2024:CGHC:37808

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Order reserved on : 07-08-2024

Order passed on : 25-09-2024

WPS No. 2708 of 2014

1 - Ramu Ram Sahu S/o Shri Belan Ram Sahu Aged About 31 Years R/o Village Mohtara, Post Latuva, P.S. Balodabazar, Distt. Balodabazar Bhatapara C.G.,

2 - Manmohan Singh Sahu S/o Shri Kriparam Sahu Aged About 30 Years R/o Village Sakari, Post Amera, P.S. Balodabazar, District : Balodabazar-Bhathapara (CG)

3 - Prateek Kumar Sahu S/o Shri Ghasi Ram Sahu Aged About 25 Years R/o Village And Post Purgaon, Via Bilaigarh P.S. Balodabazar, Distt. Balodabazar Bhatapara C.G.

... Petitioners

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Urban Administration, Mahanadi Bhawan New Raipur C.G.,

2 - The Collector, Balodabazar, Distt. Balodabazar-Bhatapara C.G.

3 - Chief Municipal Officer, Nagar Palika Parishad, Baloda Bazar, Distt. Balodabazar Bhatapara C.G.

... Respondents

For Petitioners	:	Mr. Sharad Mishra, Advocate.
For Respondents/State	:	Ms. Pragya Shrivastava, Dy. G.A.
For Respondent No.3	:	Mr. Parth Shrivastava, Advocate on behalf of Mr. Anand Shukla, Advocate.

Hon'ble Smt. Justice Rajani Dubey, J

C A V ORDER

By way of this petition, the petitioners are seeking issuance of order/writ/direction to the respondent authorities for consideration of their candidature for the post of Assistant Teacher pursuant to advertisement dated 17.06.2013 and issuance of appointment letters to them.

02. Facts, in brief, of the case as stated in the writ petition are that pursuant to the advertisement dated 17.06.2013 (Annexure P/1) issued by respondent No.3 for recruitment on the post of Lecturer/Teacher/Assistant Teacher, the petitioners having all the requisite qualification, applied for the post of Assistant Teacher along with all the documents pertaining to their educational qualification. After scrutiny, names of the petitioners were published in the list of Assistant Teacher. After obtaining objections and resolving the same, the petitioners' names were shown at S.No.1, 2 & 3 in the final list of

Assistant Teacher vide Annexure P/2. However, on 29.01.2014 meeting of the scrutiny committee was held and selection list as well as waiting list was prepared in which names of the petitioners do not find place. Copy of minutes of the meetings is filed as Annexure P/3. In the said meeting, it was decided without assigning any reason that there shall be fresh advertisement regarding five posts of Assistant Teacher. Thereafter, on 25.2.2014 the petitioners moved a detailed representation before the Collector narrating the aforesaid facts and seeking direction for their appointment vide Annexure P/4. Hence this petition for the following reliefs:

> "10.1 That the Hon'ble Court may be kind enough to call for the records of the case of the petitioners from the respondents.
>
> 10.2 That, this Hon'ble Court may kindly be pleased to issue suitable order/writ/direction directing the respondents to consider the candidature of the petitioners for the appointment to the post of Assistant Teacher and issue them appointment letters in the Nagar Palika Parishad, Baloda Bazar-Bhatapara.
>
> 10.3 Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner together with cost of the petition."

03. Learned counsel for the petitioners would submit that the action of the respondent authorities in denying appointment to the petitioners on the post of Assistant Teacher despite their having all the requisite qualifications, is per se illegal, arbitrary and contrary to the facts and

circumstances of the case. The action of the respondents is also violative of Articles 14 & 16 of the Constitution of India as much as respondents have discriminated against the petitioners by not giving them appointment. He would next submit that in the identical situation at Nagar Panchayat, Bhatgaon, appointment orders were issued in favour of the candidates who were successful and qualified vide Annexure P/5. Learned counsel further submitted that the higher authorities i.e. Deputy Director, Urban Administration vide letter dated 26.02.2014 (Annexure P/6) directed the Chief Municipal Officer, Nagar Palika Parishad, Balodabazar to follow the directions given to Nagar Panchayat, Bhatgaon with regard to appointment of the petitioners but till date the petitioners have not been issued appointment letters for the post of Assistant Teacher. He further submitted that respondent No.3 issued an order on 28.02.2014 (Annexure P/7) whereby appointed some persons on the post of Assistant Teacher in various categories which clearly shows that they have overlooked/bypassed the earlier merit list wherein the petitioners stood at top three.

Reliance has been placed on the decisions in the matters of ***East Coast Railway and another Vs. Mahadev Appa Rao and others, (2010) 7 SCC 678; Dinesh Kumar Kashyap and others Vs. SECR and others (2019) 12 SCC 798; Shailesh Kumar Son Wane Vs. State of MP and others, 2021 SCC OnLine MP 5934*** and the ***order dated 16.4.2019*** of this Court in ***WPS No.6551/2014*** in the case of ***Gavendra Kumar and others Vs State of CG and another*** and the

order dated 20.11.2019 passed in ***WPS No.7411/2018*** in the matter of ***Sudhir Rajpal and others Vs. State of CG and others***.

04. Per contra, learned counsel for respondent No.3 would contend that respondent No.3 sought instructions from the District Education Officer, Balodabazar-Bhatapara in respect of appointment of teachers vide letter dated 30.05.2013 (Annexure R-3/1) and in reply thereto, the District Education Officer vide letter dated 01.06.2013 (Annexure R-3/2) informed in respect of sanctioned and vacant post in Distt. Balodabazar-Bhatapara alongwith roster and sanctioned post. Thereafter, respondent No.3 vide letter dated 17.06.2013 advertised the post for appointment of Lecturer/Teacher/Assistant Teacher through direct recruitment and after scrutiny of the applications received, a tentative merit list was prepared and uploaded on the website and objections were invited. Meanwhile, respondent No.3 on 23.08.2013 wrote a letter to the District Education Officer, Balodabazar-Bhatapara informing him about convening a meeting of Scrutiny Committee on 24.8.2013 vide Annexure R-3/4. After resolving the objections on 26.09.2013 respondent No.3 published the seniority list of the candidates and called them for attestation of their documents on 30.09.2013 vide Annexure R-3/5.

Learned counsel for respondent No.3 further submitted that vide letter dated 27.11.2013 the Joint Director, Urban Administration and Development, Raipur directed respondent No.3 to again minutely

examine the documents of the candidates and after the election code of conduct is over, the appointment will be made vide Annexure R-3/6. As the Screening Committee found some mistakes, after rectifying those mistakes, the amended list was published and sent for approval to the District Education Officer on 20.12.2013 vide Annexure R-3/7 who in turn sent the said list to the Screening Committee and in its meeting dated 29.01.2014 the Screening Committee directed to re-advertise the five specific subject-wise posts of Assistant Teacher vide Annexure R-3/8 as no specific subject was was mentioned in the advertisement for posts of Assistant Teacher and it was under the head "others" which would have created problems in future at the time of promotion. Accordingly, respondent No.3 initiated the further proceedings and subsequently, on the representation being made by the petitioners, the Joint Director vide order dated 26.02.2014 directed to examine the application forms and further stated that as per earlier direction issued to Nagar Palika, Bhatgaon, the same will be applied to Municipality, Balodabazar also. Thus, the respondent No.3 prepared the note sheets but later on vide order dated 22.05.2014 the Joint Director issued directions to respondent No.3 and stayed the appointment of Assistant Teachers, hence no further proceedings could be conducted by respondent No.3 vide Annexure R-3/9.

Learned counsel for respondent No.3 further submitted that during pendency of this writ petition, respondent No.3 vide letter dated

19.10.2022 sought information regarding vacancy of the post of Assistant Teacher and the present status of recruitment process and vide letter dated 02.11.2022 (Annexure R-3/10) the Joint Director, Department of Urban Administration and Development requested the Director, Urban Administration and Development to make correspondence at the directorate level with the Public Instructions Directorate for further proceedings as the post of Teacher, Nagriya Nikay has been merged with the Education Department and the vacant posts have been surrendered to the Education Department. In view of above, the petitioners are not entitled for any relief and the petition being devoid of any substance is liable to be dismissed.

05. On the other hand, learned counsel for the State would submit that the petitioners have not sought any relief as against the respondent-State. Though initially in the tentative seniority list of Assistant Teacher prepared after deciding the objections, the petitioners' name find place at Sl.No.1, 2 & 3, however, after direction of the Joint Director, Urban Administration and Development vide letter dated 27.08.2013, an amended list was published and the same was sent to the District Education Officer for approval on 20.12.2013 and thereafter, the Screening Committee in its meeting dated 29.01.2014 decided to re-advertise five posts of Assistant Teacher (Other Subject) as no specific post was mentioned in the advertisement and the word "Other Subject" was ambiguous which would lead to confusion in future and further directed that the same may be done after obtaining specific

instructions with respect to these five posts from the Department of Education. However, vide letter dated 25.04.2014 the Principal Secretary, Panchayat and Rural Development directed for keeping in abeyance the selection process of Teacher (Panchayat) cadre vide Annexure R/1. In light of above submission, the petition being devoid of any substance is liable to be dismissed.

06. Heard learned counsel for the parties and perused the material available on record.

07. It is not in dispute in this case that advertisement was issued on 17.6.2013 and after participation in the selection process, the petitioners were selected for the post of Assistant Teacher and their names appear at Sl.No. 1, 2 & 3 in the final select list.

08. This Court vide order dated 24.4.2024 directed the Director, Nagriya Prashasan and Vikas, Raipur to file an affidavit as to whether selection of the petitioners was according to the Rules or not and if they are selected strictly on merits in accordance with the Rules, why appointment order has not been issued in their favour. In compliance thereof, counter affidavit dated 22.07.2024 has been filed by the Secretary, Urban Administration and Development, State of CG, Raipur. Along with this affidavit, the respondents have filed order dated 19.7.2024 (Annexure A) and operative paragraph of this order reads as under:

"संचालनालय नगरीय प्रशासन विभाग के अभिमत से सहमत होते हुए

छत्तीसगढ़ शिक्षक (नगरीय निकाय) संवर्ग (भर्ती तथा सेवा की शर्तें) नियम 2013 के प्रावधान में शिक्षक पद के अतिरिक्त अन्य संकाय का सेवा भर्ती में प्रावधान नहीं होने के कारण, राज्य शासन एतद्द्वारा, नगर पालिका परिषद बलौदाबाजार द्वारा अन्य संकाय के 04 पद की भर्ती हेतु जारी विज्ञापन दिनांक 17.06.2013 एवं नियुक्ति हेतु की गई कार्यवाही को अमान्य करता है।''

It is clear from this order that on 17.6.2013 advertisement was issued for filling up four posts of Assistant Teacher (Other Subjects) and final merit list was issued wherein the petitioners' names found place.

09. As per order dated 5.8.2014 of this Court, it was directed that any appointment made on the post of Assistant Teacher (other subject) in the concerned Nagar Palika shall remain subject to final outcome of the writ petition. However, the respondent authorities without observing the said order cancelled the whole selection process pertaining to recruitment of Assistant Teacher by issuance of order dated 19.7.2024 (Annexure A).

10. The Hon'ble Apex Court in the matter of ***Dinesh Kumar Kashyap and others*** (supra) held in paras 5 & 6 of its judgment as under:

"5. The main issue which arises before us is whether SECR could have ignored the 20 per cent extra panel despite the letter dated 2-7-2008 without giving any cogent reason for the same. No doubt, it is true, that mere

selection does not give any vested right to the selected candidate to be appointed. At the same time when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the court as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily. No doubt, it is not incumbent upon the employer to fill all the posts but it must give reasons and satisfy the court that it had some grounds for not appointing the candidates who found place in the replacement panel. In this behalf we may make reference to the judgment of this Court in R.S. Mittal v. Union of India 1995 Supp (2) SCC 230, wherein it was held as follows: (SCC p. 234. para 10)

> "10.... It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

> 6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination, etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. It is in the light of these principles that we need to examine the contentions of SECR.

11. This Court also in the matter of ***Gavendra Kumar and others*** (supra) observed in para 16 of its order as under:

> "16. Another aspect which cannot be loose sight of is that the order dtaed 22/05/2014 seems to have been passed keeping in view the earlier order dated 25/04/2014 which was passed by the Panchayat and Rural

Development Department of the State Government. The said order dated 22/05/2014 and the 25/04/2014 Annexure P-7 & P-8 with the writ petition make things more clear that the order dated 25/04/2014 was one which has been issued dealing with the Panchayat and Rural Development Department. The factual situations which is prevailing in the Panchayat and Rural Development Department is entirely different than which is prevailing in the schools run by the local bodies. Moreover, very issuance of the order dated 22/05/2014 was based on order issued by the Panchayat and Rural Development Department itself seems to be without taking into consideration the ground realities and the factual data that was available in the schools run by the local bodies. Coupled with the fact that the stand of the State Government or the respondent NO. 2 in the issuance of the order dated 29/11/2014 seems to be hit by the Principle of the discrimination and as such violative of Article 14 for the reason that the appointment made from the same recruitment process Annexure P-2, P-3 & P-9 have not been cancelled, whereas it is only the appointment of the petitioners made vide Annexure P-4 dated 15/10/2014 which has been cancelled. No justification whatsoever has been provided either in the pleadings of the respondent or in the submissions which have been made by the learned State counsel for restricting the cancellation of appointment only that of the petitioners. What also is to be borne in mind is that the orders of appointment issued in respect of the similarly placed persons are both which have been issued prior to the issuance of the appointment to the petitioners and there are also orders which have been issued subsequent to the appointment orders being issued to the petitioners and appointment orders both were issued

prior to the subsequent to the order of State Government dated 22/05/2014. If the stand which the State Government has taken of there being enough teachers available then the subsequent appointment order dated 28/07/2014 also ought to had been cancelled. Having not done so and permitting the other teachers /Assistant Teachers to work clearly reflects that the impugned order is discriminatory and is therefore not sustainable.

12. Again this Court in the matter of ***Sudhir Rajpal and others*** (supra) observed in para 9 of its order as under:

"9. The contention of the State that since in four colleges different pay-scale is given and therefore, the anomaly exists it is for the State to resolve the issue. The petitioners who are selected after due process by the PSC cannot be deprived for the reason that in respect of the different colleges different pay- scale is given in departmental papers of the State. In any case, the petitioners cannot be deprived of their right as prescribed under the Rules, 2013 and there cannot be a estoppal against the law as the Rules, 2013 are made under Statute. Furthermore, for the reason that some clarification inter se correspondence are being made in between the State department, the right of the petitioners cannot be shelved and kept in abeyance for the time immemorial as the facts would suggest that the procedure of selection was completed in the year 2014 and except petitioners others were selected. Under these circumstances, the reasons for delay in issuance of appointment letters to the petitioners who were duly selected cannot be further arrested for the internal overlapping of facts and want of clarity of State the

> petitioners cannot be made sufferers. Therefore, it is directed that the State shall issue the appointment letters to the petitioners within a period of 30 days from the date of receipt of the copy of this order and the petitioners shall be allowed to join at the pay-scale which is payable to them according to the Rules. In the meanwhile, the anomaly which is existing according to the State at their end may be rectified by suitable amendment to the Rule, if so advised."

13. In the present case also, the petitioners were selected vide Annexure P/2 by the respondent authorities for the post of Assistant Teacher and their names appear at Sl.No.1, 2 & 3 in the final select list. This Court also vide order dated 5.8.2014 directed for some reservation and further on 24.4.2024 directed the the Director, Urban Administration and Development, Raipur to file affidavit whether selection of the petitioners was according to the Rules and if they are selected strictly on merits in accordance with the Rules why they were not issued appointment orders. After a considerable period of 10 years, the whole selection process in respect of recruitment to the post of Assistant Teacher has been cancelled by order dated 19.7.2024 (Annexure A). It is an admitted position in this case that the selection process was completed in the year 2014 itself but no appointment order was issued in favour of the petitioners as per the final select list. In these circumstances, the reasons for delay in issuance of appointment letters to the petitioner who were duly selected, cannot be further arrested for the internal overlapping of facts and want of clarity

of State, the petitioners cannot be made sufferers.

14. In light of above guidelines of the Hon'ble Supreme Court and the orders passed by this Court, the respondent authorities are directed to issue appointment letters to the petitioners within a period of 45 days from the date of receipt of copy of this order and the petitioners shall be allowed to join at the pay scale which is payable to them according to the Rules. However, it is made clear that the petitioners shall not be entitled for any payment from the date of selection as appointment letters were not issued on the principle of "no work, no pay".

15. With the aforesaid observations, the writ petition stands disposed of.

Sd/
(Rajani Dubey)
Judge

MOHD AKHTAR KHAN
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