

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 461 OF 2016**

Dr. Abhijat Shukla, S/o Dr. Ashok Shukla, aged about 42 years, Resident of House No. 27/63 New Shanti Nagar, Raipur, District Raipur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Technical Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)

2. The Chhattisgarh Public Service Commission through the Secretary, Shankar Nagar, Bhagat Singh Square, Raipur, District Raipur (C.G.)

---Respondents

For Petitioner	: Mr. Prateek Sharma, Advocate
For Respondent No. 1	: Mr. O.P. Sahu, Govt. Advocate
For Respondent No. 2	: Mr. Y.C. Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****25/02/2016**

1. The Chhattisgarh Public Service Commission ('CGPSC') issued an advertisement dated 17/12/2015 for

the post of Lecturer in Polytechnic Institutions. The cut off date prescribed was 01/01/2015 and on that date, the maximum age limit was 40 years for Unreserved candidate. The petitioner admittedly was 41 years and 4 months of age on the cut off date. The said recruitment is governed by the Chhattisgarh Technical Education (Teaching Cadre-Engineering College) (Gazetted) Services Recruitment Rules, 2014 (in short 'Rules, 2014').

2. Learned counsel for the petitioner would submit that after more than 22 years process of regular selection has been made for the first time on the post of Lecturer in the Polytechnic Institutions and therefore, he should be granted age relaxation. The petitioner is teaching for last 12 years. The Shiksha Karmi granted age relaxation up to the age of 45 years as per Clause (4)(vi) of the advertisement. The petitioner's service is governed by the Rules, 2014 and according to that, maximum age for the said post is 40 years and relaxation has been granted to the petitioner as per Rule 8(I)(I) of Rules, 2014, which provides as under:-

“8. Conditions of eligibility for direct recruitment:- In order to be eligible for direct recruitment/selection, a candidate must satisfy the following conditions, namely:-

(I) **Age-**

(I) Apart from above in respect of age limit, the direction issued by General Administration Department of the Government, from time to time shall also be applicable.”

3. It is settled law that once statutory rules have been enacted, the appointment shall be only in accordance with the rules. In the matter of **J & K Public Service Commission and others v. Dr. Narinder Mohan and others**¹, Their Lordships of the Supreme Court have held as under:-

“7.It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law.....”

4. It is equally well settled principle of law that the rules prevailing at the time of notification for inviting applications for recruitment would be applicable for selection of candidates. In a decision reported in the matter of **Marripati Nagaraja and others v. Government**

¹ (1994) 2 SCC 630

of Andhra Pradesh and others², it has been held by

Their Lordships of the Supreme Court as under:-

“14. It is now a well-settled principle of law that the rules which would be applicable for selecting the candidates would be the one which were prevailing at the time of the notification. It is also equally well settled that the State may, subject to constitutional limitations, amend the rule with retrospective effect.....”

5. In an extremely recent judgment in the matter of **Prakash Chand Meena and others v. State of Rajasthan and others**³ similar proposition has been struck by the Supreme Court by authoritatively holding as under: -

“... In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by the learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement and as per Rules existing when the recruitment process began. ...”

6. Pointing out distinction between conditions of recruitment and the condition of service, it has been held by the Supreme Court in the matter of **Syed Khalid Rizvi v. Union of India and others**⁴ that eligibility to the

2 (2007) 11 SCC 522

3 (2015) 8 SCC 484

4 1993 Supp (3) SCC 575

recruitment is conditions of recruitment and not conditions of service. Relaxation cannot be made to the conditions of eligibility. Paragraph 33 of the report states as under:-

“The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused,.....It is already held that conditions of *recruitment* and conditions of service are distinct and the latter is preceded by an appointment according to rules. The former cannot be relaxed.”

7. As such, the petitioner is not entitled for age relaxation over and above prescribed under recruitment Rules and therefore, the CGPSC is absolutely justified in not allowing the petitioner to appear in the said examination being over age candidate.

8. Accordingly, writ petition is dismissed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
JUDGE