

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2946 of 2013

- Ku. Shalini Soni, D/o Shri Shambhu Prasad Soni, Aged about 26 years, Presently working as Assistant Grade-III, In the office of the General Manager, Jila Vyapar Evam Udyog Kendra, Surguja (CG) R/o Village and Post Nagpur, Tahsil Manendragarh, Police and Revenue District Korea (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department of Commerce and Industry, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. Director, Directorate of Industry, Udyog Bhawan, Ring Road No.1, Telibandha, Raipur, District Raipur Chhattisgarh
3. General Manager, Jila Vyapar Avam Udyog Kendra, Surguja, District Surguja, Chhattisgarh
4. Collector, Surguja, District Surguja, Chhattisgarh

---- Respondent

For Petitioner	Mr. Pawan Shrivastava, Advocate
For Respondent /State	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

9/5/2016

1. Heard.
2. The petitioner is aggrieved by her termination from the post of Assistant Grade-III by the order passed by the Directorate of Industries, Chhattisgarh, on 11.09.2013.
3. The facts of the case, briefly stated, are that the Collector,

Sarguja issued advertisement for filling up vacant posts of Class-III and Class IV category in Sarguja District in various Departments of the State Government. The joint recruitment drive was for all the vacant posts of different Departments and thereafter, the names of the selected candidates were forwarded to the concerned Department for issuance of letters of appointment. In the advertisement Annexure P-2, the last date of submission of application was 04.04.2012. The petitioner submitted her application for the post of AG-III on 29.03.2012. In the format of the application form, the candidates were required to state about the experience earned by them. The petitioner being duly qualified and eligible for the post in terms of the advertisement and was also having experience, mentioned in the application form that she is working as Data Entry Operator in the Office of Block Medical Officer, Community Health Centre, Manendragarh, District Korea w.e.f. 01.10.2011 till date i.e. 29.03.2012 (date of submission of application form).

4. Although the advertisement did not mention that in the recruitment process, 03 marks would be allotted for having experience of 06 months to 01 year, 06 marks would be allotted for having experience of 01 year 06 months and 09 marks would be allotted for having experience of 02 years 06 months, the Selection Committee decided to grant such weightage to the candidates, as is evident from para 6 of the return filed by the respondents. The procedure has not been questioned by any of the parties and the

recruitment has proceeded on the basis of the said procedure adopted by the Selection Committee. The petitioner was allotted 03 marks for having experience on the post of Data Entry Operator and she found position in the merit list, therefore, her name was recommended by the Selection Committee for appointment and eventually, by order dated 29.08.2012 issued by the Directorate of Industries, she was offered appointment as AG-III. The petitioner joined on the post on 10.09.2012 after having resigned from her previous place of work on 07.09.2012. After the petitioner has worked for about 09 months, she received a show cause notice on 10.06.2013 *inter alia* informing that one Rajiv Gupta has complained about the marks allotted to her under the head of experience, therefore, she is required to submit explanation and she was informed that her appointment may be cancelled.

5. In response to the notice, the petitioner informed the authorities that she has worked as Data Entry Operator in the office of Block Medical Officer, Community Health Centre, Manendragarh, District Korea w.e.f. 01.10.2011 to 07.09.2012, which is more than 06 months, therefore, the marks for experience has rightly been awarded to her. She has also stated that one Ms. Preeti Gupta has secured 54.10 marks yet she has been appointed from the waiting list, therefore, even if her marks for experience is deducted, she would still be coming within the zone of selection and as such, the appointment should not be cancelled. However, the respondents were not satisfied

with the reply because as on the date of submission of the application, the petitioner had not earned six months experience as the period of experience earned by her was only of 05 months and 28 days.

6. Mr. Pawan Shrivastava, learned counsel for the petitioner, would submit that the petitioner was not at fault at any point of time, because, she having submitted the application on 29.03.2012, she could only have submitted experience earned by her on that date, however, as on cut off date i.e. 4.04.2012, her experience was of more than 06 months, therefore, the impugned order deserves to be set-aside. In the alternative, it is argued that Ms. Preeti Gupta, who has secured less number of marks than the petitioner having been selected, the petitioner's termination is *ex facie* illegal and arbitrary.
7. Per contra, Mr. Shashank Thakur, learned Government Advocate for the State, would submit that the petitioner's selection was based on the strength of the documents submitted by her along with the application form, on the basis of which, the experience earned was less than 06 months, therefore, 03 marks for experience was wrongly awarded to the petitioner, which has rightly been deducted and as a consequence, the appointment has rightly been cancelled. He would further submit that the principles of natural justice having been followed by issuance of show cause notice before passing the order of termination, no interference is called for.

8. There is no dispute about the fact that the cut off date for submission of application form was 04.04.2012 and further that there was no mention in the advertisement that in the selection process, marks for earning experience would be given in the manner subsequently decided by the Selection Committee. Although there was a column for mentioning the experience earned by each of the candidates, they were not aware as to what would be the methodology for calculation of weightage awarded to each of the candidates for experience.
9. In the matters of **Ashok Kumar Sonkar Vs. Union of India and others, (2007) 4 SCC 54** and **Dipitimayee Parida Vs. State of Orissa and others, (2008) 10 687**, the Supreme Court has held that for obtaining the eligibility qualification, the relevant date is the date mentioned in the advertisement and if no cut off date is mentioned, the last date of submission of application would be the cut off date.
10. In the case in hand, in reply to the show cause notice, the petitioner informed the authorities that she has worked as Data Entry Operator in the Office of Block Medical Officer, Community Health Centre, Manengragarh, District Korea w.e.f. 01.10.2011 to 07.09.2012, meaning thereby that on the cut off date i.e 04.04.2012, she continued to work as Data Entry Operator. Since the qualification or additional qualification of a candidate is to be reckoned on the cut off date and if the petitioner's experience earned as on

04.04.2012 is calculated, her experience on the said date would be of more than 06 months. Moreover, the petitioner could have filled application form till 04.04.2012, which was the last date of submission, to complete 06 months experience before the submission of application, however, the candidates were not informed by way of advertisement that any weightage for experience would be granted and that such weightage would of 03 marks for experience earned between 06 to 12 months. Thus, the petitioner was never at fault by submitting the application along with the experience earned on the date of submission of application.

11. Be that as it may, as on the cut off date, the petitioner has in fact completed more than 06 months experience as Data Entry Operator in the Office of the Block Medical Officer, Community Health Centre, Manendragarh, District Korea w.e.f. 01.10.2011 to 07.05.2012 , therefore, she was entitled for 03 marks.

12. In the matter of **Charles K. Skaria and others Vs. Dr. C. Mathew & others**, AIR 1980 SC 1230, it has been held thus:

“What is essential is the possession of a diploma before the given date, what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though

indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence."

13. Applying the law laid down in the matter of **Charles K. Skaria (Supra)** to the facts of the present case, as on the cut off date i.e. 04.04.2012, the petitioner was having 06 months experience, therefore, since she was entitled for the marks for experience, while considering the petitioner's reply, the authorities should have considered this aspect, however, the authorities proceeded to take the petitioner's experience as mentioned in the application rather than calculating the experience as on cut off date.

14. In the considered opinion of this Court, having appointed the petitioner on the post of AG-III and allowed her to work for about a year, cancelling the appointment which is otherwise also illegal and arbitrary, would not be justified at all and is not permissible under Article 14 and 16 of the Constitution of India.

15. For the foregoing, the writ petition is allowed and the impugned order is set-aside and the petitioner is directed to be reinstated in service with full back-wages and other consequential benefits.

Sd/-

Judge

(Prashant Kumar Mishra)

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