

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3257 of 2015**

Smt. Jaya Bai Verma Wd/o Late Arun Kuamr, Aged About 32 Years R/O Village Khaira, Post- Nandghat, Tehsil- Nawagarh, District- Bemetara, (Chhattisgarh) Present Address Village Amora, Post- Sambalpur, Tehsil - Nawagarh, Dist- Bemetara, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through : The Secretary, Panchayat And Welfare Department, Mahanadi Bhawan, New Raipur, (Chhattisgarh)
2. The Collector, Bemetara, District- Bemetara, (Chhattisgarh)
3. Chief Executive Officer, Janpad Panchayat, Nawagarh, District- Bemetara, (Chhattisgarh).
4. Office of The Project Director, District Gramin Development Agency, Dist- Bemetara, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr.R.S.Patel, Advocate
For Respondents	:	Mr. Yashwant Singh Thakur, Dy.Advocate
No.1 & 2/State		General with Mrs.Ashtha Shukla, Panel Lawyer
For respondent No.3	:	None present
& 4		

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****26/10/2015**

1. The moot question that arises for consideration is whether a person/candidate applying for a post, who is not having requisite educational qualification as per rules, is entitled for compassionate appointment de-hors the Rule applicable ?

2. Petitioner's husband namely Shri Arun Kumar while working as Shiksha Karmi Grade-III died in harness on 30.8.2010. The petitioner made an application for appointment on the post of Shiksha Karmi Grade-III on compassionate ground. Her application was not decided by the respondent No.3 right in time.

3. Thereafter, the petitioner filed writ petition being WP(s) No.289/2015. This Court by order dated 29.1.2015 directed respondent No.3 to consider the case of the petitioner in accordance with law within the time stipulated in the order. Thereafter, respondent No.3 by its order dated 12.5.2015 (Annexure P/13) rejected the application of the petitioner stating inter-alia that the petitioner did not possess requisite qualification for the post of Shiksha Karmi Grade-III (Assistant Teacher Panchayat) as she has only secured 41.20% marks in her Higher Secondary Examination and she also did not possess certificates of B.Ed/D.Ed and T.E.T. and as such, she is not entitled for compassionate appointment.

4. Questioning the order rejecting her claim for compassionate appointment, the petitioner herein has preferred this writ petition under Article 226 of the Constitution of India stating inter-alia that rejection of her application on such a ground is bad and unsustainable in law.

5. Notices were issued to the respondents, but no return has

been filed on behalf of the respondents.

6. Mr.R.S.Patel, learned counsel appearing for the petitioner would submit that application filed by the petitioner for compassionate appointment has been rejected on the ground, which is *per se* illegal and bad in law and as such, the petitioner is entitled for compassionate appointment.

7. Mr.Y.S. Thakur, learned Deputy Advocate General with Mrs.Astha Shuka, learned Panel Lawyer appearing on behalf of the State of Chhattisgarh/respondents No.1 and 2 would submit that the petitioner has applied of compassionate appointment for the post of Shiksha Karmi Grade-III, for which passing of Higher Secondary Examination with minimum of 50% marks along with certificates of B.Ed/D.Ed and T.E.T. is mandatory as per rules applicable for such appointment and in absence of minimum educational qualification, the petitioner is not entitled for compassionate appointment and she has rightly been refused compassionate appointment.

8. I have heard learned counsel appearing for the parties and perused the record with utmost circumspection.

9. It is not in dispute that husband of the petitioner while working as Shiksha Karmi Grade-III died in harness on 30.8.2010. The petitioner applied for the post of Shiksha Karmi Grade-III claiming that she has essential educational qualification for the

post of Shiksha Karmi Grade-III.

10. The Right to Children to Free and Compulsory Education Act, 2009 has been enacted to provide for free and compulsory education to all children of the age of six to fourteen years. Section 23 of the Act of 2009 provides for qualifications for appointment and terms and conditions of service of teachers and sub-section (1) of Section 23 provides that any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher. The National Council for Teacher Education Academic Authority in exercise of the powers conferred by sub-section (1) of Section 23 of the Act of 2009 has issued the notification laying down the minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII, which provides as under:-

“1. Minimum Qualifications.-

(i) Classes I-V

- (a) Senior Secondary (or its equivalent with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

Or

Senior Secondary (or its equivalent with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in

accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.”

11. The Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012 (hereinafter referred to as “the Rules of 2012”) has been enacted, which prescribes the minimum educational qualifications for the post of Assistant Teacher (Panchayat) as under:-

(1)	(2)	(3)	(4)	(5)	(6)
(c)	Assistant Teacher (Panchayat) (P.T. teacher)	18 years	35 years	Higher Secondary certificate exam with minimum of 50% marks and a certificate of Physical Education from any	-do-

				recognized institute	
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Note (6) Educational qualification of the applicant for direct recruitment on merit basis of Teacher (Panchayat) cadre employees i.e. basis of marks obtained in 10th, 12th, Graduation, Post Graduation and B.Ed./D.Ed shall be given preference:-

- (i) For appointment of Assistant Teacher (Panchayat), 20 marks on the percentage of marks obtained in class 10th, 50 marks on the percentage of marks obtained in class 12th, 15 marks of the percentage of marks obtained in D.Ed/B.L.Ed and 15 marks on the percentage of marks obtained in T.E.T.

(C) Minimum qualification for Assistant (Teacher)

Panchayat:-

- (i) Higher Secondary (or its equivalent) with minimum 50% marks and four years degree in Elementary Education (B.L.Ed.) and

²[* * *]

OR

Higher Secondary (or its equivalent) with minimum 45% marks and four years degree in Elementary Education (B.D.Ed.) and ²[* * *] which shall be in accordance with NCTE (Recognition, Norms and Procedure) Regulation, 2002.

OR

Higher Secondary (or its equivalent) with minimum 50% marks and four years degree in

Elementary Education (B.L.Ed.).

OR

Higher Secondary (or its equivalent) with minimum 50% marks and four years degree in Elementary Education (B.L.Ed) and 2 years Diploma in Education (Special Education)

OR

2[* * *]

AND

(ii) Passed in the Teachers Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the Guidelines issued by the NCTE for the purpose.

12. Thus, a careful perusal of the Act of 2009 read with the notification dated 23rd August further read with the Rules of 2012 enacted by the State Government, it would be quite vivid that the candidate applying for the post of Assistant Teacher (Panchayat) must possess certificate of Higher Secondary examination with minimum 50% marks and must have B.Ed./D.Ed. and must have passed Teachers Eligibility Test (TET) conducted by the appropriate Government in accordance with the guidelines issued by the NCTE for the purpose in order to lay a claim for the post of Assistant Teacher (Panchayat).

13. Going by the aforesaid provisions of the Act of 2009

followed by the notification dated 23rd August, 2010 and the Rules of 2012 prescribing minimum educational qualification for the post of Assistant Teacher (Panchayat) case of the petitioner is to be examined, it would be quite apparent that the petitioner admittedly does not have the minimum qualification as neither she has passed 12th examination with 50% marks nor having professional qualification of B.Ed./D.Ed. and she has also not passed TET examination as on the date and as such, she does not have minimum requisite educational qualifications for the post of Assistant Teacher (Panchayat). The above-stated fact is evident from the order impugned passed by the respondent No.3, which states as under:-

// ज्ञापन //

कमांक / 285 / ज.पं. / स्था. / 2015-16

नवागढ़., दिनांक 12 / 5 / 15

प्रति,

श्रीमति जया वर्मा

स्व.श्री अरुण कुमार वर्मा

ग्राम अमोरा पो. सम्बलपुर

जनपद पंचायत नवागढ़

विषय:- अनुकंपा नियुक्ति के संबंध में।

विषयांतर्गत लेख है कि आपके द्वारा अपने पति के आकस्मिक मृत्यु दिनांक 30.08.2010 को होने के उपरांत कक्षा 12 वी उत्तीर्ण होने के पश्चात पुनः शिक्षाकर्मी वर्ग 03 के पद/योग्यता के अनुरूप के आधार पर अनुकम्पा नियुक्ति हेतु आवेदन पत्र प्रस्तुत किया गया है।

छ.ग.शासन पंचायत एवं ग्रामीण विकास विभाग, मंत्रालय महानदी भवन, नया रायपुर, दिनांक 07.02.2014 के बिन्दु कमांक 03 में उल्लेखित अनुदेश में स्पष्ट किया गया है कि दिवंगत शिक्षक (पंचायत) संवर्ग के कर्मचारी का आश्रित यदि सहायक शिक्षक (पंचायत) के पद हेतु बी.एड./डी.एड. एवं टी.ई.टी. उत्तीर्ण नहीं है तो 03 वर्ष का अतिरिक्त समय प्रदान किया जा सकता है उक्त अवधि के दौरान न्यूनतम

शैक्षणिक योग्यता एवं व्यवसायिक अर्हता प्राप्त करने पर ही अनुकम्पा नियुक्ति दिये जाने का प्रावधान है।

पंचायत संचालनालय, छत्तीसगढ़ कलेक्ट्रेट परिसर, पुराना डी.आर.डी.ए. भवन, रायपुर पत्र क्रमांक/पंचा./2012/1754 रायपुर, दिनांक 28.12.2012 के द्वारा सहायक शिक्षक (पंचायत) हेतु 50 प्रतिशत अनुभव के साथ उच्चतर माध्यमिक प्रमाण-पत्र अनिवार्यतः रखी गई है। आपका उच्चतर माध्यमिक प्रमाण-पत्र का अवलोकन करने पर 41.20 प्रतिशत अंक पाया गया। अतः सहायक शिक्षक (पंचायत) में अनुकम्पा नियुक्ति किया जाना संभव नहीं है।

सही/—

मुख्य कार्यपालन अधिकारी
जनपद पंचायत, नवागढ़
जिला बेमेतरा, (छ.ग.)
दिनांक 12/5/15

14. The law with regard to employment on compassionate ground for dependent of a deceased employee is well settled. The following three decisions are pertinent and are being noticed herein:

14.1 In the matter of I.G. (Karmik) and others v. Prahalad

Mani Tripathi¹, their Lordships of the Supreme Court have held that Compassionate appointment cannot be granted to a post for which the candidate is ineligible. Their Lordships observed in paragraphs 11 and 12 as under:-

“11. The respondent, thus, could be offered an appointment only to the post for which he was suitable.

12. Furthermore, the respondent accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a

¹(2007) 6 SCC 162

lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria. Physical fitness being an essential eligibility criteria, the Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power.”

14.2 In the matter of **State of Gujarat and others v. Arvindkumar T. Tiwari and another**² their Lordship of the Supreme Court considered the issue with regard to eligibility criteria of a candidate applying for the post and held that a person does not possess requisite qualifications neither can apply for recruitment nor he can be appointed on such a post by observing in paragraphs 12, 13 and 14 as under:-

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion

cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: State of J & K v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012; and Praveen Singh v. State of Punjab & Ors., (2000) 8 SCC 633).

13. In State of Orissa & Anr. v. Mamta Mohanty, (2011) 3 SCC 436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: Prit Singh v. S.K. Mangal & Ors., 1993(1) SCC (Supp.) 714; and Pramod Kumar v. U.P. Secondary Education Services Commission & Ors., AIR 2008 SC 1817)."

14.3 Similarly, the law laid-down in the case of **I.G. (Karmik)**

(supra) has been very recently followed by their Lordships of the Supreme Court in **Rajasthan State Road Transport Corporation and others v. Revat Singh**³

and it has been held that the Courts do not have power

to issue directions to make appointment by way of granting relaxation of eligibility criteria or in contravention thereof and unqualified person cannot be given appointment. Their Lordships observed as under:-

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide State of J&K v. Shiv Ram Sharma (1999)3 SCC



653 and Praveen Singh v. State of Punjab (2000) 8 SCC 633.) : (AIR 201 SC 152).”

11. Therefore, in view of the law laid down by this Court as above, we are of the opinion that since the respondent was not qualified for the post of driver, as such the High Court erred in law in directing the appellant to consider his case against the post of driver of heavy vehicle.

12. Therefore in the above circumstances, this appeal deserves to be allowed as the respondent is not qualified for the post of driver. Accordingly, the appeal is allowed. However, the respondent shall be allowed to work on the post of Artisan Grade III as offered to him. No order as to cost.”

15. Thus, it is well settled legal position that a candidate who doesn't have minimum educational qualification for the post applied for is not entitled for compassionate appointment and as such, compassionate appointment cannot be granted to a candidate being ineligible for want of minimum educational qualification. Therefore, the respondent No.3 is absolutely justified in rejecting the claim of the petitioner for compassionate appointment, warranting no interference in the impugned order in exercise of jurisdiction under Article 226 of the Constitution of India.

16. Resultantly, the instant writ petition deserves to and accordingly dismissed. No order as to cost (s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-

