

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2512 of 2012**

1. Kamlesh Kumar, aged about 22 years, S/o Shri Ramsharan, by Caste Dhanvar, R/o Village and Post Bardar, Thana and Tahsil Khadgawa, Distt.Koriya
2. Manish Kumar Pandey, aged about 21 years, S/o Shital Prasad Pandey, R/o Village and Post Uhanapur, Tahsil and Thana Khadgawa, Distt.Koriya
3. Umesh Kumar, aged about 23 years, S/o Brijmohan Sen, By Caste Nai, R/o Village and Post Devadand, Tahsil Khadgawa, Distt.Koriya

---- Petitioners**Versus**

1. State of Chhattisgarh through its Secretary, Health and Family Welfare Department, D.K.S. Bhawan, Raipur (CG)
2. The Director, Health Services, D.K.S. Bhawan, Raipur
3. The Additional Collector, Koriya Baikunthpur
4. The Chief Medical and Health Officer, Baikunthpur, Distt.Koriya

---- Respondents

For Petitioners : Ms Mahima Gupta, Advocate
 For Respondents : Mr.Soumya Rai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board (Through Video Conferencing)****2.9.2021**

1. Ms Mahima Gupta, learned counsel for the petitioner, would submit that the issue involved in this writ petition is covered by decision of this Court passed in the matter of Rajesh Kumar Sahu & Others v. State of Chhattisgarh (WPS No.2346/2012), decided on 21.11.2012.
2. Mr.Soumya Rai, learned Panel Lawyer for the

respondents/State, would also submit that the issue involved in this writ petition has been considered and decided by this Court in Rajesh Kumar Sahu's case (supra).

3. This Court in the matter of Rajesh Kumar Sahu (supra) held as under:-

"11. It is evident that all the facts, as aforestated, are indisputable. The advertisement, titled as 'Interview Notice', cannot be held as proper notice. Notice for selection/appointment is the proper notice. Interview Notice is deceptive, when the mode of selection was through interview. Calling the candidates to appear before the appointing authority next date without expressing clear intention to invite application for selection/appointment is not sustainable in the eyes of law. The minimum reasonable time atleast 15 days under proper heading of advertisement ought to have been granted so that most eligible candidates could have appeared for interview to ensure proper selection on merit.

12. The enquiry report submitted in respect of ANM & Lat Technician was also examined and it was found that even the advertisement was not issued for selection of ANMs and Lab Technicians before the petitioners were selected and appointed. Though, in the instant case, all the petitioners were afforded full opportunity to put forward their cases before their appointments were cancelled. It is trite law that if the mischief played is so widespread and all-pervasive, affecting the result the only way out would be to cancel the whole selection. (See: Union of India and others v. O. Chakradhar¹).

13. Sub-rule (2) Rule 11 of the Rules, 1989 does not provide that the candidates should be called only through Employment Exchange. Even otherwise, it is well settled principle of law

1 (2002) 3 SCC 146

that even if the names of the petitioners were called from the employment exchange, this does not suffice the requirement of provision of constitutional scheme of employment, as there should be an open invitation to all the concerned. Registration of name in the employment exchange may be one of the eligibility criteria, but drawing names from the employment exchange does not meet with the requirement of constitutional scheme of employment. Admittedly, the recruitment of the petitioners was not made in accordance with any rules. (See: *Darbar Singh Porte & Another v. State of C.G. & Another*²).

14. Sub-rule (3) Rule 11 provides for reservation, which has also not been followed in the selection process. Needless to mention that selection of MPHWS, ANM & Lab Technician is by way of direct recruitment.

16. Having regard to the facts situation of the case, particularly considering the fact of method of selection and appointment thereon, which was illegal and was discovered subsequently in an enquiry after affording proper opportunity of hearing to the petitioners, interference with the impugned order is not warranted.

17. As a sequel, all the writ petitions, *sans substratum*, are liable to be and are hereby dismissed, leaving the parties to bear their own costs."

4. Accordingly, the present writ petition is dismissed in terms of the order passed by this Court in **Rajesh Kumar Sahu's** case (supra). No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-