

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4522 of 2011**

- Smt.Urmila Nareti, aged about 36 years, W/o Shambhulal Nareti, By Caste Gond, R/o Santoshipara, Bhanupratappur, Distt. Uttar Bastar, Kanker

---- Petitioner**Versus**

1. The State of Chhattisgarh, through its Secretary, Health Department, D.K.S. Bhawan, Raipur.
2. The Collector, Distt. Uttar Bastar, Kanker
3. Chief Medical and Health Officer, Distt. Uttar Bastar, Kanker
4. Khand Chikitsa Adhikari, Vikaskhand Durgukondal, Distt. Uttar Bastar, Kanker
5. Smt. Kiran Naag, C/o Shri Bhuvan Naag, Village Charbhatti, Post Umradah, Tahsil Naharpur, Distt. Kanker.

---- Respondents

For Petitioner : Shri Parag Kotecha, Advocate.
 For Respondents 1 to 4 : Shri Shashank Thakur, Govt. Advocate.
 For Respondent No. 5 : Shri Anupam Dubey, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****19/06/2015**

1. The petitioner has prayed for reinstatement as Ward Aaya on which she was appointed vide order dated 29.4.2008 by the office of CM & HO, Kanker.

2. According to the petitioner, she joined on the said post on 8.5.2008 and worked for about a week, however, she was not allowed to work thereafter presumably on account of issuance of communication by the CM & HO Kanker on 9.5.2008 (Annexure-R/1) whereby Civil Surgeon, In-charge Medical Officers and Block Medical Officers were directed not to allow joining of the persons appointed by the order dated 29.4.2008.
3. It appears, after appointments were made, complaints were received by the authorities on which an enquiry was directed by the State Government. The Collector, North Bastar, Kanker thereafter constituted a committee of 4 senior doctors including Civil Surgeon, Kanker; CM & HO, Kanker; 2 senior specialist doctors and the Sub Divisional Officer (Revenue) Kanker as representatives of the Collector to conduct enquiry into the allegations of irregularities committed in course of recruitment process. The committee submitted its report vide Annexure-R/2, inter alia, concluding that the petitioner was awarded marks for having experience of 3 years, but she did not submit experience certificate along with her application form. The committee recommended to appoint respondent No.5, who was placed at S. No.1 in the waiting list.
4. It has been argued that the application (Annexure-PR/1) had clearly mentioned the word 'experience certificate', meaning thereby that experience certificate was submitted along with application form and on the strength of this, the petitioner was awarded marks for experience. However, someone put remark on the top of the application form at later point of time that the petitioner has not submitted experience certificate. Attention of the Court has been drawn to the certificates filed along with rejoinder. Thus, learned counsel for the petitioner argued that the petitioner was fully experienced and marks were genuinely awarded to her and denial of appointment is illegal and arbitrary, that too without any express order canceling the appointment.

5. Shri Thakur, learned Govt. Advocate would show to the Court the application form along with envelope in which the petitioner had sent documents to the authorities at the time of recruitment. He would submit that experience certificate is not available on record. Based on the original papers, the committee concluded that the petitioner was wrongly awarded marks for experience.
6. Shri Dubey, learned counsel for respondent No.5 would submit that respondent No.5 has been appointed as she was placed at S. No.1 in the waiting list.
7. Perusal of the original application of the petitioner would indicate that the entire application form appears to be filled by someone else rather than the petitioner herself. Similarly, contents of the application form and handwriting mentioning “अनुभव प्रमाणपत्र” appears to be differently written. The petitioner has not alleged malafide against any particular officer specifically alleging that although the petitioner had submitted experience certificate, someone in the office of CM & HO subsequently removed the same. Similarly, no allegation of malafide has been attributed to the members of the enquiry committee who are senior specialist doctors and representatives of the Collector. In the absence of any allegation of malafide, this Court cannot sit over finding of the enquiry committee to conclude that the petitioner had in fact submitted experience certificate. Even otherwise, experience certificate does not bear date of issuance by the concerned management or doctor of the private hospital wherein the petitioner allegedly acquired the experience.
8. Learned counsel for the petitioner has also argued that other candidates were allowed to make good deficit by producing certificate at subsequent point of time, therefore, not allowing similar facility to the petitioner has resulted in arbitrary and discriminatory exercise of power.

9. To appreciate the submission, this Court has gone through the entire enquiry report. The contents of the report would reveal that only such candidates were allowed to submit certificate of having attained eligibility criteria of passing required examination or obtaining required training and none were allowed to submit experience certificate.
10. In the matter of **Charles K. Skaria and others Vs. Dr. C. Mathew and others** {AIR 1980 SUPREME COURT 1230}, it has been held by the Supreme Court that possessing qualification on the cut off date and submitting proof of the same at a later point of time is condonable.
11. However, in the case of the petitioner, the issue is not about submitting proof of acquired qualification on the cut off date but it concerns having required experience for which she was allowed bonus marks. The experience could have been obtained by the candidate in a private hospital or nursing home. Allowing such certificate to be produced at a later point of time would provide room to the selection committee to manoeuvre the process to select candidates in discriminatory manner. Therefore, the enquiry committee rightly did not allow the petitioner to submit the said certificate subsequently. Moreover, a person is ordinarily not expected to forge and produce the certificate of having acquired the qualification but obtainment of certificate from private hospital or nursing home is possible subsequently also. Therefore, the plea that the petitioner could have been allowed to produce the experience certificate subsequently is neither acceptable nor permissible.
12. For the foregoing, this Court does not find any substance in this writ petition, the same deserves to be and is hereby dismissed.

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