

Supra 5076/13
for

(1)

Division Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Appeal No. 592 /2013

(Arising out of judgment and order of the Hon'ble Single Judge dated 16/07/2013 in W.P.(S.) No.4852/2006)

APPELLANT : Santosh Kumar Kunjam
(PETITIONERS)

Presented by Shri Santosh Kumar Kunjam
(C.G. Prison)
6/11/13

S/o Shri Samaru Lal Kunjam, aged about 37 years, R/o Shanti Nagar, Ward No.4, P.S. Chikhli, Rajnandgaon, Distt Rajnandgaon (C.G.)

VERSUS

RESPONDENTS :

1. State of Chhattisgarh
Through the Chief Secretary Mahanadi Bhawan, Capital Complex, New Raipur, P.S. Rakhi, District Raipur (C.G.)
2. The Chhattisgarh Public Service Commission, through its Secretary Shanker Nagar, P.S. Civil Lines, Raipur (C.G.)
3. The Chairman Chhattisgarh Public Service Commission, Shanker Nagar, Raipur (C.G.)
4. Ms Ismat Jehan Dani, aged about 29 years, D/o Shri Mansoor Ahmed Dani, presently posted as Assistant Director Public Relation, DPR Raipur (C.G.) R/o Basna General Store, Basna, District Mahasamund (C.G.)
5. Ms. Gurpreet Kaur Hura, aged about 26 years, D/o Shri Narendra Singh Hura, Presently Posted as District Women and Child Development Officer, Raipur (C.G.) R/o & C/o Shri



[Signature]





Narendra Singh Hura, Sargaon,
District Bilaspur (C.G.)

6. Mr. Arvind Kumar Patley, aged about 32 years, S/o Shri Nawal Singh Patley, Presently Posted as District Excise Officer, Raipur (C.G.) R/o & C/o Dr. D. R. Patley, Narmada Nagar Bilaspur (C.G.)
7. Mr. Bhagwan Singh Unikey, aged about 41 years, S/o Shri Lachhiram, Presently Posted as Deputy Collector, Dantewada (C.G.) R/o Qr.No. F/5, New GAD Colony, Awrabhata, Dantewada (C.G.)
8. Mr. Sanjay Kannoje, aged about 27 years, S/o Shri R.L. Kannoje, Presently Posted as Deputy Collector, Bijapur (C.G.) R/o ward No.2 Gariyaband Distinct Raipur (C.G.)
9. Mrs. Chandan Sanjay Tripathi, aged about 32 years, W/o Shri Sanjay Tripathi, Presently Posted as Deputy Collector Ambikapur (C.G.) R/o Manendragarh Road, Rekhanpur, Lal, House No.1 Ambikapur, District Sarguja (C.G.)
10. Ms Tulika Prajapati, aged about 25 years, D/o Late Shri Paraveen Kumar Prajapati, Presently posted as Deputy Collector,



Signature

Jashpur, (C.G.) R/o near Government Hospital, Ambedkar ward No.39, Ambikapur, District Sarguja (C.G.)

11. Ms Priyanka Thawait, aged about 30 years, D/o Shri M.L. Thawait, Presently posted as Deputy Collector, Ambikapur, (C.G.) R/o Thawait Medical Store, Main Road, Pungarh, District Janjgir-Champa (C.G.)

12. Chandrawesh Sisodia, aged about 31 years, S/o Shri H.S. Presently posted as Dist

13. Manisha Thakur
Additional Superintendent of Police,
Ambikapur, Dist- Sarguja (C.G.)

14. Jyoti Singh
Deputy Commandant
11nd Battalion Sakari, Bilaspur
Dist- Bilaspur (C.G.)

humbly beg to prefer the instant appeal before this Hon'ble court amongst the others on the following facts and grounds to determine the following question of laws :-



Amended
29/04/14
AR (S)
in cooperation
14
Amendment
appear Hon'ble
order dated - 28/04/20.
29/04/2014
(Santosh Kumar Khajuria)





HIGH COURT OF CHHATTISGARH, BILASPUR

D.B.: HON'BLE SHRI NAVIN SINHA, ACTING CHIEF JUSTICE &
HON'BLE SHRI CHANDRA BHUSHAN BAJPAI, J.

WRIT APPEAL NO. 592 OF 2013

APPELLANT Santosh Kumar Kunjam

Versus

RESPONDENTS State of Chhattisgarh and others

(WRIT APPEAL UNDER SECTION 2(1) OF THE CHHATTISGARH
(APPEAL TO DIVISION BENCH) ACT, 2006)

Appearance:

Mr. Santosh Kumar Kunjam : In person.
Mr. R.K. Gupta : Dy. Government Advocate
Dr. N.K. Shukla, Sr. Advocate
with Mr. Rajendra Tripathi, Advocate : For Respondents 2 and 3
Mr. Jai Prakash Shukla, Advocate : For Respondents 13 and 14.

ORDER
(8th December, 2014)

PER NAVIN SINHA, ACTING CJ

1. The present appeal arises from order dated 16.07.2013 dismissing Writ Petition No 4852 of 2006. I.A. No.1 of 2013 has been filed to condone delay of ninety six days in filing the appeal. We have heard Counsel for the parties and considered the duration as also the explanation for the delay. I.A. No.1 of 2013 is allowed and delay is condoned.

2. The Learned Single Judge held that the examinations in question were conducted long years ago and the final results published in July

2005. The Appellant does not find place in the merit list. Those who have been selected have not been impleaded as party Respondents despite sufficient opportunities grant to the Appellant. If directions for re-evaluation of answer sheets are given it would be to the prejudice of other candidates already appointed but not impleaded.

3. The Appellant appearing in person submits that the scaling system has been wrongly applied by the Commission in respect of his second paper of the second optional subject of Social Science and History. If the scaling system was applied properly he would have secured higher marks than those appointed. He next submits that he had requested for re-evaluation of his answer sheets in General Hindi paper. There is no need for him to implead all the selected candidates as in the event that he is granted relief it would affect only two persons impleaded as Respondents 13 and 14 in the appeal.

4. Learned Senior Counsel appearing for the Commission submitted that there is no provision in the Rules for re-evaluation of the answer sheets. The law stands settled that in absence of a statutory provision for re-evaluation the Court cannot direct so but can direct re-totaling only. It is next submitted that the Learned Single Judge has adequately discussed the non-maintainability of the writ petition in absence of necessary parties being impleaded. Persons selected have been appointed as far back as 2005 and are working since then.

5. Learned Counsel for Respondents 13 and 14 submitted that they





have been appointed as far back as 2005. The Appellant did not implead them as party Respondents in the writ petition. He cannot be permitted to now implead them as Respondents belatedly in the appeal.

6. The Respondents published an advertisement on 04.07.2003. The preliminary examination was conducted on 21.12.2003. The final results were published in July, 2005. The writ petition was then filed in the year 2006 with legal assistance and was argued by his Advocate. It was stated in the writ petition that the Petitioner has not impleaded any successful candidate as he does not challenge the selection of any candidate. It displays adequate awareness for the need to implead the concerned as Respondents if he sought relief against a selected candidate. That right was expressly given up. The challenge was to the correctness of the selection procedure without following reservation policy and applying wrong scaling method.

7. After publication of the advertisement, the Commission published a corrigendum to the advertisement on 09.02.2004 disclosing the application of the scaling system in the examination and also the manner in which it would be done. The Appellant did not assail the application of the scaling system or the manner in which it was to be done. He appeared at the examination and only after publication of the results, having been unsuccessful now assails the manner in which scaling has been done. In (1997) 4 SCC 426 (*University of Cochin v. N.S. Kanjoonamma*), it was observed :-

"4... Having participated in the selection, she is estopped to challenge the correctness of the procedure...."

8. Re-evaluation of answer sheets cannot be allowed unless there be a statutory provision with regard to the same. The Appellant fairly acknowledged that there was no statutory provision for re-evaluation. In (2010) 6 SCC 759 (Himachal Pradesh Public Service Commission v. Mukesh Thakur), it was observed :-

"24. The issue of revaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheeth, wherein this Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision...."

9. The Appellant consciously did not implead Respondents 13 and 14 in the writ petition. He had more than sufficient time to do so from 2006 when he filed the writ petition till its dismissal in July, 2013. The writ petition itself was not maintainable in absence of necessary parties. Respondents 13 and 14 have been appointed as far back as 2005 and are working since then. The Appellant cannot be permitted to challenge their appointment 7 years later by impleading them for the first time in the appeal. Third party rights have accrued and fructified. The Appellant





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is alone responsible for his conduct. Delay has always been considered vital in service matters. In (1996) 11 SCC 753 (*S. Jaffar Sahib v. Secy., A.P.P.S.C.*), it was observed :-

"4. The appellant appeared in person in this Court and contended that appointments having been made contrary to the Rules of Reservations, the said appointments are invalid and inoperative. The appellant's right to be appointed was illegally taken away and therefore this Court should annul the appointment of the respondents forthright and direct reconsideration of the appellant's appointment. We are unable to accept this contention at this belated stage..... On the admitted facts that appointment of respondents to the post of Deputy Collector was made in the year 1981, an application before the Tribunal in the year 1990 could not have been entertained after lapse of 9 years. Then again there is an additional hurdle on the part of the appellant namely affected persons are not made parties to the proceedings. It is too well settled that without impleading a person as a party whose rights would be affected, no court/tribunal can pass any order against him."

10. In conclusion, we find no merit in the appeal. The Appeal is dismissed.

Sd/-
Navin Sinha
Acting Chief Justice

Sd/-
C.B. Bajpai
Judge

Exp. No. 55365/14

(1) Application received on	09/12/14
(2) Applicant told to appear on	10/12/14
(3) Applicant appeared on	12/12/14
(4) Application (With or without further or relevant particulars) sent to record-room	09/12/14
(5) Application received from record-room with record or without record for correction or direct consideration	12/12/14
(6) Application given to file by lawyer or clerk/official on	/
(7) Applicant given notice by further notice	/
(8) Notice in constant (C) or (7) complied with on	/
(9) Copy ready on	12/12/14
(10) Copy delivered or sent on	12/12/14
(11) Court-fee realised	12/12/14



Copyist

Comparator

Head Copyist

12/12/14