

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3883 of 2014

- Rakesh Kumar Shrivastava S/o Late Sunder Lal Shrivastava Aged About 34 Years R/o Of Vijay Ward No. 2, Dokrighatpara Near Lala Jagdalpuri House Jagdalpur Distt. Bastar C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Ps Mandir Hasoud, Raipur, Dist Raipur, Cg
2. Chief Engineer Public Works Department Bastar Range, Jagdalpur, Distt. Bastar C.G.
3. Superintending Engineer Public Works Department Bastar Range, Jagdalpur, Distt. Bastar C.G.
4. Ku Neelu Karn D/o Rajkumar Karan R/o Santoshi Ward Jagdalpur, Distt. Bastar C.G.
5. Smt. Anuradha Parihar W/o Shri Nilesh Parihar R/o House No. 1, Hataground Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Petitioner	Shri C.J.K. Rao, Advocate
For Respondent/State	Shri S. Majid Ali, PL
For Respondents	Shri Vikash Shrivastava, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

28/08/2015

Heard finally with the consent of the learned counsel for the parties.

1. The petitioner has preferred this writ petition seeking a direction to the respondents to consider his candidature in the recruitment of Assistant

Draftsman (Civil) in the Department of Public Works, Bastar Region, Jagdalpur. It appears, the advertisement (Annexure-P-2) issued from the office of the Chief Engineer, Public Works Department, Bastar contained the condition that a candidate should be the bonafide resident of Chhattisgarh and of the Bastar District; since the petitioner's application was not accompanied with the certificate of residence, his candidature has been rejected by declaring him ineligible.

2. Indisputably, the last date for submission of application form was 26.09.2013, within which the petitioner submitted his application. Despite mentioning in the application that he is submitting the certificate of residence, the said certificate was infact not attached with the application form. The petitioner later on submitted the required certificate issued to him by the competent authority i.e. Tahsildar/Naib Tahsildar (Nazul), Jagdalpur, District Bastar on 05.03.2003-30.04.2003.
3. There is no dispute that the petitioner did submit the residential certificate when claims and objections were invited, however, in view of the condition No.11 of the advertisement, which conferred power on the recruiting agency to reject any application found incomplete, the subsequently submitted certificate was not entertained and the petitioner is thus, compelled to move to this Court.
4. In the matter of **Charles K. Skaria and others Vs. Dr. C. Mathew & others**¹, it has been held thus:

“What is essential is the possession of a diploma before the

¹ AIR 1980 SC 1230

given date, what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.”

5. In the case at hand, the authorities have refused to entertain the subsequently submitted certificate only on the ground that under Clause 11 of the advertisement, the certificate cannot be entertained, however, in view of the law laid down by the Supreme Court, if the candidate had already acquired the qualification or eligibility before the cut off date, but the proof thereof was submitted later on, the same would not be fatal and the recruiting agency can consider the subsequently furnished certificate in proof of acquisition of the eligibility criteria before the cut off date.
6. For the foregoing, the writ petition is allowed. The petitioner's application be processed in accordance with law, however, subject to fulfillment of other eligibility conditions.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA