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SINGLE BENCH

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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

W.P.(S) No. 4787/2010

PETITIONER:

1. Vimlesh Kumar Sahu,
S/o Rohan Sahu
Aged- 22 years
R/o- Village & Post Devri
Block- Fingeshwar
Thana- Rajim,
District- Raipur
Chattisgarh

P.S. No. 5096/11
Presented by Sri. Mahesh
Dated 20-8-10

VERSUS

RESPONDENTS:

1. State of Chhattisgarh
Through Principal Secretary
Panchayat and Rural Development
Department, D.K.S. Bhawan
Mantralaya, Raipur (C.G.)
2. Chief Executive Officer
Janpad Panchayat
Basna
District- Mahasamund (C.G.)



PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
FOR ISSUANCE OF APPROPRIATE WRITS OF MANDAMUS AND
CEXTIORARI AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:

(3)

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (S) NO. 4522 OF 2009

PETITIONERS Rajeshwari Rathore & Another
Versus
RESPONDENTS State of Chhattisgarh & Others

WRIT PETITION (S) NO. 3847 OF 2009

PETITIONER Krishna Kumar Gajendra
Versus
RESPONDENTS State of Chhattisgarh & Others

WRIT PETITION (S) NO. 4628 OF 2009

PETITIONERS Bharat Lal Devangan & Others
Versus
RESPONDENTS State of Chhattisgarh & Others

WRIT PETITION (S) NO. 4632 OF 2009

PETITIONERS Dilip Kumar Choubey & Others
Versus
RESPONDENTS State of Chhattisgarh & Others

WRIT PETITION (S) NO. 4939 OF 2009

PETITIONERS Pawan Kumar Chandrakar & Others
Versus
RESPONDENTS State of Chhattisgarh & Others

WRIT PETITION (S) NO. 4941 OF 2009

PETITIONERS Ram Nath Sharma & Others
Versus
RESPONDENTS State of Chhattisgarh & Others

WRIT PETITION (S) NO. 6228 OF 2009

PETITIONER Murli Manohar Dubey
Versus
RESPONDENTS State of Chhattisgarh & Others

WRIT PETITION (S) NO. 6255 OF 2009PETITIONER

Shailesh Singh Somwanshi

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 6258 OF 2009PETITIONER

Mahendra Dubey

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 6704 OF 2009PETITIONER

Padma Dewangan

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 7426 OF 2009PETITIONER

Laxmi Kumar Dadsena

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 3299 OF 2010PETITIONERS

Anil Kumar Soni & Others

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 3598 OF 2010PETITIONER

Vijay Laxmi Sahu

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 3599 OF 2010PETITIONER

Krishna Kumar Gajendra

Versus

RESPONDENTS

State of Chhattisgarh & Others

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WRIT PETITION (S) NO. 3600 OF 2010PETITIONERS

Lokesh Kumar Sahu & Others

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 4779 OF 2010PETITIONERS

Thanwar Das Deckar & Another

Versus

RESPONDENTS

State of Chhattisgarh & Others

WRIT PETITION (S) NO. 4780 OF 2010PETITIONER

Mohammad Mustkim

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 4781 OF 2010PETITIONER

Rashmi Mishra

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 4782 OF 2010PETITIONERS

Govind Ram Sahu & Others

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 4783 OF 2010PETITIONER

Lakhan Lal Verma

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 4787 OF 2010PETITIONER

Vimlesh Kumar Sahu

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 433 OF 2011PETITIONERS

Pushpendra Sinha & Another

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 435 OF 2011PETITIONER

Tulsi Dewangan

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 436 OF 2011PETITIONER

Mahesh Kumar

Versus

RESPONDENTS

State of Chhattisgarh & Another

WRIT PETITION (S) NO. 437 OF 2011PETITIONER

Devesh Datt

Versus

RESPONDENTS

State of Chhattisgarh & Another

AND

WRIT PETITION (S) NO. 438 OF 2011PETITIONERS

Girish Kumar Sahu & Another

Versus

RESPONDENTS

State of Chhattisgarh & Another

(Writ Petitions under Article 226/227 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri K.R. Nair, Shri Jitendra Pali, Shri Mateen Siddiqui and Shri Varun Sharma, Advocates for the respective petitioners.

Shri Y.S. Thakur, Dy. Advocate General for the State & counsel for the respondent - Janpad Panchayat Pondi Uroda, Shri M.P.S. Bhatia, Shri Shrijit C.S. Nair, Shri Pawan Shrivastava and Shri Akhilesh Kumar, Advocates for the respective respondents.

(Delivered on this 28th day of February, 2011)

1. In W.P.(S) Nos. 4522, 3847, 4628, 4632, 4939, 4941, 6228, 6255, 6258, 6704 & 7426 of 2009, W.P. (S) Nos.3299, 3598, 3599, 3600, 4779, 4780, 4781, 4782, 4783 & 4787 of 2010 and W.P. (S) Nos.433, 435, 436, 437 & 438 of 2011, the common question of law is involved with identical facts, thus all the petitions are being disposed of by this common order.
2. For the purpose of disposal, facts in W.P. (S) No.4522 of 2009 are set out hererin. The petitioners, pursuant to the advertisements issued by the various Janpad Panchayats of the State of Chhattisgarh in the month of January, 2008, made applications for appointment on the post of Shiksha Karmi Grade – III. The examination was held in the month of April, 2008. The result of the examination was declared on 10-6-2008. All the petitioners were placed in the waiting list, but they could not be appointed on account of the fact that the validity of the list came to an end. Thus, these petitions.
3. In this batch of matters, the appointments in respect of Janpad Panchayats namely; Pondi Uproda & Pali (Korba), Mungeli (Bilaspur), Kharsiya (Raigarh), Gurur (Durg), Mainpur, Baloda Bazar & Abhanpur (Raipur), Kurud (Dhamtari), Basna (Mahasamund), Bhanuptrappur (Kanker) and Khairagarh (Rajnandgaon) are involved.
4. Shri Nair, learned counsel appearing for the petitioner in W.P. (S) No.3847 of 2009, Shri Pali & Shri Sharma, learned counsel appearing for the petitioners in W.P. (S) Nos.4522, 4628, 4632, 4939 & 4941 of 2009 and Shri Siddiqui, learned counsel appearing for the petitioners in W.P. (S) Nos.6228, 6255, 6258, 6704 & 7426 of 2009, W.P. (S) Nos.3299, 3598, 3599, 3600, 4779, 4780, 4781, 4782, 4783 & 4787 of 2010 and W.P. (S) Nos.433, 435, 436, 437 &

438 of 2011, would submit that as per clause 4.24, all the vacancies, which arose and were created on any ground during the selection process, ought to have been filled in within the validity period of initially one year later on, extended to thirteen months from the waiting list.

5. In the cases on hand, initially the period of validity of the select/waiting list by circular dated 30-5-2009 was extended for a period of three months i.e. till 31-8-2009 stating clearly that on account of enforcement of code of conduct in view of the assembly and lok sabha elections, it became necessary to extend the period of validity. Thereafter, the amendment was brought by notification dated 25-6-2009 wherein the "validity of "one year" provided under sub-clause (xi) of clause (g) of sub-rule (7) of Rule 6 of the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 2007 (for short "the Rules, 2007") was substituted by "thirteen months". Thus, the petitioners became entitled to be appointed even against the vacancies, whose were created or arose after the result was declared, during the selection process.
6. Learned counsel appearing for the petitioners would further submit that there is no dispute with regard to availability of vacancies. Thus, the respondent authorities may be directed to appoint the petitioners on the post of Shiksha Karmi Grade – III in the respective Janpad Panchayats as per the waiting list.
7. It was next contended that the respondent authorities cannot stop appointment of the select/waiting list candidates without explaining proper reasons on the ground that the candidates have no indefeasible right to appointment.

8. In support of this contention, learned counsel appearing for the petitioners placed reliance upon the decisions of the Supreme Court in *Gujarat State Dy. Executive Engineers' Association v. State of Gujarat and Others*¹, *Director, SCTI for Medical Science & Technology and Another v. M. Pushkaran*², *Bharat Sanchar Nigam Limited and Others v. Abhishek shukla and Another*³ and *Naseem Ahmad & Ors. v. State of U.P. & Anr.*⁴.
9. Learned counsel would also submit that the appointments have been made in other Janpad Panchayats even after 30-6-2009. Thus, the petitioners are entitled to similar treatment and equality at par with them.
10. On the other hand, Shri Thakur, learned Dy. Advocate General appearing for the State and Shri Bhatia, Shri Shrijit C.S. Nair, Shri Shrivastava & Shri Akhilesh Kumar, Advocates appearing for the respective respondents, would submit that the validity period of one year as provided in the Rules, 2007 could not have been extended till 31-8-2009 by executive circular dated 30-05-2009 and, as such, the same defect was cured by incorporating the amendment in Rule 6 of the Rules, 2007, whereunder the word "one year" was substituted by "thirteen months". Thus, the validity of the select/waiting list was upto 30-6-2009. The appointments could not be made, as after extending the period of the validity of select/waiting list, by notification dated 25-6-2009, the time left was only five days. It was not possible to verify the documents and hold counseling and thereafter, pass an order of appointment within five days and, as such, the vacancies could not be filled up. There is no dispute that vacancies available till 30-6-2009, became a part of

¹ 1994 Supp (2) SCC 591

² (2008) 1 SCC 448

³ (2009) 5 SCC 368

⁴ 2011 AIR SCW 133

the subsequent selection process. Consequently, an advertisement dated 3-10-2009 was issued for selection and appointment on the post of Shiksha Karmi Grade – III. The subsequent selection process has already been over and the appointments are being made in pursuance of the advertisement dated 3-10-2009.

11. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.
12. There is no dispute that the petitioners were placed in the waiting list. Clause 4.24 of the advertisement also provides for making appointments on all the posts, which were available within the period of validity of waiting list. Clause 4.24 reads as under :

"4.24 संपूर्ण प्रतीक्षा सूची सहित चयन सूची परीक्षा परिणाम घोषित होने के एक वर्ष तक के लिये वैध होगी तथा इस अवधि में नये पदों की स्वीकृति या किसी भी कारण से हुए रिक्त पदों की भर्ती इस प्रतीक्षा सूची से की जा सकेगी।"

The aforesaid fact is not disputed by the respondents also.

13. By executive instructions dated 30-5-2009, the period of validity was extended till 30-8-2009, but the same was not legally permissible. The validity of the select/waiting list was prescribed in Rule 6 of the Rules, 2007. The same could have been altered, amended or substituted only by way of amendment in the Rules, 2007 which was done, thereafter, by notification dated 25-6-2009.

The notification dated 25-6-2009 reads as under :

"No./764/P/PGVV/22/2009.- In exercise of the powers conferred by sub-section (1) of section 95 read with sub-section 70 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (No.1 of 1994), the State Government hereby makes the following amendment in the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules 2007, namely"



AMENDMENTS

In the said rule:-

In sub-clause (xi) of clause (g) of sub-rule (7) of rule 6, for the words "One year" the words "Thirteen Months" shall be substituted"

The petitioners could not claim any right on the basis of executive instructions dated 30-5-2009. Thus, it is held that the select/waiting list was valid up to 30-6-2009 only.

14. The last contention of the petitioners is that in other Janpad Panchayats, several appointments have been made beyond the period of validity of waiting list. On the basis of such appointments, the petitioner cannot claim parity or relief. It is a trite law that equality cannot be claimed negatively, if certain illegal appointments have been made, the same benefit cannot be extended to other persons also.
15. The fact of certain appointments in other Janpad Panchayats is not in dispute, but the petitioners cannot be granted the same benefit wherein the illegal appointments have been made beyond the period of validity of the list.
16. This Court in *Sanjay Patil v. State of Chhattisgarh & Another*⁵, while dealing with similar issue observed that "*if the State Government has regularized some of the daily wagers, not appointed in accordance with the constitutional scheme of employment, this Court cannot issue a positive direction to legalise the illegal appointment on the ground that certain illegal appointments have been legalized/regularized by the employer.*" (See *Panchi Devi v.*

⁵ WP (S) No.5845 of 2009 decided on 9-10-2009

*State of Rajasthan*⁶ & *Ghulam Rasool Lone v. State of Jammu and Kashmir and Another*⁷).

17. The vacancies existing on or before 30-6-2009 were taken into consideration in the subsequent selection process for which an advertisement was issued and the selection process has been completed by the respondents. Even otherwise, no direction can be issued to the respondent authorities to appoint the petitioners, against the subsequent vacancies.
18. The Supreme Court in *State of M.P. and Others v. Sanjay Kumar Pathak and Others*⁸, observed as under :

"18.....Even where, it is trite, the names of the persons appeared in the select list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or mala fide. The State, thus, subject to acting bona fide as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India, is entitled to take a decision not to employ any selected (*sic* candidate) even from amongst the Select List....."

19. The Supreme Court in *Rakhi Ray and Others v. High Court of Delhi and Others*⁹, observed as under :

"24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment."

⁶ (2009) 2 SCC 589

⁷ (2009) 15 SCC 321

⁸ (2008) 1 SCC 456

⁹ (2010) 2 SCC 637

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20. In *Shankarsan Dash v. Union of India*¹⁰, the Supreme Court observed as under :

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, *Neelima Shangla v. State of Haryana* or *Jatendra Kumar v. State of Punjab*."

21. The Supreme Court in *Asha Kaul (Mrs.) and Another v. State of Jammu and Kashmir and Others*¹¹, observed as under :

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (*State of Haryana v. Subhash Chandra Marwaha*, *Mani Subrat Jain v. State of Haryana*, *State of Kerala v. A. Lakshmikutty*) but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/ request to the commission to select a particular

¹⁰ (1991) 3 SCC 47

¹¹ (1993) 2 SCC 573

number of candidates for a particular category, -- in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government-the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment....."

22. The Supreme Court in *Gujarat State Dy. Executive Engineers'*

Association (supra) observed as under :

"8. Coming to the next issue, the first question is what is a waiting list ?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary ?; and lastly how long can it operate ? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in

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the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons."

23. In *Director, SCTI for Medical Science & Technology* (supra), cited by the learned counsel appearing for the petitioners, the Supreme Court observed as under :

"11. The law operating in the field in this behalf is neither in doubt nor in dispute. Only because the name of a person appears in the select list, the same by itself may not be a ground for offering him an appointment. A person in the select list does not have any legal right in this behalf. The selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State...."

"16. It is, therefore, evident that whereas the selectee as such has no legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. Each case, therefore, must be considered on its own merit."

24. The Supreme Court in *Bharat Sanchar Nigam Limited* (supra), observed as under :

"17. We, therefore, do not find any error in the impugned judgments. We are, however, not oblivious of the fact that ordinarily the life of such a

panel is one year as has been observed by this Court in *Girdhar Kumar Dadhich v. State of Rajasthan*. However, the select list was approved by the appellant only in August 2003 and the respondents having made representations within one year therefrom in our opinion, the said requirement also stands satisfied in the instant case. Moreover, such a question had not ever been raised before the courts below. Had such a question been raised, the respondent could have dealt with the same. (See *Amlan Jyoti Borooah v. State of Assam*)."

25. The decision of the Supreme Court in *Naseem Ahmad* (supra), cited by the learned counsel appearing for the petitioners, may not be applicable to the facts of the present case because in that case the appellants were appointed within one year of the declaration of the result. Thereafter, subsequently by order dated 19-9-2003 it was provided that only the appointments made after 19-9-2001 were ad hoc. The Supreme Court held that since all the appellants were appointed within one year and, as such, they cannot be held as ad hoc. However, in that case Rule 12 governing the validity did not provide any time limit. Thus, it was held as under :

"11.....As long as the wait list was not exhausted, a fresh list could not be prepared under Rule 12 and the process initiated by the respondents for advertising fresh posts and canceling the wait list by making it as ad hoc is against the provisions of the Rules."

In the cases on hand, the validity period is prescribed in the Rules, 2007 itself, thus, *Naseem Ahmad* (supra) is distinguishable on the facts of the present cases.

26. It is true that the appointment of the candidates cannot be denied on the basis that the candidates, who are in the select/waiting list have no indefeasible right to appointment. Denial of appointment should not be unfair, unreasonable or *mala fide*.



27. On considering the above-stated facts, which have been proved that the appointments could not be made on account of genuine and fair difficulties. Thus, it cannot be held that the appointment was not made on account of unfair, unreasonable or *mala fide* reasons.
28. Applying the well settled principles of law to the facts of the cases on hand and for the reasons mentioned hereinabove, all the writ petitions, being bereft of merit, are liable to be and are hereby dismissed.
29. There shall be no order asto costs.

Gowri

**Sd/-
S.K.Agnihotri
Judge**