

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 908 of 2013**

- Smt. Ashwani Patel, W/o Ashok Ku. Patel, Aged about 20 years, R/o Village Lakhanpur, P.O.-Silhatti, P.S.-Lohara, Dist.-Kabirdham Kawardha

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Department of Animal Husbandry, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Deputy Director, Department of Veterinary Kabirdham.
3. Collector Kabirdham, Dist.-Kabirdham.
4. Smt. Parem, D/o Virsingh, R/o Village Botesur, P.O.-Surajpura (Jungle) P.S./Tehsil-Lohara, Dist.-Kabirdham

---- Respondents

For Petitioner : Shri HS Ahluwalia, Advocate.
 For Respondents 1 to 3 : Shri Arvind Dubey, Panel Lawyer.
 For Respondent No.4. : Shri Pawan Shrivastava, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****22/06/2015**

1. The petitioner is aggrieved by her non-selection and selection of respondent No.4 on the post of Sweeper cum Attendant cum Chowkidar in the Department of Deputy Director, Health Services, Kabirdham.
2. An advertisement (Annexure-P/2) was issued in March, 2012 inviting applications for the post of Driver and Sweeper cum Attendant cum

Chowkidar wherein amongst other categories, one post was reserved for OBC (woman). The petitioner and respondent No.4 applied for the said post. Written examination was conducted on 24.6.2012 wherein the petitioner did not participate. Respondent No.4 though participated, secured '0' marks, yet she was offered appointment on the ground that no other candidate in the category was available and she was eligible to hold the post.

3. Learned counsel for the petitioner would submit that clause-22 and 23 of the advertisement clearly provided that candidates shall be interviewed, however, selection process was changed and written examination was conducted wherein too respondent No.4 failed, therefore, she could not have been selected. He would further submit that admit card for the written examination could not be delivered on the petitioner within time for which the petitioner could not be faulted. If the petitioner would have allowed to participate, she might have secured some marks and would have been more meritorious than respondent No.4. Therefore, non delivery of admit card within time is arbitrary and illegal.
4. Learned State counsel and learned counsel for respondent No.4 would submit that clauses-10 and 25 of the advertisement clearly provide that the instructions issued by the State Government concerning recruitment process shall be followed. Therefore, in view of the State Government's circular dated 12.5.2012 (Annexure-R/1), the recruiting agency was bound to conduct written examination and there is no illegality.
5. Perusal of the documents annexed with the writ petition would reveal that in the advertisement itself recruiting agency reserved its right to apply any change effected by the State Government, in the recruitment process, if the same is received during currency of the recruitment process. Therefore, if the State Government has issued any instructions on 12.5.2012 making it mandatory for the recruiting agency to hold the

written examination, it is not a case where the rules have been changed mid way in arbitrary and unreasonable manner. Such allegation would hold ground when change has been effected without any basis and only at the whims and fancies of the recruiting agency. Conduct of written examination in place of interview due to intervention of the State Government cannot be held to be arbitrary or illegal.

6. Similarly, non delivery of admit card to the petitioner is not attributable to the recruiting agency or respondent No.4. The documents available on record would demonstrate that much before the date of examination the concerned postman tried to serve the papers on the petitioner, however, the petitioner was not available in her house for accepting delivery of admit card. Endorsement made by the postman filed as Annexure-P/4 fully substantiates the contention made by the respondents that the department had issued communication to the petitioner within time and it was sought to be delivered on the petitioner much before the date of examination. Moreover, the date of examination was also notified by issuing news publication in the local newspapers. If the petitioner failed to participate in the written examination, she is to blame herself and not the respondents. The fact that respondent No.4 secured '0' marks in the written examination is also of no avail to the petitioner because advertisement or process of recruitment did not fix any minimum marks in the written examination. Since respondent No.4 was only eligible candidate in the OBC (woman) category and was eligible as per the rules, the marks secured by her in the written examination are of no significance.
7. For the foregoing, there is no substance in the writ petition, the same deserves to be and is hereby dismissed. Needless to say, the interim order passed earlier stands vacated.

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