
(2011) 01 CHH CK 0027
In the Chhattisgarh High Court
Case No : Writ Appeal No. 158 of 2010

Sandeep Kumar Shrivastava

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Citation : (2011) 1 CGBCLJ 104

Hon'ble Judges : Rangnath Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Advocate : Jitendra Pali, for the Appellant; Kishore Bhaduri, A.A.G. for State and Shri Akhilesh Kumar, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Rangnath Chandrakar, J.—This writ appeal is directed against the order dated 30th March, 2010 (Annexure A/1) passed by learned Single Judge in WP (s) No. 5568/2008 whereby the petitioner's writ petition against the order dated 25.8.2008 passed by the Collector, Durg, canceling his appointment on the post of Shikshakarmi Grade-III, has been dismissed. The appellant was appointed as Shikshakarmi Grade-III on 20.7.2007 for a probation period of three years by Janpad Panchayat, Nawagarh. He was served with a show cause notice dated 16.2.2008 and asked to explain the allegation of submitting fake documents. He denied the allegation and claimed that the alleged documents are not fake, and the same are genuine and bona fide documents. The District Education Officer (DEO) came to the conclusion that there is no mention of experience certificate in the records and as such, the experience certificate was a fake document. The matter was referred to the Collector. The Collector, after considering all the aspects of the matter, vide his order dated 25.8.2008 concluded that the experience certificate issued in favour of the petitioner was a bona fide and genuine fiqs document as the Block Education Officer as certified about the experience of teaching of the petitioner. However, his appointment was cancelled on the ground that he does not have minimum eight months" teaching

experience.

2. The writ petition against the above order has been again dismissed by the impugned order with an observation that "However, it is made clear that If any candidate is appointed without fulfilling the requisite qualifications, his case may be considered, decided after passing appropriate orders, in accordance with law."

3. Shri Jitendra Pali, learned counsel for the appellant submits that the appellant was awarded 5 marks on the basis of experience certificate. Even if this bonus marks are deducted, the appellant would have been selected as Shikshakarmi Grade-III, and several others are still working as Shikshakarmis, who have secured lesser marks than the appellant. The appellant's appointment could not have been cancelled only on the ground that he has been awarded 5 marks for teaching experience for a period of five months as it was none of the faults on the part of the appellant in awarding marks.

Referring to the counter affidavit filed by the Janpad Panchayat, Nawagarh in compliance of the Court's order dated 14.6.2010, it was argued that if 5 marks awarded to the appellant towards teaching experience are deducted, in that case, he would have secured 54.49%, whereas in the merit list, the other candidates, namely Ramniwas Singh Rajput and Bhuvneshwar Prasad Shukla, who secured 54.34% and 54.21% respectively, and placed at SI- No. 172 and 181, have been appointed under the "Unreserved Category".

4. On the other hand, Shri Kishore Bhaduri, learned Addl. Advocate General for the State and Shri Akhilesh Kumar, learned counsel appearing for respondent No-3-Janpad Panchayat, Nawagarh, would argue that the appellant's appointment has been cancelled at the same was procured on the basis of certificate of five months" teaching experience, which was never issued from the office of DEO, as the minimum teaching experience of eight months was necessary for awarding 5 bonus marks. Methods of selections and recruitment are provided under Rule 5 of the Chhattisgarh Panchayat Shikshakarmis (Recruitment and Condition of Service) Rules. 1997 (in short "the Rules, 1997"). Sub-rule (9) of Rule 5 provides that 70% marks of the total marks obtained by the candidate in the qualifying examination specified in Schedule-11; maximum 12 marks for teaching experience; 2.5 marks for certificate of Scout and Guide/ NCC; and 4.5 marks for sports, are to be awarded by the Evaluation Committee after scrutiny of the applications of the candidates. Since the appellant did not have the requisite teaching experience, no marks could be awarded to him for the same and he was not eligible for recruitment on the post of Shikshakarmi Grade-III.

5. Heard learned counsel for the parties.

6. The conditions of eligibility for direct recruitment and promotion on the post of Shikshakarmi Grade-I, II & III, are provided in Schedule-11 made under Rule 2(c) and Rule 5 of the Rules, 1997. The eligibility criteria for recruitment on the post of Shikshakarmi Grade-III have been prescribed as Higher Secondary

Certificate Examination. There are no other eligibility criteria, such as teaching experience, prescribed under the Rules, 1997. In view of the admitted premises that even if 5 marks awarded to the appellant towards teaching experience are deducted, he obtained more marks than two other candidates of General Category, who have been selected and whose names appear at SI. No. 172 and 181 in the select list, we are of opinion that the appellant's appointment could not be cancelled by the Collector vide order dated 25.8-2008 on the ground that he did not have the minimum eight months' teaching experience.

7. On the basis of aforesaid discussions, we are of the opinion that the learned Single Judge was not Justified in dismissing the writ petition by the impugned order. Consequently, we allow this writ appeal, set aside the order dated 25.8.2008 (Annexure P/1) of the Collector, Durg and the impugned order dated 30th March, 2010 (Annexure A/1) passed by the learned Single Judge. We direct the respondents to re-consider the case of appointment of the appellant, after deciding his position in the merit list of the selected candidates, after deducting 5 bonus marks erroneously awarded to him towards teaching experience.

No order as to costs.