

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 991 of 2013**

Satish Singh Keshariya S/o Adhin Singh Keshariya, aged about 42 years, R/o Shivpara, P.S. City Kotwali Durg, Tahsil & Distt. Durg C.G. Recently Posted & Working as Senior Treatment Laboratory Supervisor (Contractual) in the O/o Distt. Tuberculosis Control Officer, Kanker Uttar Bastar C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Health Department, Mahanadi Bhawan, Mantralaya, P.S. Mandir Hasaoud Raipur C.G.
2. Commissioner, Health Services, Mahanadi Bhawan, Mantralaya P.S. Mandir Hasaoud, Raipur C.G.
3. Joint Director, Health Services, T.B. Clinic Campus Kali Badi Chowk, Raipur C.G.

---- Respondents

For Petitioner	: Shri Atanu Ghosh, Advocate
For Respondents/State	: Shri R. K. Gupta, Dy. Advocate General

Writ Petition (S) No. 1786 of 2013

Amit Bose S/o S.K. Bose, aged about 40 years, C/o Rajesh Sonkar, Near Memon Provision Store, Ruprella Gali, Raman Mandir Ward, Post & Ps Ganj, Fafadih, Raipur CG.

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Medical Education, New Mantralaya Zero Point, Baloda Bazar Road, Post & PS Shankar Nagar, New Raipur C.G.
2. Director Health Services, Directorate Health, Pension Bada, Post & PS Civil Lines, Raipur, C.G.
3. Joint Director, Health Services, Bilaspur Division, Regional Health & Family Welfare Training Centre, Seepat Road, Sarkanda, Post & PS Sarkanda, Bilaspur, C.G.
4. Secretary, Department of General Administration, New Mantralaya, Zero Point, Baloda Bazar Road, Post & P.S Shankar Nagar, New Raipur C.G.

---- Respondents

For Petitioner	: Shri Jitendra Pali, Advocate
For Respondents/State	: Shri R. K. Gupta, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

21/06/2016

Both these writ petitions pertain to the advertisements issued on 05.04.2012 and 25.05.2012 respectively. Though the advertisements were issued in April & May, 2012, both these writ petitions have been filed after about a year's time seeking for a direction to the respondents for grant of relaxation of age limit as prescribed in the advertisement by providing relaxation of upper age limit to the extent of the period that they have worked as a contract employee with the State Govt.

2. On perusal of the record it appears that the petitioners at the first instance were not aggrieved by the advertisement and the conditions therein and it is this reason that they have not challenged the advertisement. The petitioners knowing fully well the fact that they are not eligible for applying for the said post on account of having crossed the maximum age limit permissible under the Rules as well as the instructions and directives given by the State Govt. from time to time, they still applied for the said post taking a chance to see whether they could be selected or not. It is only when they were not called for interview, they have now turned back and filed the writ petitions seeking for relaxation of age of the period that they have spent with the respondents as contract employees.

3. Relaxation of age is indisputably is an exclusive prerogative of the Government and it is for the government to decide what

would be the proper age limit for a particular recruitment. It is also the prerogative and exclusivity of the State Government to decide as to which category of persons can be granted relaxation of age and what extent of relaxation of age is to be provided to each such categories. The relaxation of age can vary from category to category taking into consideration the overall factual matrix which prompts them to consider for grant of relaxation as per the Rules governing the field. The State Government has been granting age relaxation to different categories of employees like persons belonging to the reserve category, Siksha Karmis, contract employees working with the State Government, women considering various factors like the social set up of the particular category.

4. In the instant case also, both the petitioners had been working as contract employee with the respondents and as per the circular of the State Govt. of the year 2012, a contract employee would be entitled for age relaxation for the period that he had served as a contractual employee but with an upper age limit of 38 years. On the other words, a contractual employee working with the State Govt. would get relaxation of three years beyond the maximum age of 35 years as fixed by the State Govt. Undisputedly, both the petitioners, on the date of advertisement, had crossed the age of 35 years and therefore they would have been entitled for grant of relaxation upto 3 years as provided by the State Govt. i.e. till the petitioners attained the age of 38 years. Once when the Rules are specific or for that matter the Govt.

instructions are very categorical more particularly the fixing of minimum as well as maximum age for participating in the recruitment process, this Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India would not venture into the arena of legislation of laws and policies for the State Govt. The petitioners in the entire petition have not questioned the policy nor have they sought for a change of policy condition or for amendment of the Rules. In the absence of either of the two, howsoever sympathy the Court may have with the petitioners, if the law does not permit, the Court would be bound by the laws governing the field unless the law itself is questioned or is struck down by the State. So is not the case of the petitioners. The petitioners only seek an indulgence of this Court for a direction to the respondents to permit them for participating in the selection process giving relaxation of upper age limit to the extent of the period that they have been working as contract employee with the State Govt. which is otherwise not permissible under law, rules or executive instructions.

5. Another aspect which has to be borne in mind is that it is not the case where the category which the petitioners belong does not have age relaxation, rather the Govt. has relaxed the age limit of such candidates but with an upper age limit of 38 years. Unfortunately, the petitioners could not come in the zone of consideration even after grant of relaxation up to the age of 38 years being a contract employee in the State Govt. and therefore,

the petitioners have tried to knock the door of this Court after more than one year of the advertisement having been passed.

6. It is settled position of law that any recruitment made by the State Govt. has to be strictly in accordance with the Rules governing the field and nobody could have got any advantage or relaxation unless the Rules provide for the same or the Govt. issues specific instructions in this regard. In the instant case, the petitioners have not questioned any particular Rule position or any order of the State Govt. so far as the grant of age relaxation is concerned and in the absence of which the entire claim of the petitioners itself gets demolished.

7. Thus, for the aforementioned factual backgrounds, this Court is of the opinion that the petitioners have not been able to make out any strong case calling for interference with the recruitment process initiated on the advertisement as enclosed with the petition.

8. Thus, the instant petitions being devoid of merit deserve to be and are accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**