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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4473 of 2022

- Dilip Kumar Sahu S/o Late Santru Ram Sahu Aged About 32 Years R/o Ward No. 4, Tribal Colony, Ambagarh Chowki, District Rajnandgaon, Chhattisgarh

... Petitioner(s)

versus

1. State Of Chhattisgarh Through Secretary School Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh
2. Collector Rajnandgaon, Adim Jati Tatha Anusuchit Jati Vikas Vibhag, District Rajnandgaon, Chhattisgarh
3. District Education Officer Rajnandgaon, Chhattisgarh
4. Block Education Officer Mohla, District Rajnandgaon, Chhattisgarh
5. Assistant Commissioner Tribal Development, Rajnandgaon, District Rajnandgaon, Chhattisgarh

... Respondent(s)

For Petitioner	:	Mr. Ashish Thawait, Advocate on behalf of Mr. Vaibhav P. Shukla, Advocate
For State	:	Mr. Abhishek Singh, P.L.

Hon'ble Shri Justice Rakesh Mohan Pandey

Judgment On Board

28.4.2026



1) By way of this petition, petitioner has sought following reliefs:-

10.1. That, Hon'ble Court may kindly be pleased to issue writ/writs, order/orders, direction/directions to the Respondent authorities to consider afresh the claim of the Petitioner for compassionate appointment on his representation dated 22/03/2022 and appoint the petitioner on appropriate post on the ground of compassion in place of his father within stipulated time by deciding his application.

10.2 That, Hon'ble Court may kindly be pleased to set aside and quash the order dated 01/12/2010 issued by Assistant Commissioner refusing the claim of the Petitioner.

10.3. Any other relief that the Hon'ble court may deem fit in the facts and circumstances of the case may also be granted in favour of the petitioners against the respondents.

2) Learned counsel for the petitioner submits that father of petitioner, who was working on the post of Accountant in O/o Block Education Officer, Mohla, Rajnandgaon died in harness on 31.8.2010 and thereafter petitioner moved application for grant of compassionate appointment on 19.11.2010. He further submits that pursuant to application moved by the petitioner, Assistant Commissioner, Tribal Development, Rajnandgaon on 1.12.2010 returned the application to Block Education Officer, Mohla stating that the mother and elder brother of petitioner are working as Shiksha Karmi Grade-III. He contends that District Education Officer, Rajnandgaon issued a separate order on 5.10.2021 rejecting the claim of petitioner for grant of compassionate appointment.

3) Learned counsel for the petitioner submits that issue involved in



the present petition is no more res integra and it is now been settled by the judgment of co-ordinate Bench in the matter of ***Harnarayan Yadav Versus Chhattisgarh Public Service Commission***¹ and same has been affirmed by the Division Bench of this Court in the matter of ***Harnarayan Yadav Versus Chhattisgarh Public Service Commission***². He further submits that respondent authorities have rejected the claim of petitioner for grant of compassionate appointment on the ground that mother and elder brother of petitioner are working as Shiksha Karmi Grade-III but Shiksha Karmis are not holders of civil posts under the State Government and they cannot be termed as 'civil servants'. He prays to quash the orders impugned.

- 4) On the other hand, learned State counsel would oppose. He submits that mother and elder brother of petitioner are Shiksha Karmi Grade-III and subsequently their services were adsorbed with the School Education Department and they have now acquired the status of 'civil servant', therefore respondent authorities rightly rejected the claim of petitioner and this petition deserves to be dismissed.
- 5) I have heard learned counsel for the parties and perused the material available on record.
- 6) It appears that claim of petitioner for grant of compassionate appointment has been rejected on the ground that mother and

1. ILR 2017 Chhattisgarh 1864

2. ILR 2019 Chhattisgarh 639



elder brother of petitioner were Shiksha Karmi Grade-III at the relevant time.

- 7) Question for consideration as to whether Shiksha Karmi can be considered as Government servant came-up for consideration before this Court in the matter of **Harnarayan Yadav** (supra) (single Bench), in which co-ordinate Court has held that Shiksha Kamri (petitioner therein) is not a Government servant and observed as under:-

"15. Applying the principle of law laid down by the Supreme Court and the Madhya Pradesh High Court in the aforesaid 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 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 relaxation." servant and is entitled for age relaxation. "

- 8) The aforesaid order was taken to the Division Bench of this Court and the Division Bench of this Court in the matter of **Harnarayan Yadav** (supra) has affirmed the order of single Judge holding that Shiksha Karmi is not the holder of a civil post and therefore, he is not a Government servant. It was observed as under:-

21. Keeping the totality of the various constitutional provisions and the corresponding enactments including the Act of 1993 and the 2007 Rules relating to appointment of the Panchayat Teachers, this Court has no hesitation in coming to the same conclusion as the learned single Judge that the Appellant cannot be treated as a Government Servant as he is not holder of a civil post under the State but an appointee of a Panchayat which is an independent entity and has its own enactments and rules governing such appointees. The concession therefore which had been provided for in advertisement of age relaxation of additional three years to a Government servant cannot be extended to the Appellant as he is not holder of a civil post under the State and cannot be treated to be a Government servant to derive the benefit of age relaxation."

- 9) Judgments rendered by Single Bench of this Court in the matter of **Harnarayan Yadav** (supra) was affirmed by the Division Bench and SLP (C) No.12313/2019 against the order of Division Bench was dismissed by the Supreme Court on 1.7.2019, as such, it is established that Shiksha Karmi is not holder of a civil post under the State and therefore, he is not a Government servant.
- 10) In view of the discussion made herein-above and the legal principle established by the Hon'ble Division Bench in the matter



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of **Harnarayan Yadav** (supra), the orders dated 1.12.2010 and 5.10.2021 are hereby quashed. District Education Officer, Rajnandgaon is directed to reconsider the claim of petitioner keeping in mind the observations made herein-above. It is expected that the entire exercise shall be completed by the authority concerned within period of 120 days from the date of receipt of copy of this order.

11) In result, the instant writ petition stands **allowed**.

Sd/-
(Rakesh Mohan Pandey)
JUDGE

Ajinkya