

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4412 of 2012

- Rajendra Kumar Dewangan, aged about 31 years, S/o Jagannath Dewangan, R/o Tikrapara, Kanker

---- Petitioner

Versus

- The State of Chhattisgarh through its Secretary, Finance Department, DKS Bhawan, Raipur.
- The Secretary, General Administration Department, DKS Bhawan, Raipur (C.G.)
- The Collector North Bastar Kanker
- Shri Sanjay Kumari Kalihari, Son of Kanhaiyalal aged about 25 years, Resident of Village Chapeli, Post Charbhatha, Tahsil and Police Station – Charama, District Kanker (C.G.)

---- Respondent

For Petitioner

Mr. Parag Kotecha, Advocate

For Respondent/State

Mr. Bhaskar Pyasi, Panel Lawyer

For Respondent No.4

Mr. Prateek Sharma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

9/7/2015

Heard.

(2) The petitioner has assailed the legality and validity of the advertisement (Annexure P/1) in so far as it relates to recruitment of AG-III. He has also prayed for quashment of the merit list (Annexure P/6) and the Notification dated 17.01.2012 (Annexure P/3).

(3) The facts of the matter, in brief, are that the Collector, North Bastar, Kanker, issued an advertisement for filling up the posts of AG-III, Stenographer Grade-III, Driver, regular Chowkidar, Farrash, Process Writer and Contingency Paid Peon/Watchman. The present matter is in relation to the recruitment for the post of AG-III, for which, total 185 posts were advertised. The eligibility condition for the said post was that the candidates should have passed 10 + 2 examination from a recognized Board and he should also have one year diploma/certificate from a recognized institution in the course of Data Entry Operator and should also have the knowledge of Hindi Typing in computer with 5000 keys per hour. These eligibility conditions have been fixed pursuant to the State Government's Circular dated 28.11.2011. However, subsequently, the State Government issued a Circular dated 26.03.2012 relaxing the requirement of obtaining one year Diploma/Certificate of Data Entry Operator from recognized institution with direction that for a period of one year, in Bastar and Surguja Division, the candidates who possess certificate from non-recognized institutions shall also be entitled for participation subject, however, to the fact that they shall be required to undergo skill test for assessing their knowledge of computers.

(4) Mr. Kotecha, learned counsel for the petitioner, would submit that the Circular dated 26.03.2002 has the effect of changing the rules of the game midway, which is not permissible in law. He also submits that because of the said relaxation large number of ineligible candidates have been issued appointment.

(5) Mr. Pyasi, learned Panel Lawyer for the State and Mr. Sharma, learned counsel for respondent No.4, would submit that as per his own showing in para 8.8 and 9.5 of the writ petition, the petitioner is ineligible

as he has not secured required percentage of marks in the Class-XII examination, therefore, the writ petition is not maintainable . They would also submit that the petitioner has sought quashment of the advertisement, merit list and Circular issued by the State Government without impleading necessary parties.

(6) Concededly, the petitioner has not secured such percentage of marks which would make him eligible to be included in the zone of consideration for appointment on the post of AG-III. Thus, at the time of shortlisting, the petitioner has been found not eligible to be considered for appointment as he was not included in the list of persons to be considered for appointment..

(7) It is the settled law that the persons who has taken chance and competed in the selection process cannot turn around and subsequently challenge the advertisement and the selection list. In this regard, it would be apt to refer to the judgment rendered in matter of *Vijendra Kumar Verma vs. Public Service Commission, Uttarakhand and others, (2011) 1 SCC 150.*

(8) It is also to be seen that the petitioner has sought quashment of the advertisement, however, since thereafter, the selection process is already complete and the persons have been appointed except respondent No.4. Although this Court had initially restrained the State Government from offering appointment to any candidate, who does not fulfill criteria No.2 described for the post of AG-III and subsequently, the same was modified to direct keeping one post of AG-III vacant during pendency of the writ petition and thereafter, making recruitment subject to final outcome of this writ petition yet the said order making the recruitment subject to final outcome of the writ petition was passed on

13.12.2013, whereas, all the appointments have been made prior to the said date. It is only respondent No.4, who has not been appointed because of the interim order directing keeping of one post vacant.

(9) Mr. Sharma, learned counsel for respondent No.4, would submit that the said respondent is in possession of one year diploma/certificate of Data Entry Operator from recognized institution, therefore, he is fully qualified and eligible as per the prescribed criteria in the original advertisement and he is not affected by dilution of the criteria by the subsequent Circular dated 26.03.2012 – Annexure P/5, therefore, he cannot be denied appointment.

(10) The issue to be considered is if the appointment of respondent No.4 cannot be set aside because he fulfills the eligibility criteria, this Court is now confronted with the question as to whether in the absence of other qualified candidates having been joined in the writ petition, any relief can be made admissible to the petitioner.

(11) In the matter of K.H. Siraj vs. High Court of Kerala and others, AIR 2006 SC 2339 and Ranjan Kumar v. State of Bihar 2014 (3) Supreme 646, the Surpreme Court has reiterated the principle that the select list/merit list/ recruitment cannot be set-aside without impleadment of the successful candidates. In this petition, the petitioner has not arrayed any of the successful candidates except respondent No.4 and as stated earlier, the said respondent is fully qualified and eligible for appointment as AG-III. Thus, for non-impleadment of other successful candidates, the petition is not maintainable.

(12) For the foregoing, the writ petition has no substance. The same deserves to be and is hereby dismissed. Consequently, all the interim orders passed earlier stands discharged {See: **Kanwar Singh Saini vs. High Court of Delhi, 2012 (4) SCC 307**}.

Sd/-

JUDGE

(Prashant Kumar Mishra)

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