

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1436 of 2015**

Harnarayan Yadav, aged about 42 years, S/o Shri Tanaram Yadav, R/o Nayaganj Road, Sanjay Ward, Bhatapara, Post Office and Thana-Bhatapara, District-Balodabazar Bhatapara (CG)

---Petitioner**Versus**

1. Chhattisgarh Public Service Commission, Raipur through Secretary, Chhattisgarh Public Service Commission, Shankar Nagar Road, Bhagat Singh Chowk, Raipur, District Raipur (CG)
2. State of Chhattisgarh through Chief Secretary, Law and Legislative Department, Mantralaya, Naya Raipur, District Raipur (CG)

---Respondents

For Petitioner	:	Harnarayan Yadav, petitioner-in-person
For Respondent No.1	:	Mr.B.D.Guru, Advocate
For Respondent No.2	:	Mr.Y.S.Thakur, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****19/04/2017**

1. The short question involved in the present writ petition is whether the petitioner is entitled for age relaxation in terms of clause (iv) (c) of the advertisement dated 26.2.2014 (Annexure P/15) for the post of Civil Judge (Entry Level) Examination 2014.
2. The essential facts imperative to answer the above-stated question are as under:-
 - 2.1 The petitioner was appointed as Shiksha Karmi Grade-III (now re-designated as Assistant Teacher Panchayat) by order of the Chief Executive Officer, Janpad Panchayat, Bhatapara dated

10.7.2008 (Annexure P/9) under the C.G. Panchayat Shiksha Karmi (Recruitment and Conditions of Services) Rules, 2007 (hereinafter called as "Rules of 2007") as amended from time to time for a period of two years. It was further submitted that in the order of appointment it has been mentioned that his appointment is being made for the schools owned by School Education and the schools maintained by Sarva Shiksha Abhiyan.

2.2 The petitioner pursuant to the advertisement issued by the Chhattisgarh Public Service Commission dated 26.2.2014 applied for the post of Civil Judge (Entry Level) Examinations 2014, in which he claimed age relaxation in terms of clause (iv) (c) of the advertisement dated 26.2.2014. He was allowed to appear in the written examination and he cleared pre & mains examinations, but ultimately at the time of interview, it was informed to him that he is over age and age relaxation available to the government servant for a period of further three years is not available to him as he is not a government servant being Shiksha Karmi Grade-III (Assistant Teacher Panchayat).

2.3 Being aggrieved and dissatisfied with the action of respondent No.1 herein/Chhattisgarh Public Service Commission declining him that he is not eligible to avail the age relaxation as per clause (iv) (c) of the advertisement filed this writ petition under Article 226 of the Constitution of India.

3. Mr.Harnarayan Yadav, petitioner-in-person would submit that government servant has neither defined in the advertisement nor in the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (hereinafter called as “Rules of 2006”), therefore, definition contained in Rule 15 of the Chhattisgarh Public Service Commission Rules (hereinafter called as “PSC Rules”) as well as definition contained in Rule 2 (a) (iii) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter called as “Rules of 1966”) would be applicable. He would further submit that after his appointment he has been placed at the disposal of the State Government in Government Primary School, Mopki, Tahsil Bhatapara, District Balodabazar and therefore, he is government servant and entitled for age relaxation in terms of clause (iv) (c) of the advertisement. He would place reliance upon the judgments of the Supreme Court in the matters of **Renu & Ors. Vs. District & Sessions Judge, Tis Hazari & Anr.**¹ (para. 16 and 18) and **State of Gujarat & Another Vs. Raman Lal Keshav Lal Soni and others**² (para. 26).

4. Mr.Y.S.Thakur, learned Deputy Advocate General appearing for respondent No.2, would submit that the petitioner has been appointed by the Chief Executive Officer, Janpad Panchayat, Bhatapara under the Rules of 2007 and his appointing, controlling and disciplinary authority is the Chief Executive Officer, Janpad Panchayat, Bhatapara. He would further submit

1 AIR 2014 SC 2175

2 (1983) 2 SCC 33

that under Section 70 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as "Act of 1993") every Panchayat is entitled to make an appointment of officers/servants with previous approval of the Prescribed Authority. He would also submit that the Rules of 2007 was promulgated under Section 70(1) of the Act of 1993 and that Rules were not framed in exercise of powers conferred under Article 309 of the Constitution of India. He contended that Shiksha Karmis/Assistant Teacher Panchayat are not appointed under the Rules framed under Article 309 of the Constitution of India and therefore, by no stretch of imagination they can be called as government servant and therefore, the plea raised in this behalf by the petitioner that he is government servant and entitled for age relaxation in terms of clause (iv) (c) of the advertisement is not sustainable. Therefore, the writ petition deserves to be dismissed.

5. Mr.B.D.Guru, learned counsel appearing for respondent No.1 while arguing in line of the argument raised by Mr.Yashwant Singh Thakur, would submit that definition contained in Section 2(a) (iii) of the Rules of 1966 would not be attracted and therefore, respondent No.1/Chhattisgarh Public Service Commission is absolutely justified in holding that the petitioner being not a government servant is not entitled for age relaxation prescribed for government servant. Therefore, the writ petition deserves to be dismissed.

6. I have heard learned counsel appearing for the parties,

considered their rival submissions made herein and also gone through the records with utmost circumspection.

7. As stated in opening paragraph of this order, the question for consideration would be whether the petitioner is entitled for age relaxation applicable to the government servant being Shiksha Karmi Grade-III (Assistant Teacher Panchayat).

8. It is not in dispute that the petitioner was appointed on the post of Shiksha Karmi Grade-III under the Rules of 2007 enacted under Section 70(1) read with Section 95 of the Act of 1993 and the said Rules were not framed in exercise of powers conferred under proviso to Article 309 of the Constitution of India. The petitioner was appointed on the said post by Janpad Panchayat, Bhatapara and his appointing as well as disciplinary authority is the Chief Executive Officer, Janpad Panchayat, Bhatapara and as such, administrative and disciplinary control vest in Janpad Panchayat, Bhatapara.

9. In order to decide the question whether Shiksha Karmi Grade-III is the government servant and entitled for age relaxation at par with the government servant, the Constitution Bench judgment in **State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and others**³ deserves to be noticed. In the aforesaid case, the Constitution Bench of the Supreme Court while considering the question whether members of Gujarat Panchayat Service are government servant laid down certain factors, which would indicate relationship of master and

3 (1980) 4 SCC 653

servant. It was observed as under:-

“27. We have to first consider the question whether the members of the Gnjarat Panchayat Service are Government Servants. Earlier we have already said enough to indicate our view that they are Government Servants. We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not.”

10. In the matter of **State of Gujarat Vs. Raman Lal Keshav Lal**⁴, the Constitution Bench of the Supreme Court has held as under:-

“14. The first question is whether the Panchayat Service constituted under the Panchayats Act is a civil service of the State. The expressions 'civil service' or 'civil post' are not formally defined. Entry 70 of List I of the Seventh Schedule to the Constitution refers to Union Public Services and All India Services, and Entry 41 of List II of that Schedule refers to State Public Services. Part XIV of the Constitution deals with services under the Union and the States. In Art. 309 of the Constitution, we find reference to persons appointed to public services and posts in connection with the affairs of the Union or of any State. Art. 310 of the Constitution distinguishes the defence service from the civil service when it refers to members of a 'defence service or of a civil service'. But all persons

4 (1980) 4 SCC 653

who are members of a defence service or of a civil service of the Union or of an all-India service or persons who hold any post connected with defence or any civil post under the Union are treated as persons serving the Union and every person who is a member of the civil service of a State or holds any civil post under a State is treated as a person serving a State. The factors which govern the determination of the question whether a person holds a civil post or is a member of civil service were considered by a Constitution Bench of this Court in *State of Assam v. Kanak Chandra Dutta*⁵ and Bachawat, J. speaking for the Bench observed thus :-

"There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 and 311. The heading and the subheading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

15. According to the above decision, the true test

for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wage and remuneration. It further held that the relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances. Applying these tests, this Court held that a Mauzadar in the Assam Valley who was engaged in the work of collection of land revenue and other Government dues and in the performance of certain other special duties was a person holding a civil post under the State. Following the above decision in *Superintendent of Post Offices v. P. K. Rajamma*⁶ this Court held that persons who were working as extra departmental agents of the Posts and Telegraphs Department were persons holding civil posts.”

11. Likewise, in the matter of **Union Public Service**

Commission Vs. Girish Jayanti Lal Vaghela and others⁷,

the Supreme Court held that Girish Yayanti Lal Vaghela was working on short term contract basis, he was not a Government servant and was not eligible for any relaxation in the upper age limit.

12. In the matter of **Union Public Service Commission Vs.**

Dr. Jamuna Kurup and others⁸ Their Lordships of the Supreme

Court while relying upon other two judgments of the Supreme

Court in **Roshan Lal Tandon Vs. Union of India**⁹ and **Dinesh**

Chandra Sangma Vs. State of Assam¹⁰ have held that

6 (1977) 3 SCC 94

7 (2006) 2 SCC 482

8 (2008) 11 SCC 10

9 AIR 1967 SC 1889

10 (1977) 4 SCC 441

employment under the Government is a matter of status and further held that contract employees of the Government were governed by the terms of contract and did not possess the status of government servants, nor were governed by the Rules framed under Article 309 of the Constitution, nor enjoyed the protection under Article 311 and further held that municipal employees are not government servants governed by Articles 309 to 311.

13. The High Court of Madhya Pradesh in the matter of **Arun Singh Bhadouriya Vs. State of M.P. and others**¹¹ while considering the case of Samvida Shala Shikshak Class II of Zila Panchayat has held that the petitioner is not a government servant and therefore, not entitled to claim age relaxation of upper age limit provided in Second Proviso to Rule 7 of the M.P. Lower Judicial Service (Recruitment & Conditions of Service) Rules, 1994.

14. Thereafter, in the matter of **Gajpalsingh Rathore Vs. State of M.P. and others**¹² the High Court of Madhya Pradesh has relied upon the matters of **Arun Singh Bhadouriya** (supra) and **Girish Jayantilal Vaghela** (supra) and held that that employee working as Shiksha Karmi on contractual basis is not a government employee.

15. Applying the principle of law laid down by the Supreme Court and the Madhya Pradesh High Court in the aforesaid

¹¹ 2009(2) M.P.H.T. 277 (DB)

¹² 2012(4) M.P.H.T. 542

judgments, if the facts of the present case are examined, it is quite apparent that the petitioner was appointed on the post of Shiksha Karmi Grade-III (now re-designated as Assistant Teacher Panchayat) under the Rules of 2007. The said Rules were promulgated under Section 70(1) read with Section 95 of the Act of 1993. That rules were not framed in exercise of powers conferred under proviso to Article 309 of the Constitution of India. It is also apparent that the petitioner was appointed on the post of Shiksha Karmi Grade-III by Janpad Panchayat, Bhatapara, his appointing as well as disciplinary authority is the Chief Executive Officer, Janpad Panchayat, Bhatapara and as such, full administrative and disciplinary control vest in Janpad Panchayat, Bhatapara. Merely because he has been placed under the disposal of school owned by the State Government, he cannot claim that he is a government servant. It is also not in dispute that the petitioner is not entitled for protection under Article 311 of the Constitution of India. Viewed from any angle, it cannot be held that the petitioner was appointed under the Rules promulgated under Article 309 of the Constitution of India and as such, the petitioner having been appointed by Janpad Panchayat, Bhatapara pursuant to the Rules framed under the Rules promulgated under Section 70(1) of the Act of 1993 and admittedly not entitled for protection under Article 311 of the Constitution of India. It cannot be held that the petitioner is government servant and is entitled for age relaxation.



16. In view of the above stated finding, the judgments cited by the petitioner-in-person are clearly inapplicable to the facts of the present case.

17. As a fallout and consequence of the aforesaid discussion, the writ petition is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-



HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB: Hon'ble Shri Justice Sanjay K. Agrawal)

Writ Petition (S) No.1436 of 2015**Petitioner**

Harnarayan Yadav

*Versus***Respondents**Chhattisgarh Public Service
Commission and another**Head-Note**

(English)

Shiksha Karmi appointed by Janpad Panchayat is not entitled for age relaxation at par with Government Servant.

(हिन्दी)

जनपद पंचायत द्वारा नियुक्त शिक्षाकर्मी सरकारी कर्मचारियों की तरह आयु में छूट प्राप्त करने की पात्रता नहीं रखता।

