

(2023) 11 CHH CK 0056
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4032, 5048 Of 2015

Mamta Kaushik

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 22-11-2023

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 85(1)

Citation : (2023) 11 CHH CK 0056

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : H.B. Agrawal, Shashi Kumar Kushwaha, Mateen Siddiqui, Yashwant Thakur, Diksha Gouraha

Final Decision : Dismissed

Judgement

1. The petitioners in WPS No. 4032/2015 have filed the petition seeking for the following reliefs:

(i) That, this Hon'ble Court may kindly be pleased to call for the entire record concerning the case of the petitioners from the concerned authority for its kind perusal.

(ii) That this Hon'ble Court may kindly be pleased to issue appropriate writ directing respondent/State to consider the candidature of the petitioners for appointment on the post of Shikshakarmi Grade-III (Arts/Science) as per their position in the merit list and further, to issue appointment order to the petitioners within a stipulated time period.

(iii) Any other relief or relief(s) which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case also be granted.

2. Similarly, the petition WPS No. 5048/2015 has been filed by the petitioners seeking for the following reliefs:

(i) That, this Hon'ble Court may kindly be pleased to consider the case of the

petitioners for appointment on the post of Shiksha Karmi Grade-III (Arts/ Science) as per merit list and further to issue appointment order, in the interest of justice.

(ii) That, the order dated 22.09.2014 (Annexure P/7) passed by the Chief Executive Officer, Jila Panchayat may also be quashed.

(iii) Any other relief which this Hon'ble Court deems fit and proper may also be passed in favour of the petitioners together with cost of the petition."

3. Brief facts of the case as projected by the petitioners in WPS No. 4032/2015 are that the petitioners had earlier filed writ petitions before this Hon'ble Court being aggrieved by the order dated 22.02.2011 of the Collector, Korba whereby the Collector exercising his jurisdiction under the provisions of Section 85(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in short "the Act") cancelled the counseling and selection process for appointment on the post of Shiksha Karmi Grade-III in Janpad Panchayat Pali, District Korba. The petitioners were the candidates who had appeared in the said counseling and even got selected and served with appointment orders and some of them even joined their duties pursuant to that. Since the issue involved in all these petitions was similar, this Hon'ble Court heard all the writ petitions analogously and allowed the same by a common order dated 29.04.2011. Relevant paras of the said order are quoted below for ready reference:

"3. The undisputable facts, in brief, are that the petitioners participated in the selection process and in the counselling held on 05.02.2011 and 07.02.2011. Thereafter, the petitioners were appointed. The Collector, Korba, thereafter, passed the impugned order dated 22.02.2011 cancelling the selection process and the counselling as aforestated. On the basis of the impugned order dated 22.02.2011, the services of the petitioners, who were duly appointed after selection and counselling were terminated. Then, the impugned order dated 22.02.2011 was subsequently modified by the order dated 06.04.2011 to the effect of suspending the selection process and the counselling on 05.02.2011 and 07.02.2011 in lieu of cancellation of the selection and counselling as aforestated in exercise of power conferred under Section 85(1) of the Adhiniyam, 1993.

4. Learned counsel appearing for the State submits that the order dated 22.02.2011 has been recalled and the order dated 6.4.2011 has been passed where instead of cancellation of the appointment order, the counselling and selection process has been suspended by the Collector.

5. In view of the fact that since the order dated 22.02.2011 has been modified to the extent of recalling cancellation of the selection process and the counselling by suspending the same by order dated 06.04.2011, no order passed on the basis of order dated 22.02.2011 can sustain in the eyes of law. As a sequel, the order of termination passed against the petitioners stand cancelled.

6. Accordingly, it is not necessary to go into the nature and validity of the order

dated 06.04.2011, as the same is not under challenge in the petition.

7. Resultantly, the writ petitions are allowed to the extent indicated above. No order as to costs."

4. As the Collector, Korba passed the order dated 06.04.2011 by which instead of cancellation of the appointment orders, the counselling and selection process was suspended and the Hon'ble Court while passing the order dated 29.04.2011 also observed that the validity of the order dated 06.04.2011 is not being considered for want of challenge to the same in the petitions. Being aggrieved by the said order dated 06.04.2011 and also the order dated 07.04.2011 issued by the Director, Panchayat and Rural Development, certain writ petitions were filed before this Hon'ble Court, one of them being WPS No. 2548/11 (Mamta Kaushik Vs. State of Chhattisgarh and others). All these writ petitions were analogously heard and a common order dated 21.03.2013 was passed by this Hon'ble Court dismissing all the writ petitions.

5. Being aggrieved by the aforesaid order dated 21.03.2013 of the Hon'ble Single Judge, several writ appeals were filed before the Hon'ble Division Bench, one of them being WA No. 329/2013 (Mamta Kaushik Vs. State of CG and others). All these appeals were heard together by the Hon'ble Division Bench and a common judgment dated 19.07.2013 was passed dismissing the appeals with the following observations:

"8. In the enquiry, it was found that no merit list was made and the appointments were made without considering the merit list. It is on this basis, the Collector passed the order under Section 85(1) of the Act suspending the counselling and it has been confirmed by the Director on 7.4.2011.

9. The single judge after considering the enquiry report, has recorded a finding that neither any merit list was made nor appointments were made on merit. There is no illegality in the finding of the single judge.

10. In view of above, the order of the Collector under section 85(1) of the Act and its confirmation by the Director cannot be faulted. The appeals have no merit.

11. Nevertheless, in case, the rule permits and if there is any merit list available, it is always open to the Respondents to do the counselling and make the appointments on merit in accordance with law."

6. A representation was also made before the Commissioner, Bilaspur Division, thereby requesting, inter alia, that nothing has been done by the authorities even after lapse of one year. Vide letter dated 22.09.2014 the office of the Divisional Commissioner, Bilaspur directed the Collector, Korba to submit the information regarding selection process of Shiksha Karmi, 2011 in Janpad Panchayat, Pali, District Korba. Vide letter dated 22.09.2014, Chief Executive Officer, Zila Panchayat Korba informed the Divisional Commissioner, Bilaspur, inter alia, that the order of the Collector, Korba under the provisions of Section 85(1) of the Act and the order of the Director, Panchayat and Rural Development,

are correct and the appeal of the Shiksha Karmis has no merit. It was further mentioned that if the rule permits and the merit list is available, then the authorities on merit can proceed for appointment. It was also mentioned that as per letter dated 25.04.2014 issued by the Director, Panchayat and Rural Development, State of Chhattisgarh, there is ban on appointment of Shiksha Karmi Grade-II and III. However, the case of the petitioners is still pending consideration before the respondent authorities and they are not sitting idle for the reasons best known to them, hence this petition.

7. Learned counsel for the petitioners submits that the action of the respondent authorities in not taking any action on the representation of the petitioners smacks of arbitrariness and malafide. As per judgment dated 19.07.2013 the Division Bench of this Hon'ble Court while disposing of the writ appeals had made it clear that if the rule permits and there is any merit list, the respondent authorities to do the counselling and make appointments on merit. However, the respondent authorities despite being aware of the order of this Court not acting in accordance with law. In the letter dated 22.09.2014 (Annexure P/8) sent by the Chief Executive Officer, Zila Panchayat, Korba to the Divisional Commissioner, Bilaspur, it was mentioned that as per direction issued on 25.04.2014 there is ban on appointment of Shiksha Karmi Grade-II and III and it was also observed that as per merit list, appointment is to be made. Therefore, it is apparent that the authorities at the level of Chief Executive Officer, Zila Panchayat, Korba and the Collector, Korba are keen to proceed ahead in consonance with the observations made by this Court in its judgment dated 19.07.2013, but due to ban on such recruitment, they could not have proceeded further. He further submits that the petitioners duly appeared in the selection process conducted by the C.G. Professional Examination Board and their names appear in the merit list (Annexure P/9). It is thus apparent that the merit list is available and therefore, the authorities cannot be allowed to sit silent for long. Petitioner No.1 also obtained certain documents under Right to Information Act that in the year 2011 there were 126 posts of Shiksha Karmi Grade-III in Janpad Panchayat, Pali and even as on 28.08.2014, there are 151 posts lying vacant in Janpad Panchayat, Pali (Annexure P/10), therefore, the respondent/State cannot take the plea that the posts are not lying vacant. In support of his contention, he placed reliance on the order passed by this Court in the matter of "Ku. Ruchi Sahu v. State of Chhattisgarh & others" WPS No. 1818 of 2015, decided on 03.02.2017.

8. Learned counsel for the respondents strongly opposed the prayer of the petitioners and submits that it is a settled law that a selected candidate has no right for appointment. The petitioners were candidates for the post of Shiksha Karmi Grade-III against an advertisement issued by the Janpad Panchayat Pali, District Korba. No select list was issued for the concerned selection process, however, 175 candidates were issued with appointment orders instead against 126 posts advertised. Thus, the entire selection process suffered from vice of arbitrariness and corruption. The petitioners who were only candidates in the selection process cannot claim appointment to a post. The Division Bench of this

Court had directed the Zila Panchayat and Janpad Panchayat to do counseling and make appointment. The Division Bench had not conferred any right on the petitioners to claim appointment. Thus, the issues raised in the present petition is no more res integra. The present writ petition suffers from res judicata, therefore, is not maintainable. The Division Bench had left it to the discretion of the respondents Zila Panchayat and Janpad Panchayat to do the counseling and make the appointments, therefore, it was for the concerned Zila Panchayat and Janpad Panchayat to make the appointments. No liberty was granted to the petitioners to make a representation to the authorities for seeking appointment, the petitioners cannot claim for appointment. On 22.05.2014 the State Government had issued a ban in the appointment of Shiksha Karmi Grade-II and III and there is no vacant post for the petitioners to be appointed on the post of Shiksha Karmi Grade-III, therefore, this petition is without any merit and liable to be dismissed.

9. I have heard the contentions put forth by learned counsel for the parties and perused the materials available on the record.

10. It is not disputed that the petitioners had filed previous writ petitions and writ appeals. The Division Bench of this Court while disposing WA No. 329/2013 on 19.07.2013 observed in para 8 to 11 as under:

"8. In the enquiry, it was found that no merit list was made and the appointments were made without considering the merit list. It is on this basis, the Collector passed the order under Section 85(1) of the Act suspending the counselling and it has been confirmed by the Director on 7.4.2011.

9. The single judge after considering the enquiry report, has recorded a finding that neither any merit list was made nor appointments were made on merit. There is no illegality in the finding of the single judge.

10. In view of above, the order of the Collector under section 85(1) of the Act and its confirmation by the Director cannot be faulted. The appeals have no merit.

11. Nevertheless, in case, the rule permits and if there is any merit list available, it is always open to the Respondents to do the counselling and make the appointments on merit in accordance with law."

11. In view of the above, it is clear that the appeals are dismissed by this Court, however this Court observed that if rule permits and if there is any merit list available, it is always open to the respondents to do the counseling and make the appointment on merits in accordance with law. It is clear from para 8 that in the enquiry, it was found that no merit list was made and the appointments were made without considering the merit list. It is clear from the order of this Court that there was no direction to the respondents for counseling. Only liberty granted in favour of the respondents to do counseling and make appointment as per their discretion, therefore, it was for the concerned Zila Panchayat and Janpad Panchayat to follow the observation of this Court or not.

12. During the course of argument, it is also submitted by both the parties that after 2018 all posts of Shiksha Karmi of Panchayat Department were merged to School Education Department. As per the petitioners' submission, in the year 2014, total 151 posts of Shiksha Karmi were lying vacant in Janpad Panchayat Pali, but now it is not clear from all the documents.

13. Looking to the aforesaid facts and circumstances of the case and looking to the previous order passed by this Court, it is clear that previous petitions filed by the petitioners were dismissed by this Court and petitioners have no right in their favour only on the basis of para 11 of the order passed by this Court in WA No. 329/2013. Accordingly, both these petitions having no merit, liable to be and are hereby dismissed.