.2010 and respondent may kindly be ordered to reinstate the petitioner with all consequential benefit from 21.06.10.

10.2. That respondents may kindly be ordered to pay the arrears with interest @ 12% p.a. and to pay the

cost of litigation.

10.3. That any other relief which the Hon'ble Court may deem just and proper may kindly also be allowed.”

2. Case of the petitioner is that pursuant to advertisement issued by respondent No.2 for appointment on the post of Shiksha Karmi, petitioner applied for the post of Shiksha Karmi Grade-2 (Physical Instructor). After completion of due selection process, respondent No.2 issued appointment order dated 16.6.2010 in favour of petitioner vide order dated 29.1.2010 (Annexure P-3). Within a short period of time, appointment of petitioner was cancelled vide impugned order dated 21.9.2010 (Annexure P-1) mentioning that petitioner has already crossed maximum age limit prescribed under the rules to hold post of Shiksha Karmi. It is this order which is under challenge in this petition.

3. Mr. Suresh Kumar Dewangan, learned counsel for petitioner would submit that vide order dated 16.6.2010 (Annexure P-3) petitioner and 28 other candidates were appointed as Shiksha Karmi Grade-2 (Physical Instructor). After considering application form and documents submitted along with it, respondent No.2 considered the petitioner to be eligible and had issued appointment order in his favour. After being appointed, petitioner joined at the place of posting on 21.6.2010 i.e. Government Higher Secondary, Dahi, District Dhamtari (CG) and continued to work there till issuance of order of cancellation of his appointment on 21.9.2010.

Appointment of petitioner as Shiksha Karmi Grade-2 was under the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 2007 (for short 'the Rules of 2007'); even if it is found subsequent to appointment and joining of petitioner on the post of Shiksha Karmi Grade-2, that petitioner was not eligible to hold post of Shiksha Karma, respondent No.2 could have terminated his services following the provisions contained in Rule 10 & 11 of the Rules of 2007. However, no show-cause notice or opportunity of hearing was given to petitioner before issuing order of cancellation, which amounts to violation of principles of natural justice. He contended that appointment order has been issued upon approval by the General Administration Standing Committee of Zila Panchayat, Dhamtari, but order of Annexure P-1 was passed without obtaining approval from the competent authority, hence the impugned order is not sustainable and is liable to be set aside. Lastly, he contended that respondent No.2 has not paid any salary for the period during which the petitioner has worked as Shiksha Karmi Grade-2 i.e. from 21.6.2010 to 21.9.2010. Appointment order itself prescribes for termination of service of Shiksha Karmi if not satisfactory by issuing one month's prior notice or in lieu thereof one month's salary. Respondent No.2 has not given any notice nor paid one month's salary to petitioner. He submits that as there is non-compliance of the provisions of the Rules of 2007, conditions of appointment order as also there is violation of principles of natural justice, the impugned

order Annexure P-1 is liable to be set aside.

4. Mr. Vimlesh Bajpai, learned Government Advocate for the State/respondent No.1 would submit that the order challenged in this writ petition is an appealable order under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam of 1993'), hence writ petition itself is not maintainable for want of availability of efficacious alternative remedy of appeal under the law. He further contended that in the advertisement, maximum age limit for the candidates belonging to unreserved category was prescribed as 35 years. It is the case of petitioner himself that, he has crossed the age of 35, but is claiming benefit of age relaxation of two years, as provided under the Circular issued by the Chhattisgarh Professional Board Examination, Raipur. Petitioner cannot claim benefit of said Circular for the reason that services of petitioner are governed by the Rules of 2007 wherein no such age relaxation is provided. The age relaxation under Circular is for civil services examination conducted by the Public Service Commission. He submits that immediately after verification of documents of selected candidates, order of cancellation of appointment of petitioner is passed within short period of time after his appointment and joining on the post. Petitioner is not entitled for any relief much less the reliefs as sought for in this writ petition.
5. Mr. Sanjay Patel, learned counsel for respondent No.2 submits that appointments on the post of Shiksha Karmi are to

be made strictly in accordance with the Rules of 2007. Under Schedule-III of the Rules of 2007, minimum and maximum age of a candidate applying for the post of Shiksha Karmi is mentioned as 21 years and 35 years respectively. From the pleadings made in writ petition it is clear that petitioner on the date of consideration of his application in terms of the advertisement, was more than 35 years of age, hence in writ petition he has taken a plea that petitioner should have been extended age relaxation in terms of Circular dated 16.9.2008 issued by the General Administration Department. Age relaxation of two years provided in aforementioned circular is for specific reason that the Public Service Commission could not conduct examination for last few years. Hence, petitioner will not get any benefit from the Circular (Annexure P-4). He submits that petitioner is aggrieved by the order of cancellation of his appointment. Rule 13 of the Rules of 2007 provides for filing of an appeal under the provisions of the Adhiniyam of 1993. Section 91 of the Adhiniyam of 1993 provides for appeal and revision. Petitioner could have approached the appellate authority by filing an appeal challenging the impugned order. He submits that on verification of documents when it revealed that petitioner is not eligible for appointment being overage, his appointment was cancelled immediately within three months of his joining. Appointment of petitioner was factually wrong. It is not the case where service of petitioner was terminated, in this case appointment of petitioner was cancelled. Rule 10 of Rules of

2007 would apply only when appointing authority initiates proceeding for termination of service by way of imposing punishment. He submits that once it is admitted by petitioner himself that he was overage, no purpose would have been served by issuing show-cause notice. In support of this contention, he places his reliance on the judgment passed by Hon'ble Supreme Court in case of **State of Uttar Pradesh vs. Sudhir Kumar Singh** reported in **(2020) SCC Online SC 847**.

6. I have heard learned counsel for parties and perused the documents placed on record by respective parties.
7. During the course of submissions, learned counsel for petitioner submits that petitioner is raising grounds with regard to non-issuance of show-cause; violation of principles of natural justice and non-compliance of provisions of Rules 10 & 11 of the Rules of 2007. During course of his submissions, he concedes that the petitioner was above 35 years of age. He has not challenged the ground for cancellation of his appointment to be factually wrong. In view of submission made by learned counsel for petitioner, the issues remain for consideration of this Court are (i) whether Rule 10 & 11 of the Rules of 2007 are required to be followed; (ii) whether non-issuance of show-cause notice has in any manner caused prejudice to the petitioner; and (iii) whether the petitioner is entitled for salary of notice period as provided under Rule 11 of the Rules of 2007?

8. When appointment is based on any statutory rules than a candidate who has submitted application for appointment, should possess minimum eligibility criteria as provided under those Rules. In case at hand, the rules applicable are the Rules of 2007 and the dispute is with regard to maximum age for appointment on the post of Shiksha Karmi Grade-II. Under Schedule-II of the Rules of 2007 minimum age is prescribed as 27 years and maximum to be 35 years. Appointing Authority is prescribed as Chief Executive Officer, Zila Panchayat with approval of General Administration Committee, Zila Panchayat. As per submission made by learned counsel for petitioner, the petitioner was more than 35 years of age, hence it is petitioner's case that he was over age. Petitioner was appointed vide order dated 16.6.2010 but within a period of three months from his appointment, upon verification of documents of candidates appointed as Shiksha Karmi Grade-II, it was found that petitioner has wrongly been appointed as he was ineligible for appointment. In the order Annexure P-1, which is order of cancellation of appointment of petitioner, specific reason for cancellation of appointment is mentioned. Subsequent to the order of cancellation of appointment of petitioner, respondent No.2 has taken approval of the General Administration Committee in the meeting dated 22.10.2010. In the given facts of case, where maximum age limit is prescribed in the Rules for appointment of Shiksha Karmi; admission of petitioner himself that he was over age; only because of non-issuance of show-cause notice would not

cause any prejudice to him for the reason that even after giving show-cause notice, the petitioner could not have any case to justify his appointment. Hence, submission made by learned counsel for petitioner that impugned order is liable to be set aside on the ground of violation of principles of natural justice is not sustainable in the facts and circumstances of case and it is hereby repelled.

9. Hon'ble Supreme Court in case of **Mohd. Sartaj vs. State of UP** reported in **(2006) 2 SCC 315** has considered question of non-issuance of show-cause/prior notice or giving opportunity of hearing at the time of cancelling appointment where candidate appointed was not eligible and held that appellant therein did not hold any right over the post because he lacks of qualification required, therefore, no hearing was required before cancellation on his appointment/service. Para-6 of said judgment reads thus:-

“6. Regarding the non-compliance of natural justice, the Court opined that in the present case there was no procedural illegality and relied upon the State of MP v. Shyama Pardhi⁸ where it was observed that question of violation of natural justice did not arise in a case where the pre-requisite minimum qualification for the appointment was not fulfilled and resulted in the cancellation of the appointment. The Court also opined that the action of cancellation was taken swiftly within a short interval and merely because appellants were allowed to continue on the post in pursuance of the interim order, would not entitle them to the posts on which they were illegally appointed.

10. Recently, in case of Sudhir Kumar Singh (supra) Hon'ble Supreme Court considering its earlier decisions in case of

Aligarh Muslim University v. Mansoor Ali Khan reported in **(2000) 7 SCC 529** and **Union of India vs. Alok Kumar** reported in **(2010) 5 SCC 349** has held thus:-

“38. Under the broad rubric of the Court not passing futile orders as the case is based on “admitted” facts, being admitted by reason of estoppel, acquiescence, non-challenge or non-denial, the following judgements of this Court are all illustrations of a breach of the *audi alteram partem* rule being established on the facts of the case, but with no prejudice caused to the person alleging breach of natural justice, as the case was one on admitted facts:

- (i) Punjab and Sind Bank & ors Vs. Sakattar Singh (2001) 1 SCC 214 (see paragraphs 1, 4 and 5);
- (ii) Karnataka SRTC & anr Vs. S.G. Kotturappa & anr (2005) 3 SCC 409 (see paragraph 24);
- (iii) Viveka Nand Sethi v. Chairman, J&K Bank Ltd. (2005) 5 SCC 337 (see paragraphs 21, 22 and 26);
- (iv) Mohd. Sartaj V. State of UP (2006) 2 SCC 315 (see paragraph 18);
- (v) Punjab National Bank & ors v. Manjeet Singh (2006) 8 SCC 647 (see paragraphs 17 and 19);
- (vi) Ashok Kumar Sonkar v. Union of India (2007) 4 SCC 54 (see paragraphs 26 to 32);
- (vii) State of Manipur v. Y. Token Singh (2007) 5 SCC 65 (see paragraphs 21 and 22);
- (viii) Secretary, A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar (2007) 13 SCC 352 (see paragraph 7)
- (ix) Peethani Suryanarayana v. Repaka Venkata Ramana Kishore (2009) 11 SCC 308 (see paragraph 18);
- (x) Municipal Committee, Hoshiapur v. Punjab State Electricity Board (2010) 13 SCC 216 (see paragraphs 31 to 36, and paragraphs 44 and 45);
- (xi) Union of India v. Raghuwar Pal Singh (2018) 15 SCC 463 (see paragraph 20).

39. An analysis of the aforesaid judgements thus reveals:

- (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2)Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3)No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4)In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5)The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

11. Now coming back to facts of present case. As per case of petitioner himself, he was over age on the date of submission of application form for appointment as Shiksha Karmi Grade-II and being so, as per Rules of 2007, he was not eligible for consideration of his appointment on the post of Shiksha Karmi Grade-II, hence, issuance of show cause notice would be an empty formality only. No prejudice is caused to the petitioner due to non-issuance of show-cause notice or non-grant of opportunity of hearing. Even the petitioner himself has not

shown as to what prejudice is caused to him. Hence, the submission of learned counsel for petitioner that impugned order Annexure P-1 is liable to be set aside on the ground of violation of principles of natural justice is not sustainable and it is hereby repelled.

12. Submission made by learned counsel for petitioner that respondent No.2 has not followed the Rules of 2007 is also not sustainable because it is not the case of termination of petitioner from services on any of the charges or by levelling any allegation against him. Rule 10 of Rules of 2007 prescribes for imposition of penalties. In case at hand, no penalty has been imposed on petitioner and cancellation of appointment of petitioner is on the ground that the petitioner being overage was not eligible to be appointed as Shiksha Karmi Grade-II.

13. Another submission of learned counsel for petitioner is that before removal of any Shiksha Karmi, one month's notice period is prescribed under the Rules of 2007. Rule 11 of the Rules of 2007 deals with termination of service. In case at hand, it is not the case of termination or removal from service of a Shiksha Karmi by appointing authority, but it is cancellation of appointment on the ground that he being ineligible was wrongly appointed. Hence, submission of learned counsel for petitioner that there is violation of provisions of Rules 10 & 11 of the Rules of 2007 has no force and the same is hereby repelled.

14. So far as objection raised by learned counsel for the respondents with regard to maintainability of writ petition is concerned, perusal of the Rules of 2007 would reveal that Rule 13 provides for appeal under the provisions of the Adhiniyam of 1993. Section 91 of the Adhiniyam of 1993 provides for appeal and revision. Chhattisgarh Panchayat Appeal and Revision Rules, 1995 have been framed under Section 91 of the Adhiniyam of 1993. There was efficacious statutory remedy available with the petitioner to assail impugned order Annexure P-1. By passing of statutory remedy of appeal and revision can be only in exceptional cases like violation of principles of natural justice; opportunity of hearing was not afforded or the order challenged is without any authority under law. Though the petitioner has made an attempt to raise the ground, but is not attracted in the facts of the case for the foregoing discussion.
15. In view of above discussions, I do not find any merit in this petition, which is liable to be dismissed and is hereby dismissed.
16. Submission of learned counsel for petitioner with regard to non-payment of salary for the period the petitioner worked as Shiksha Karmi Grade-II (Physical Instructor) is concerned, it is the case where petitioner was appointed by the competent authority along with 28 other candidates. Petitioner joined at his place of posting and worked till 21.9.2010. Fact with regard to period of his working at the place of his posting till

issuance of impugned order Annexure P-1 is not disputed by respondent No.2. In view of undisputed facts that petitioner in pursuance of his appointment order has worked till the date of issuance of impugned order Annexure P-1 and the ground raised by petitioner that he was not paid any salary for that period, in the considered opinion of this Court, the petitioner is entitled for salary for the period during which he worked as Shiksha Karmi Grade-II. Respondent No.2 is directed to pay salary to the petitioner for the period during which petitioner worked as Shiksha Karmi Grade-II (Physical Instructor) at the place of his posting, if it is not paid to him till date.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-