

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (S) No.4097 of 2011

PETITIONERS: Girish Sharma & others
-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2996 of 2011

PETITIONER: Monika Uikey
-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2649 of 2011

PETITIONER: Punia Kumari Dhiwar
-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2651 of 2011

PETITIONER: Rajesh Kumar Raj Uike
-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2650 of 2011

PETITIONER: Rishi Kumar Morse
-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2654 of 2011

PETITIONER: Dayal Singh Rajput
-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2653 of 2011

PETITIONER: Smt. Preeti
-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3033 of 2011

PETITIONER: Bharosaram Nirmalkar

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3042 of 2011

PETITIONER: Natvarlal Nirgun

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3043 of 2011

PETITIONER: Dayaram

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3044 of 2011

PETITIONER: Anil Paikra

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2587 of 2011

PETITIONER: Durgesh Kumar Sahu

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2548 of 2011

PETITIONER: Mamta Kaushik

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2547 of 2011

PETITIONER: Savita Singh

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2599 of 2011

PETITIONER: Kiran Shriwas

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2588 of 2011

PETITIONER: Vinay Kumar Verma

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2592 of 2011

PETITIONER: Indramani Paikra

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2595 of 2011

PETITIONER: Santosh Kumar Patel

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2596 of 2011

PETITIONER: Nisha Singh

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2586 of 2011

PETITIONER: Yogendra Kumar Ghitode

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2541 of 2011

PETITIONER: Vinod Kumar Dewangan

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2590 of 2011

PETITIONER: Mohan Kumar

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2594 of 2011

PETITIONER: Yogita Singh

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2997 of 2011

PETITIONER: Ku. Aabha Kerketta

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.2998 of 2011

PETITIONER: Anita Maheshwari

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3285 of 2011

PETITIONER: Anita Kumari

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3381 of 2011

PETITIONER: Ravishankar Sonwani

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3391 of 2011

PETITIONER: Antaryami Vishal

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.491 of 2012

PETITIONER: Jai Kumar Toppo & others

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3506 of 2011

PETITIONER: Mahesh Singh Markam

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3065 of 2011

PETITIONER: Savita Mire

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3066 of 2011

PETITIONER: Raghvendra Kumar Namdev

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3067 of 2011

PETITIONER: Shankar Lal Khunte

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.6692 of 2011

PETITIONER: Dinesh Kumar Chandra

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3107 of 2011

PETITIONER: Dinesh Kumar

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3108 of 2011

PETITIONER: Mahendra Kumar Pathari

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Writ Petition (S) No.3109 of 2011

PETITIONER: Shanti Yadav

-Versus-

RESPONDENTS: State of Chhattisgarh & others

AND

Writ Petition (S) No.58 of 2013

PETITIONER: Pradeep Kumar Soni & another

-Versus-

RESPONDENTS: State of Chhattisgarh & others

Present:

Shri H.V. Sharma, Smt. Renu Kochar & Miss Meha Kumar, counsel for the petitioners.

Shri Yashwant Singh Thakur, Deputy Advocate General for the State.

ORAL ORDER
(21.3.2013)

PRASHANT KUMAR MISHRA, J.

1. In this batch of writ petitions, the petitioners have called in question the orders dated 6.4.2011 and 7.4.2011 passed by the Collector, Korba in exercise of powers under Section 85 (1) of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Act'). In some cases, the first order dated 22nd February, 2011 has been challenged and in some other cases, both the

orders i.e. the first order dated 22.2.2011 and the second order dated 6.4.2011 have been challenged. However, the issue falling for consideration being the same, as all the petitions arise from the impugned action/order of the Collector, Korba, whereby the execution/appointment of Shiksha Karmi Grade-III in Janpad Panchayat Pali, District Korba has been suspended, they have been heard together and are being disposed of by this common order.

2. There is no dispute about the fact that Janpad Panchayat Pali issued an advertisement for filling up 126 posts of Shiksha Karmi Grade-III and pursuant to the selection process, counselling was conducted on 5.2.2011 and 7.2.2011, however, instead of appointing 126 Shiksha Karmis in order of merit, the concerned Janpad Panchayat issued a letter of appointment in a random and indiscriminate manner without issuing any select list and without adhering to the merit and in the process, about 175 Shiksha Karmis were issued letter of appointment. When after allowing joining to 126 Shiksha Karmis, the remaining Shiksha Karmis were not allowed to join, there arose a furore leading to lodging of complaint on which the concerned Collector directed for enquiry through Zila Panchayat, Korba. The enquiry was conducted by a team of Dr. Lalit Shukla, Additional Commissioner, Tribal Development, Korba; Dr. A.K. Tapsi, Assistant Project Officer, Zila Panchayat, Korba and Shri J.L. Shandilya, Assistant Project Officer, Zila Panchayat.
3. Pursuant to the earlier enquiry by the CEO, Zila Panchayat, Korba and having found that mass irregularities have been committed in making appointments, the concerned Collector, by its order dated 22.2.2011 (Annexure-P/1) cancelled the counselling and the selection process. The said order was challenged in WP(S) No.1442/2011, as after the said order

(Annexure-P/1) appointments were cancelled. Since in the meanwhile, the second order dated 6.4.2011 was already issued and this Court found that in exercise of powers under Section 85 (1) of the Act, the Collector could not have cancelled the counselling, but could only have suspended the execution, the orders of termination were set aside. This Court did not go into the nature and validity of the order dated 6.4.2011, as the same was not under challenge in the earlier round of litigation. When after issuance of the second order dated 6.4.2011 the Shiksha Karmis were restrained from functioning, the present batch of writ petitions has been filed seeking quashment of the order dated 6.4.2011.

4. According to the petitioners, the order of appointment having already been executed, its execution could not have been suspended by the Collector. They would submit that the Collector has no power to review or revise the order of appointment or the counselling conducted by the Janpad Panchayat dehors the procedure prescribed under the CG Panchayat (Appeal & Revision) Rules, 1995 (for short 'the Rules, 1995'). Since under the said Rules, an opportunity of hearing was necessary before excising the powers of revision and the said opportunity having not been afforded to the petitioners, the impugned order is vitiated. Learned counsel have referred to Section 94 of the Act. It has also been urged that even if there were some irregularities, the entire list ought not to have been cancelled and that it is not a case of mass irregularities. It has also been argued that since the petitioners were already working, an opportunity of hearing was necessary, however, since the principles of natural justice have not been adhered, the impugned order deserves to be set aside.
5. On the other hand, learned Deputy Advocate General would submit that the enquiry report which found commission of mass irregularities has not been

challenged, therefore, the writ petitions deserve to be dismissed. He would submit that the Collector has not exercised the revisionary power but has only exercised the power under Section 85 (1) of the Act, therefore, the said power being administrative power, the Collector has acted within his jurisdiction to modify the earlier order.

6. Heard learned counsel for the parties.
7. On a perusal of the enquiry report, it would clearly appear that while conducting the counselling, the Janpad Panchayat has not adhered to the merit position of the candidates and instead, the appointment orders were issued as if the Janpad Panchayat is following the principle of first come first served. The petitioners have not filed any merit list or select list substantiating that in accordance with their merit they were entitled for appointment. It appears, as if the Janpad Panchayat organized a camp and issued letter of appointment without examining the percentage of marks secured by the candidates. In the absence of select list, it was not possible for the Janpad Panchayat to adhere to the merit. It is observed by the enquiry team that instead of issuing any letter of appointment on the basis of select list, separate letters of appointment to 176 persons were issued and although, an endorsement was made to demonstrate that copies of appointment order have been sent to the various authorities, but in fact the copies were never sent and at-least the Zila Panchayat has never received any order of appointment which was endorsed to it. It has also been mentioned that although the Block Education Officer had issued a letter dated 4.2.2011 for not issuing the appointment letter, the Janpad Panchayat ignored the said communication and proceeded to conduct counselling and issued appointment letters. Thus, there appears widespread and all pervasive illegalities and mischief committed by the Janpad Panchayat

which has vitiated the counselling.

8. In the matters of **Union of India and others Vs. O. Chakradhar** {(2002) 3 SCC 146) and **Krishan Yadav Vs. State of Haryana** {(1994) 4 SCC 165}, the principle regarding adherence to the principles of natural justice in the cases of mass irregularities has been laid down and further it has been held that if the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongly deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.
9. In the case in hand, the Janpad Panchayat seems to have never prepared a select list nor adhered to the merit and issued letter of appointment in a randomly organized counselling as if they are providing bounty to a candidate. When merit has altogether been ignored and the merit position of a candidate is not known, it is difficult to separate as to whose selection was valid and who has secured the employment in a wrongful manner. Therefore, even if individual notices have not been issued before suspending the execution of result of counselling i.e. the appointment, the Collector has not committed any violation of principles of natural justice.
10. Section 85 (1) of the Act empowers the Collector to suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized. The said power of Collector is administrative in nature as it is not directed against any particular person. If this power has been exercised by the Collector and subsequently it has been modified

on 6.4.2011, it cannot be said that the Collector was in-fact exercising its review power. The power under Section 85 (1) of the Act is also different than the power of suo motu revision conferred on an authority under Section 91 of the Act read with the Rules, 1995. Since the Collector has not exercised its revisionary power, there is no question of violation of Rule 5 which makes it obligatory on the revisionary authority to hear the other side before passing an order in revision.

11. In the opinion of this Court, in the obtaining facts of the case, the Collector has rightly exercised the power under Section 85 (1) of the Act and there was no illegality when the earlier order dated 22.2.2011 was modified because admittedly, under Section 85 (1) of the Act, the Collector has no power to cancel an order. It is also to be seen that by a communication dated 7.4.2011 (Annexure-P/4), the State Government, after carefully examining the entire record, has approved the order passed by the Collector and as such, the requirement of Section 85 (2) of the Act having also been complied with, the order of Collector dated 6.4.2011 cannot be faulted with on any count.

12. There appears to be no substance in these writ petitions, which fail and are hereby dismissed.

J U D G E

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