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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2702 of 2013

- Krishna Kumar Rathore S/o Lt Salikram Rathore Aged About 52 years R/ L.I.G. 66, Sharda Vihar Colony, Ps Korba, Civil & Revenue Distt Korba, Cg

---- Petitioner

Versus

1. State Of ChhattisgarhThrough Secretary, Deptt Of Commercial Tax, Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist Raipur, Cg

2. Commissioner Commercial Tax, Commercial Tax Building Civil Line, Raipur, Dist Raipur, Cg

3. Addditional Commissioner Commercial Tax, Commercial Tax Building Civil Line, Raipur, Distt Raipur, Cg

4. Shri Tapan Kumar Das Sale Tax Inspector, O/o Dy. Commissioner, Sale Tax Raipur, Distt Raipur, Cg

5. Shri Agushta Lakada Sale Tax Inspector, O/o Commercial Tax Officer Circle-1, Jagdalpur, Distt Bastar At Jagdalpur, Cg

6. Shri Lakheshwar Prasad Joshi Sale Tax Inspector, Commercial Tax Officer, Circle 5, Raipur, Dist Raipur, Cg

7. Shri Krishna Kumar Sidar Sale Tax Inspector, Commercial Tax Officer, Korea, Dist Korea, Cg

8. Shri Shorabh Thakur Sal Tax Inspector, O/o Comemrcial Tax Officer, Circle 1, Durg, Dist Durg,c G

9. Shri Vikas Choubey Sale Tax Inspector, O/o Commercial Tax Officer, Ambikapur, Distt Surguja, Cg

10. Shri Santosh Kumar Badge Sale Tax Inspector, O/o Commercial Tax Officer, Circle 2, Raigarh, Dist Raigarh, Cg

11. Smt. Manisha Nayak Sale Tax Inspector, O/o Commercial Tax Officer, Circle 2, Raipur, Dist Raipur, Cg

12. Shri Dinesh Kumar Dhurw Sale Tax Inspector, Commercial Tax Officer Circle 1, Jagadalpur, Dist Bastar, Cg

13. Shri Naresh Kumar Hurra Sale Tax Inspector, O/o Commercil Tax Officer, Circle 1, Jagadlpur, Dist Bastar, Cg

14. Shri Rahul Tiwari Sale Tax Inspector, O/o Commerical Tax Officer, Circle 3, Raipur, Dist Raipur, Cg

15. Shri Bhagat Khekhas Sale Tax Inspector, O/o Commercial Tax Officer, Ambikapur, Dist Surguja, Cg

16. Priyal Gupta Sale Tax Inspector, O/o Commercial Tax Officer, Korea, Dist Korea, Cg

17. Smt. Sushila Tigga Sale Tax Inspector, O/o Commercial Tax Officer, Circle 5, Raipur, Dist Raipur, Cg

18. Shri Vivek Pandey Sale Tax Inspector, O/o Commercial Tax Officer, Circle 1, Bilaspur, Dist Bilaspur, Cg

19. Shri Suresh Kumar Navratan Sale Tax Inspector, O/o Commercial Tax Officer, Ambikapur, Dist Surguja, Cg

20. Shri Dyashankar Netam Sale Tax Inspector, O/o Commercial Tax Officer, Circle 2, Jagdalpur, Dist Bastar, Cg

21. Shri Parmeshwar Singh Marco Sale Tax Inspector, O/o Commercial Tax Officer, Circle 1, Raigarh, Dist Raigarh, Cg``

---- Respondent

And

<u>WPS No. 1167 Of 2013</u>

1. Sachin Kumar Dewangan S/o Late Sita Ram Dewangan Aged About 52 years Near Gayari Mandir, Talapara Road Vinayak Nagar, P.S. Civil Line, Bilapsur District Bilapsur C.G.

2. Om Prakash Shukla S/o Mahesh Prasad Shukla Aged About 50 Years D-75 Yadunandan Nagar, Tifra, P.S. Tifra Bilapsur, Distt. Bilaspur C.G.

---- Petitioner

Vs

- State Of Chhattisgarh Through Secretary, Department Of Commercial Tax, Mantralaya, Mahanadi Bhawan, Naya Raipur C.G.

- Commissioner Commercial Tax, Commercial Tax Building, Civil Line, Raipur C.G.

- Additional Commissioner Commercial Tax, Commercial Tax Building Civil Line, Raipur C.G.

---- Respondent

For Petitioners — Ms. Renu Kochar, Advocate
For Respondent/State — Shri S. Majid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

11/08/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.

2. The petitioners are working on the post of AG-III in the Department of Commercial Tax. The WPS No.1167/2013 has been preferred seeking direction to the respondents to permit the petitioners to appear in the limited competitive examination for promotion to the post of Inspector in the Commercial Tax Department; appoint them by giving them the benefit of GAD circular dated 15.06.1995, in this petition, prayer for quashment of the advertisement for holding the said departmental examination in the year 2012, has also been made.

3. In WPS No.2702/2013, the petitioner is seeking quashment of the promotion order (Annexure-P-1) with further prayer to direct the respondents to allow the petitioner to participate in the departmental examination in future and grant him the benefit of GAD circular dated 15.06.1995.

4. The petitioners have not placed on record the GAD circular dated 15.06.1995, therefore, the said issue has not been examined by this Court.

5. During pendency of these writ petitions, the examinations have already taken place and the promotion orders have been issued, therefore, WPS No.1167/2013 has been rendered infructuous. It is accordingly

dismissed as infructuous.

6. The petitioner would contend that under the applicable departmental rules, for being eligible to participate in the limited competitive examination for filling up the 25% quota for promotion to the post of Inspector in the Commercial Tax Department, a candidate should not be more than 45 years of age and should have put in minimum 5 years service in the feeder cadre. The examination should be conducted once every year, however, since after 2003, such examinations were not conducted and in the meanwhile, the petitioner crossed the maximum age limit of 45 years. Resultantly, the petitioner was not allowed to participate in the examination held in the year 2012. Even though, the examination was deferred/postponed to facilitate one candidate, who was yet to complete the required length of experience. Learned counsel would submit that similar relaxation could have been granted to the petitioner.

7. Admittedly, the petitioner has crossed the maximum age limit of 45 years and is thus, not eligible to participate in the limited competitive examination. It is settled law that the Writ Court cannot issue mandamus contrary to the statutory provisions. The scheme for limited competitive examination is a part of recruitment rules known as Chhattisgarh Commercial Tax Subordinate Class-III Executive Recruitment Rules, 1966. The rules having been framed under Article 309 of the Constitution of India, this Court cannot issue any mandamus contrary to the rules. Merely because, for some period, the examination was postponed and in the meanwhile, one candidate became eligible to participate in the examination, it cannot be said that the whole examination was deferred only to facilitate his eligibility. The

fact remains that the petitioner was ineligible, therefore, in view of the said legal position that the person, who himself is ineligible to participate in the examination cannot question the result of the examination, the writ petition has no substance.

8. It is equally settled that if the petitioner has crossed the maximum age limit, this Court cannot issue any direction to the respondents to grant him relaxation or to appoint him by permitting him to compete in the examination in future, contrary to the express terms of the rules.

9. There is no substance in WPS No.2702/2013. It is accordingly dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

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