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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 22/08/2023****Order passed on : 10/11/2023****WPS No. 2724 of 2013**

1. Mahendra Kumar Sonber, S/o Shri Raghu Ram Sonber, age 34 years, R/o Imlibhata, Near Radha Krishna Mandir, Tahsil Mahasamund, PO Mahasamund, PS Mahasamund, Distt. Mahasamund (CG)
2. Hemlal Sirmaur, S/o Shri Shankar Lal Sirmaur, age 40 years, R/o In front of HP Petrol Pump, Mahadevghat road, Danganiya, PS Civil Line, PO Raipur, Distt. Raipur (CG)
3. Arun Kumar Pushpakar S/o Shri Hemendra Pushpakar, age 37 years, R/o Village & Post Garhseoni, Thana Tumgaon, Tahsil & District Mahasamund (CG)
4. Praveen Kumar Rathore, S/o Shri Umashankar Rathore, age 29 years, R/o Nagar Nigam Sada Colony, Qr.No.G-23, Behind Niharika Talkies, PO Korba, PS Rampur, Tahsil Korba, Distt. Korba (CG)
5. Bhunesh Kumar Sahu, S/o Shri Balram Sahu, age 32 years, R/o Masturi, PS Masturi, Post Masturi, Tahsil Masturi, Distt. Bilaspur (CG)

---- Petitioners**Versus**

1. State of Chhattisgarh, Through the Secretary, Rural Engineering Service, DKS Building, Ministry, Raipur, CG
2. The Development Commissioner, Department of Rural Engineering Service, Raipur, Distt. Raipur, CG
3. Chief Engineer, Rural Engineering Service, Office of the Development Commissioner, Vikas Bhavan, Civil Line, Raipur, CG
4. Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed) University, Through its Director, Pratap Nagar, Udaipur, Rajasthan, PIN 313001.

---- Respondents**WPS No. 2529 of 2013**

Gopal Ram Sahu, S/o Shri Punau Ram Sahu, age 39 years, R/o Nearby Deshmukh Kirana Store, Gaya Nagar, Post Office Durg,



Police Station Mohan Nagar, Durg, Distt. Durg, CG

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Rural Engineering Service, Ministry, New Raipur, Distt. Raipur, CG
2. The Development Commissioner, Department of Rural Engineering Service, Raipur, Distt. Raipur, CG
3. Chief Engineer, Rural Engineering Service, Office of the Development Commissioner, Vikas Bhavan, Civil Line, Raipur, CG

---- Respondents

For Petitioners : Mr. Alok Dewangan, Advocate.

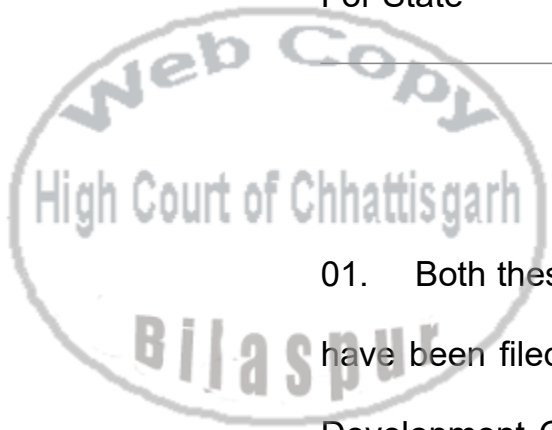
For State : Ms. Meena Shastri, Addl. A.G.

Hon'ble Smt. Justice Rajani Dubey, J

CAV ORDER

01. Both these petitions under Article 226 of the Constitution of India have been filed for setting aside the order dated 27.7.2013 issued by Development Commissioner, CG, Raipur for appointment on the post of Sub Engineer (Civil) in the Department of Rural Engineering Services and directing the respondent authorities to prepare an amended merit list after adding marks of experience and thereafter, fill up the vacancies as per recruitment rules.

02. Brief facts of the case, as mentioned in these petitions, are that pursuant to the advertisement issued by the respondent-Department of Rural Engineering Services, CG, Raipur, the petitioners, who had all the requisite qualification as also experience, applied for the post of Sub Engineer (Civil/Electrical), Assistant Draftsman and Tracer. After





due verification of their documents and scrutiny of the applications, merit list of selected candidates was prepared in which the petitioners names were also mentioned. However, no marks for experience was given to the petitioners in contravention of the conditions of the advertisement. Thereafter, on 27.7.2013 an order was issued by the Development Commissioner, CG, Raipur for appointment on the post of Sub Engineer (Civil), in which the petitioners name are not mentioned. Hence these petitions for the following reliefs:

“10.1 The Hon’ble Court may kindly be pleased to set aside the Order Kramank 6699/3372/Stha/22/Vi-3/Gra. Yan. Seva/2013 Raipur, Dated 27/07/2013 issued from the office of Development Commissioner, Chhattisgarh, Raipur for appointment in the post of Sub Engineer (Civil) in the Department of Rural Engineering Services because Respondents have committed irregularity by violating provision of Recruitment Rules framed in this regard.

10.2 That, this Hon’ble Court may kindly be pleased to direct the respondents to amend the Merit List on the basis of which impugned appointment order is issued, since no marks were given for working experience, the respondents may further be directed to prepare fresh merit list by following the rules framed for recruitment by granting marks for experience and there after issue fresh appointment order.

10.3 The Hon’ble Court may graciously be pleased to direct the respondents to fill up the vacancies as per Recruitment Rule framed under Article 309 of Constitution of India.

10.4 That, any other Writ, order, directions or relief which this Hon’ble Court may deem fit may kindly be passed in favour of the petitioners.”





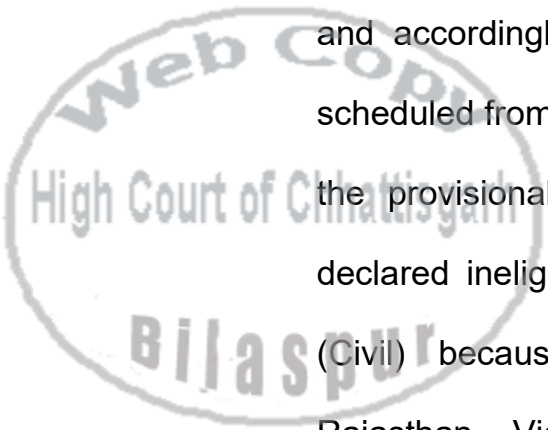
03. Learned counsel for the petitioners submits that it was obligatory on the part of the respondents to maintain consistency in eligibility criteria for the post advertised and there should be no change in rules for selection once the process is started for selection. Therefore, the recruitment procedure is hit by Articles 14, 16 & 21 of the Constitution of India and liable to be set aside. The degree obtained by the petitioners is duly recognized by AICTE by way of tripartite agreement entered into between AICTE, UGC and Distance Education Council. The recruitment procedure adopted by the respondents is irrational and perverse for want of transparency. The respondents changed the eligibility criteria and mode of assessment of suitability for selection by not granting 30 marks to the candidates having working experience of more than three years, which deprived the petitioners of selection on the post of Sub Engineer. Therefore, the impugned order dated 27.7.2013 is liable to be set aside and the respondent authorities be directed to prepare an amended merit list after adding 30 marks of experience and then fill up the vacancies in accordance with the recruitment rules.

Reliance has been placed on the decisions in the matters of **Buddhi Nath Chaudhary and others Vs. Abahi Kumar and others, (2001) 3 SCC 328; Institution of Mechanical Engineering (India) Vs. State of Punjab and others, (2019) 16 SCC 95** and **Sree Sankaracharya University of Sanskrit and others Vs. Dr. Manu and another, 2023 SCC OnLine SC 640.**

04. On the other hand, learned counsel for the respondents strongly



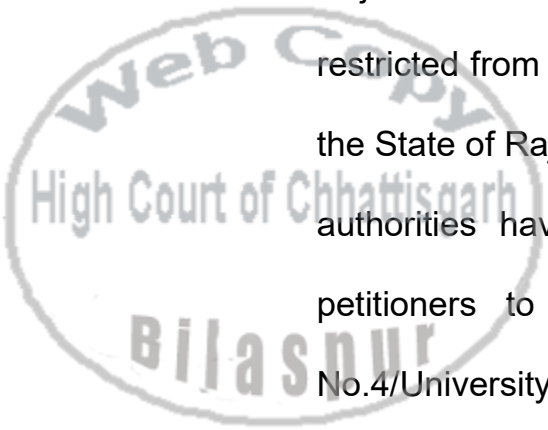
oppose the prayer of the petitioners and submit that respondent No.3 issued an advertisement (Annexure P/2) inviting applications from the eligible candidates for recruitment on various vacant posts including the post of Sub Engineer (Civil). The requisite qualification for the said post is three years diploma in Civil Engineering or two years Post Diploma in Rural Technology and Management or higher education in civil engineering. The petitioners considering themselves to be eligible for the said post, submitted their applications along with necessary educational certificates. After receiving the applications from the candidates including the petitioners, a provisional list was prepared and accordingly, date for documents verification and interview was scheduled from 4.2.2013 to 8.2.2013 (Annexure R/1). A bare perusal of the provisional list would make it clear that the petitioners were declared ineligible for being appointed on the post of Sub Engineer (Civil) because they obtained their diploma/degree from JRN Rajasthan Vidyapeeth University, Rajasthan through distance education which is not allowed by the respondent authorities for the purpose of recruitment to the post of Sub Engineer (Civil) vide note sheet dated 11.9.2013 issued by the General Administration Department, State of CG, wherein it is clearly mentioned that the diploma/degree obtained through distance education from the educational institution situated outside the State of Chhattisgarh, would not be allowed for appointment/promotion in the technical posts. Accordingly, the Department of Panchayat and Rural Development issued an order dated 7.11.2013 by which the decision taken by the General Administration Department was accepted. Copy of the note





sheet dated 11.9.2013 and order dated 7.1.2013 is filed as Annexure R/2. A similar decision has also been taken by the Department of Panchayat and Rural Development as well as Department of Water Resources and in this regard, copy of the letter dated 31.8.2013 is filed as Annexure R/3.

It is further submitted that the diploma/degree of Civil Engineering obtained by the petitioners from the respondent No.4/University has not been accepted to be a valid degree not only on the ground that it contravenes the orders issued by the State of Rajasthan whereby Universities in the State of Rajasthan have been restricted from imparting education through distance education outside the State of Rajasthan during the academic session but the respondent authorities have also treated the diploma/degree obtained by the petitioners to be invalid on this legal ground that respondent No.4/University i.e. JRN Rajasthan Vidyapeeth University cannot impart education by way of distance mode outside its territorial jurisdiction and the study centres have been opened in the State of Chhattisgarh without any permission and sanction of the State Government. Hon'ble Supreme Court has also passed order in **Professor Yashpal and others Vs. State of Chhattisgarh and others, (2005) 5 SCC 420** wherein opening of study centres outside the territorial jurisdiction of their State by the Universities have been prohibited. Therefore, running of study centres by respondent No.4/University outside its territorial jurisdiction i.e. State of Rajasthan is against the law as declared by the Hon'ble Apex Court. As such, the respondents have rightly declared the petitioners ineligible for being





appointed to the post of Sub Engineer (Civil). Since the petitioners did not possess the essential educational qualification for the said post, the question of awarding them marks of working experience does not arise. Hence, both these petitions being devoid of any substance are liable to be dismissed.

05. Heard learned counsel for the parties and perused the material available on record.

06. Admittedly, the petitioners obtained their degree in civil engineering from JRN Rajasthan Vidyapeeth University, Rajasthan through distance education and as per the respondents, they have declared petitioners ineligible on the ground that they have obtained degree through distance education from an educational institution which is not recognized by the State of Chhattisgarh.

07. Learned counsel for the petitioners have argued that the petitioners have marksheets from a University which is duly recognized by AICTE by way of a tripartite agreement entered into between AICTE, UGC and Distance Education Council. Respondent No.4 has filed Annexure R/3 which is an order dated 31.8.2013 issued by the State of Chhattisgarh, Water Resources Department, Raipur. Para 3 of the said order reads as under:

“3. अखिल भारतीय तकनीकी शिक्षा परिषद (AICTE) नई दिल्ली ने अपने पत्र क्रमांक फा. स. [2-पी.सी./अभातशिप/सामान्य दूरस्थ शिक्षा नीति/236](#), दिनांक 11.04.2013 द्वारा सूचित किया गया है कि AICTE की नीति के तहत इंजीनियरिंग, प्रौद्योगिकी, वास्तुकला, नगर आयोजना, भेषजी, होटल प्रबंधन एवं खान-पान प्रौद्योगिकी, अनुप्रयुक्त कला एवं शिल्प में डिप्लोमा, स्नातक तथा निष्णात (मास्टर्स) डिग्री तथा प्रबंधन में स्नातकोत्तर डिप्लोमा (पी.जी.डी.एम) स्तर पर दूरस्थ शिक्षा प्रणाली के



माध्यम से प्राप्त की गई योग्यताओं को मान्यता नहीं दी जाती है।

Annexure R/4 is a document related to UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, clause (iii) of which reads as under:

(iii) Under Section 3 of the UGC Act deemed to be university status is granted by the Central Government to those educational institutions of repute, which fulfill the prescribed standards and comply with various requirements laid down by the UGC.”

08. The Hon'ble Supreme Court in the matters of **Prof. Yashpal and another** (supra) observed in paras 55, 57 & 63 of its judgment as under:

“55. Regulation 3.3 puts restriction on establishment of a University outside the State. Regulation 5 provides consequences of violation and lays down that if the Commission is satisfied that a private University has, even after getting an opportunity to do so, failed to comply with the provisions of any of the Regulations, the Commission may pass orders prohibiting the private University from offering any course for award of the degree or diploma. Similarly, the UGC is empowered to take action against a private University awarding first degree and/or a post-graduate degree/diploma, which is not specified by the UGC and any private University continuing such programme and awarding unspecified degree shall be liable for penalty under Section 24 of the UGC Act.

57. In view of Regulation 3.1, a private University can only be established either by a separate Act or by one compendious Act where the legislature specifically provides for establishment of the said University. Though



an attempt has been made in [Section 5\(1\)\(b\)](#) of the amended Act in this regard, but the same does not conform to the Regulations inasmuch as the initial notification notifying in the Official Gazette that the University is established, is done by the executive order and not by any Act of legislature.

63. There is hardly any merit in the submission raised. The impugned Act which enables only a proposal of a sponsoring body to be notified as a University is not likely to attract private capital and a University so notified cannot provide education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide high level of teaching and other facilities like well equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not Universities without any teaching facility but having the authority to confer degrees. If good institutions are established for providing higher education, they can be conferred the status of a deemed University by the Central Government in accordance with Section 3 of UGC Act or they can be affiliated to the already existing Universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected by the learned counsel as it enables a proposal alone being notified as a University.”

09. Thus, it is clear from all the documents placed on record that the



respondent-State of Chhattisgarh has not recognized respondent No.4/University as deemed University and on this ground disqualified the petitioners for being appointed on the post of Sub Engineer (Civil). The said decision of the respondent authorities cannot be faulted with in light of the principles of law laid down in the afore-cited judgment and the material available on record. The judgments/orders relied upon by learned counsel for the petitioners being distinguishable on facts are of no help to them.

10. For the aforesaid reasons, this Court finds no merit in these writ petitions. Accordingly, both these petitions are hereby dismissed.



Sd/
(Rajani Dubey)
Judge