

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPIL No. 129 of 2021**

Deepak Kumar Nayak, S/o Shri Dhuri Ram Nayak, Aged About 43 Years
Member Of Janpad Panchayat Palari Tahsil - Palari District - Baloda Bazar -
Bhatapara Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Integrated Women And Child Development Department Mahanadi Bhawan, Atal Nagar Nawa Raipur District - Raipur Chhattisgarh.
2. The Director, Integrated Women And Child Development Department Indrawati Bhawan, Atal Nagar Nawa Raipur District - Raipur Chhattisgarh.
3. The Collector, District - Baloda Bazar - Bhatapara Chhattisgarh.
4. The Chief Executive Officer, Jila Panchayat Baloda Bazar District - Baloda Bazar - Bhatapara Chhattisgarh.
5. The Chief Executive Officer, Janpad Panchayat Palari, District - Baloda Bazar - Bhatapara Chhattisgarh.
6. The Project Officer, Integrated Women And Child Development Department Palari, District - Baloda Bazar - Bhatapara Chhattisgarh.

---- Respondents

(Cause – title taken from Case Information System)

For Petitioner	:	Mr. Awadh Tripathi, Advocate.
For Respondents No. 1 to 3 & 6 :		Mr. Chandresh Shrivastava, Deputy Advocate General

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

22.10.2021

Heard Mr. Awadh Tripathi, learned Counsel for the petitioner. Also heard Mr. Chandresh Shrivastava, learned Deputy Advocate General appearing for respondents No. 1 to 3 and 6.

2. The petitioner is a member of Janpad Panchayat, Palari in the District of Baloda Bazar–Bharatapara, and by this application, styled as a Public Interest Litigation, following reliefs are sought for, which are reproduced hereunder as follows:

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the advertisement dated 12.03.2021 (Annexure P-1) issued by the respondent no.6.

10.2 That this Hon'ble court may kindly be pleased to issue appropriate orders/ directions/ writ and set-aside the advertisement dated 12.03.2021 (Annexure P-1) and its entire appointment proceeding drawn by the respondent no.6.

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deem fit.

10.4 Cost of the petition may also be awarded.”

3. An advertisement dated 12.03.2021 was issued by respondent No. 6 for different villages within the Baloda Bazar District inviting applications for the post of Anganbadi Karyakarta and Sahayika on or before 31.03.2021. A merit list in respect of village Jara and Keshla are enclosed in the petition. The grievance of the petitioner is articulated, primarily, in paragraphs 8.5 and 8.7 as also in the grounds urged at paragraphs 9.3 and 9.4. It will be appropriate to quote the aforesaid paragraphs and grounds:

“8.5 That, after completing the formalities, the respondent no. 6 issued the merit list and in the column no. 16 to 19 the respondent no.6 after calculating the total marks on 8th class certificate i.e. (total marks 1800 obtain 1704 = 94.67%), (total marks 1200 obtain 923 = 76.92%) (total marks 1200 obtain 938 = 78.17%) and (total marks 1800 obtain 1343 = 74.61%) those are the favourable candidate of respondent no. 6 and the other candidates as in the same column obtained as (total marks 500 obtain 287 = 54.40%), though the favourable candidates are obtain huge marks other than the candidates, which is totally wrong action taken by the respondent no. 6. Copies of merit list of village Jara and Keshla is filed herewith.

8.7 That, the respondent no. 6 has ignoring the fact that, the 8th class students are obtain 1 to 500 as score in the integer score of 500 but

the respondent no. 6 calculated the entire integer as 1800/1200/600 instead of 500.

9.3 Because, the respondent no. 6 issued the merit list and in the column no. 16 to 19 after calculating the total marks on 8th class certificate i.e. (total marks 1800 obtain 1704 = 94.67%) (total marks 1200 obtain 923 = 76.92%) (total marks 1200 obtain 938 = 78.17%) and (total marks 1800 obtain 1343 = 74.61%) those are the favourable candidate of respondent no. 6 and the other candidate as in the same column obtained as (total marks 500 obtain 287 = 54.40%), though the favourable candidates are obtain huge marks other than the participated candidates.

9.4 Because, the 8th class students are obtain 1 to 500 as score in the integer score of 500 but the respondent no. 6 calculated the entire integer as 1800/1200/600 instead of 500.”

4. Though prayer is made for setting aside the advertisement dated 12.03.2021, there is no pleading with regard to any infirmity in the advertisement that may invite setting aside of the advertisement. No arguments are also being advanced during the course of the proceeding with regard to any anomaly/infirmity in the advertisement and the learned counsel, while fairly conceding that there is no infirmity in the advertisement, contends that calculation of marks pursuant to the applications received on the basis of

advertisement was erroneously done giving unfair advantage to some candidates, and therefore, the candidates, who otherwise could have found place in the merit list, are illegally deprived from securing their rightful places in the merit list. It is also submitted that pick and choose method has been adopted and therefore, the entire process of selection is vitiated.

5. Essentially, the petitioner is raising an issue relating to appointment in service in the posts of Anganbadi Karyakarta and Sahayika. Though allegations are made that some candidates have been given undue benefit, such candidates have not been made parties to the proceedings. It is also not understood what is meant by the petitioner that the “respondent No. 6 calculated and ranked the entire integer as 1800/1200/600 instead of 500”.

6. It is no longer *res integra* that in service matters, filing of public interest litigation is not permissible. In ***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & Others***, reported in (2013) 4 SCC 465, at paragraph 15, it was held as follows:

“15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide *Duryodhan Sahu v. Jitendra Kumar Mishra* (1998) 7 SCC 273, *Dattaraj Nathuji Thaware v. State of Maharashtra* (2005) 1 SCC 590 and *Neetu v. State of Punjab* (2007) 10 SCC 614).”

7. In the case of ***Vishal Ashok Thorat & Others v. Rajesh Shrirambapu Fate & Others*** (Civil Appeal No. 5444 of 2019), the Hon'ble

Supreme Court reiterated the proposition that it is well settled that with regard to service jurisprudence, PILs are not entertained.

8. In the attending facts and circumstances, we are not inclined to entertain this public interest litigation at the instance of the petitioner. If any of the candidates is aggrieved by any action taken pursuant to the above advertisement, needless to say, that such candidates may initiate appropriate proceedings in accordance with law, if so advised.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge

Hem