

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1543 of 2012**

Ku. Saroj Sinha, D/o Shri Raghunandan Prasad, aged about 42 years, resident of C/o C.P. Dadsena, Qtr. No.75, Jawahar Nagar, Durg, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through the Secretary, Panchayat Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Chief Executive Officer, Zila Panchayat Durg, District Durg, Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Patan, District Durg, Chhattisgarh.
4. Ku. Deepti Mahobiya, posted as Shiksha Karmi Grade-III, Govt. Middle School Batrel, District Durg, Chhattisgarh.
5. Shivani Yadav, posted as Shiksha Karmi Grade-III, Govt. Primary School Patora, District Durg, Chhattisgarh.

---- Respondents

For Petitioner : Shri Vinod Kumar Sharma, Advocate
 For Respondent/State : Shri Vimlesh Bajpai, Govt. Advocate
 For Respondents 2 & 3 : Shri Pawan Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****13.09.2021**

1. Petitioner aggrieved by her non-selection and appointment on the post of Shiksha Karmi Grade-III in Other Backward Class ('OBC') category and selection and appointment of

respondents No.4 and 5, who were less meritorious than her filed this writ petition seeking following relief(s) :

“10.1 That, the Hon'ble Court may kindly be pleased to consider the petitioner for appointment on the post of Shiksha Karmi Grade III from the date respondent No. 4 & 5 have been granted appointment considering that the Bal Sevika Prashikshan Certificate is equivalent D.Ed. in the interest of justice.

10.2 To issue any other order(s), direction(s), writ(s) which the Hon'ble Court deems fit and proper in the interest of justice.”

2. Facts of the case in nutshell are that, office of Janpad Panchayat Patan, District Durg issued advertisement for appointment of Shiksha Karmi Grade-III vide advertisement dated 14.01.2008. Petitioner submitted her application as OBC category candidate under Arts faculty. In the published selection list (Annexure P/2), name of petitioner is mentioned at Sl.No.41 with 35.68 marks. While issuing appointment order (Annexure P/3) dated 05.07.2008, name of petitioner did not find place, but name of respondents No.4 and 5 has been shown to be appointed candidate at Sl.No.27 and 29 of select list, who have secured less marks than the petitioner. Petitioner approached the authority who informed that petitioner could not be appointed as she does not hold the certificate of D.Ed. Even after efforts made by petitioner and

letters written by authority for considering the grievance of petitioner, respondent No.3 has not issued any order of appointment in her favour, which made the petitioner to file instant writ petition.

3. Respondent No.1/State submitted reply to writ petition pleadings therein that petitioner submitted her application form for appointment on the post of Shiksha Karmi Grade-III as OBC (Woman) candidate. Recruitment of Shiksha Karmis to be governed by the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Services) Rules, 2007 (hereinafter referred to as 'Rules of 2007'), in which, prescribed qualification for appointment on the post of Shiksha Karmi Grade-III to be Higher Secondary School Certificate and D.Ed. Chief Executive Officer of Janpad Panchayat to be Appointing Authority with approval of General Administration Committee. Under the Rules of 2007, "Bal Sevika Prashikshan" certificate is not mentioned as eligible qualification and is not equivalent to D.Ed. certificate.
4. Respondent No.3/Chief Executive Officer, Janpad Panchayat, Patan submitted reply on same lines as submitted by the State.
5. Shri Vinod Kumar Sharma, learned counsel for the petitioner would submit that petitioner in pursuance to the advertisement for appointment on the post of Shiksha Karmi Grade-III issued by respondent No.3 submitted her

application form with relevant documents. After considering the documents placed on record along with application form, respondent No.3 prepared proposed select list. In select list, total marks obtained by each of the candidates is mentioned separately. Proposed selection list is placed on record as Annexure P/2, name of petitioner finds place at Sl.No.41, whereas name of respondents No.4 and 5 is mentioned at Sl.No.45 and 48 respectively. Petitioner secured 35.68 marks, whereas respondents No.4 and 5 obtained 31.66 and 29.15 marks respectively, she being meritorious was hopeful for her appointment on the post of Shiksha Karmi Grade-III, but when final list of appointment was published by respondent No.3 on 05.07.2008 (Annexure P/3), name of petitioner did not find place, but name of respondents No.4 and 5, who are less meritorious than the petitioner have been appointed as Shiksha Karmi Grade-III. He further submits that on inquiry, petitioner revealed that she was not selected because petitioner has submitted certificate of "Bal Sevika Prashikshan" certificate and not D.Ed. certificate. It is pointed out that State of Madhya Pradesh vide circular dated 03.11.1971 has considered Bal Sevika Prashikshan certificate to be valid for appointment of Teachers, vide circular dated 22.02.1972 by Secretary of Department of Child Welfare, Madhya Pradesh, directed that persons holding Bal Sevika Prashikshan certificate are also entitle for their appointment as Teachers in Primary Schools. Public

Instructions Madhya Pradesh issued circular on 27.10.1990 stating that Bal Sevika Prashikshan certificate to be treated as equivalent with B.T.I. certificate (Annexure P/5). Based on the representation made by petitioner, Additional Secretary, Panchayat and Rural Development Department has issued letter to respondent No.3 asking as to why petitioner was not appointed, whereas other persons based on the same certificate i.e. Bal Sevika Prashikshan certificate have been given appointment, but even then, respondent No.3 arbitrarily not considered the candidature of petitioner for appointment on the post of Shiksha Karmi Grade-III. It is contended that as erstwhile State of Madhya Pradesh by issuing circulars at different point of time have treated Bal Sevika Prashikshan certificate equivalent with D.Ed., petitioner shall be treated to be eligible for appointment on the post of Shiksha Karmi Grade-III and she be also appointed being meritorious than respondents No.4 and 5.

6. Per contra, Shri Vimlesh Bajpai, learned Government Advocate representing the State/respondent No.1 would submit that circulars relied upon by learned counsel for the petitioner are prior to coming into force of recruitment of Shiksha Karmi Rules. He further submits that advertisement is of the year 2008, hence, appointment on the post of Shiksha Karmi will be governed by the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Services) Rules, 2007. For appointment on the post of

Shiksha Karmi, candidate should possess the requisite qualification as prescribed therein. Under Rules of 2007, under Schedule-II, there is no mention of Bal Sevika Prashikshan certificate, hence, petitioner cannot be appointed on the post of Shiksha Karmi Grade-III when she does not possess the qualification prescribed under Schedule-II.

7. Shri Pawan Shrivastava, learned counsel for respondents No.2 and 3 adopting the submissions made by learned counsel for the State, would submit that petitioner do not possess D.Ed. certificate as prescribed under Schedule-II of Rules of 2007. Petitioner is claiming her right for appointment on the post of Shiksha Karmi Grade-III based on the Bal Sevika Prashikshan certificate, which does not find place in the Rules of 2007. The State Government or any competent Authority has not issued any circular/order of treating Bal Sevika Prashikshan certificate equivalent to D.Ed. certificate neither it is the claim of petitioner. He further submits that letters enclosed along with writ petition is based on representation and grievance raised by petitioner that some other persons were appointed as Shiksha Karmi Grade-III considering their Bal Sevika Prashikshan certificate. Petitioner has not specified the name of those candidates/Shiksha Karmis nor placed any document on record to show that some of the Shiksha Karmis Grade-III were appointed based on Bal Sevika Prashikshan certificate.

8. I have heard learned counsel for the respective parties.
9. The sole ground raised in the writ petition is that petitioner possessed with Bal Sevika Prashikshan certificate, which is to be treated equivalent to D.Ed. certificate and further that less meritorious candidate than the petitioner (respondents No.4 and 5) are appointed.
10. Perusal of proposed select list (Annexure P/2) would show that, different columns like Roll No., Candidate Name, Category, Sex, Date of Birth, Marks Secured and D.Ed. Certificate is mentioned. Under the column "D.Ed. Certificate", in front of the name of petitioner is mentioned as 'Y' (Yes). Finding name of petitioner in select list is only because the person preparing the chart has considered Bal Sevika Prashikshan certificate to be D.Ed. certificate. Appointment on the post of Shiksha Karmi Grade-III is to be made strictly in accordance with Rules of 2007. In Schedule-II of Rules of 2007, minimum eligibility requirement is prescribed for appointment of Shiksha Karmi Grade-I, Shiksha Karmi Grade-II and Shiksha Karmi Grade-III. For appointment of Shiksha Karmi Grade-III, minimum age prescribed is 18 years and maximum 35 years' qualification prescribed is Higher Secondary School Certificate Examination passed and D.Ed. Examination. Under the Rules of 2007, there is no mention of any other certificate to be equivalent to D.Ed.

11. In the instant case, neither petitioner could place before this Court any circular issued of the State Government relaxing the qualification or directing the Authorities to consider other certificates like “Bal Sevika Prashikshan” to be equivalent with D.Ed. certificate. Appointing Authority has to make appointment based on the Rules framed by the Law Makers. Prescribing eligibility criteria and qualification is within the domain of State Government and Rule Making Authority and not with the Court. Court cannot interpret the Rules which is not mentioned therein. Circulars relied upon by petitioner are not of any help of her because those circulars are of much prior to framing of Rules of 2007. When statutory rules are framed then the appointing authority is bound to consider the candidature of each of the candidate strictly within the eligibility criteria enumerated under the rules applicable for appointment, in present case Rules of 2007.
12. As on the date of consideration of candidature of petitioner, she was not having the requisite qualification, hence, she was rightly not been appointed on the post of Shiksha Karmi Grade-III by respondent No.3.
13. Respondents No.4 and 5 though secured less marks in merit list than of the petitioner but they possessed minimum qualification prescribed under Schedule-II of Rules of 2007 whereas the petitioner do not possess minimum qualification prescribed under Rules of 2007, hence, submission of learned counsel for the petitioner that less meritorious

candidates than the petitioner are appointed is also not sustainable and is hereby repelled.

14. For the foregoing reasons, there is no merit in the writ petition, which is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh