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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 18/10/2016****Judgment Delivered on : 15/11/2016****Writ Appeal No. 427 of 2016**

Govind Maskhare S/o Shri Mohan Lal Maskhare, Aged about 45 years, R/o Janta Colony, Gudiyari, Raipur, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Public Relations Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Director, Directorate Public Relations, Indrawati Bhawan, Naya Raipur, Chhattisgarh.
3. Commissioner, Public Relations, Directorate Public Relations, Indrawati Bhawan, Naya Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Jitendra Pali, Advocate.
For Respondent/State	:	Shri Yashwant Singh Thakur, Additional Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

C.A.V. Judgment**Per Deepak Gupta, Chief Justice**

1. This writ appeal is directed against the judgment dated 21.06.2016 delivered by a learned Single Judge of this Court in Writ Petition (S) No. 1936 of 2012 whereby the writ petition filed by the Appellant/Petitioner praying for relaxation of age has been rejected primarily on two grounds. Firstly, that the petition was barred by principles of delay and laches and secondly that the Appellant took a chance to appear in the interview and

after having appeared in the interview, he could not be permitted to challenge the selection process.

2. Briefly stated facts of the case are that the Appellant who was working as Data Entry Operator filed a writ petition on 05.03.2012 praying that the Respondents/State be directed to consider his candidature by granting him relaxation in age equivalent to number of years the Appellant had served the State on contract basis as Data Entry Operator. He also prayed that his case is squarely covered by the judgment delivered in Writ Petition (S) No. 2711 of 2009 on 29.03.2012. The Appellant was initially appointed as Communication Assistant (Sanchar Sahayak) in the Public Works Department of Government of Chhattisgarh on 09.12.2000. Thereafter, on 09.10.2006, the Appellant was appointed as Data Entry Operator initially for a period of one year but he continued to work on the said post. Thereafter, the Respondents issued an advertisement on 05.02.2009 inviting applications for Data Entry Operator on regular basis. In this advertisement, the upper age limit was prescribed as 35 years. However, it was mentioned that even after relaxation the upper age limit would not be beyond 38 years. The Appellant alongwith other employees made a representation to the Department immediately after issuance of the advertisement in the year 2009 in which it was submitted that when they entered service as contractual employees, they were below the upper age limit but now they are beyond the age limit. On this representation, the order passed is "put up proposal for all such cases". However, no order was ever conveyed to the Appellant. Though, the advertisement was issued in the year 2009, call letters were issued for tests and interview only on 28.04.2012. Even before the results of the interview were issued, the Appellant approached this Court seeking a direction that the Respondents be directed to consider his candidature by

giving him relaxation in age in terms of the judgment of a Division Bench of this Court in Writ Petition (S) No. 2711 of 2009 decided on 29.03.2012. In this writ petition, following detailed order was passed on 08.05.2012 by the learned Single Judge of this Court and the operative portion of the said order reads as follows:

“Having regard to the facts situation of the case as the examination is going to be held on 15.05.2012, and the last working day before summer vacation is 11.05.2012, it is just and proper to permit the petitioner to participate in the examination to be held pursuant to the notice dated 23.04.2012. However, it is made clear that the petitioner cannot claim any equity on the basis of his provisional admission to the examination and also this order is passed without prejudice to the rights and contentions of the parties and the participation of the petitioner in the examination shall be subject to final decision of this petition.”

3. Thereafter, the Appellant appeared in the test and it is not disputed that he was at serial No. 5 in the merit list but was not offered appointment only on the ground that he had crossed the maximum age limit.
4. The learned Single Judge has not gone into the merits of the case but has rejected the writ petition only on the grounds that the petition was barred by delay and laches and the Petitioner/Appellant having taken part in the selection process is not entitled to challenge the same.
5. With due respect to the learned Single Judge, we are totally unable to uphold the judgment of the learned Single Judge. The learned Single Judge did not take into consideration two very important factors. The first factor was that the Appellant immediately after the advertisement was issued had approached the Department to consider his candidature by giving him relaxation in age on the ground that the employees in other Departments had been given such relaxation. On his representation, the order passed was to put up proposal for all such cases, but nothing was conveyed to him. Not only that, before the interviews were held, in the

year 2012, he approached this Court and obtained orders of the Court to be permitted to appear in the interview.

6. We fail to understand how the writ petition can be said to be belated. No doubt the advertisement was issued in the year 2009, but the Appellant had immediately represented for relaxation in age. Not only that, before the interviews were held, the Appellant filed writ petition and obtained an order that he be permitted to appear in the interview. In such circumstances, it cannot be said that the Appellant was in any manner negligent or was sleeping like Kumbhakarna or for that matter Rip Van Winkle. In the present case, the Appellant was well aware of his rights and doing whatever best he could do. He was not a negligent person and there was no delay on his part.
7. With regard to the second observation made by the learned Single Judge, we again cannot agree with him that the Appellant took the role of fence-sitter. Immediately, after the advertisement was issued, the Appellant filed a representation before the process of selection started and also filed a writ petition. The learned Single Judge wrongly held that this was in connection with some different recruitment process. Therefore, we are not in agreement with the learned Single Judge that the writ petition is either belated or that the Appellant being a fence-sitter is not entitled to any relief.
8. Having held so, instead of remanding the matter to the learned Single Judge, we feel that we should dispose of the same on merits.
9. The Appellant has also relied upon certain other instances where the State Government has given relief as claimed by the Appellant to Photographers, Shiksha Karmis etc. It would also be pertinent to mention that the first representation made by the Appellant and others is dated 07.11.2009 in which they have prayed that those Data Entry Operators

who were working on the contract basis be granted relaxation in age equal to the period of contract service rendered by them. These representations were never answered. We also find from the record that earlier on 10.02.2006, the State of Chhattisgarh was pleased to issue guidelines that when the officials of Panchayats are considered for appointment in the State service, they should be given relaxation in upper age limit equal to the service rendered by them in the Panchayat. It was further ordered that the service beyond six months would be treated equal to one year service. The same benefit was extended to Shiksha Karmis who were the teachers appointed by Panchayats when they were being considered for regular appointment as Teachers in the State Service. It is also not disputed before us that such benefit was given to Photographers etc.

10. We are conscious of the fact that normally, this Court does not direct to grant relaxation in age. However, the Government cannot have different criteria of age relaxation for different posts under the State Government. Once, the State has decided to grant relaxation in age for the period of contract service rendered to one category of employees, the same should have been granted to all employees regardless of the Department in which they are working.

11. A Division Bench of this Court in *Dr. Ajay Kumar Sinha & Others v. The State of Chhattisgarh & Others* {Writ Petition (S) No. 2711 of 2009} and other connected writ petitions was dealing with a similar question of age relaxation with regard to filling up of the posts of Assistant Professors in various disciplines in the State of Chhattisgarh. The Division Bench after a detailed discussion held as follows:

“39. Therefore, this Court is of the opinion that not providing age relaxation to the petitioners, who had been working on the post of contract Teachers/Assistant

Professors and at the same time providing age relaxation to Shiksha Karmis, who even do not belong to Govt. service but belong to Panchayat service and the minimum requisite qualification prescribed for them is lesser than contract Teachers/Assistant Professors, amounts to discrimination and it is violative of Articles 14 and 16 of the Constitution of India. Looking to the facts situation, as noticed above, wherein Shiksha Karmis have been granted relaxation in age for serving in the schools run by the Panchayats but the petitioners, who had been rendering their services in the schools come under the Higher Education Department, have been ignored, we are of the opinion that the petitioners are entitled to get similar benefit in age relaxation akin to Shikhsa Karmis, otherwise, it would amount to discrimination in an arbitrary manner.

43. Accordingly, we direct that the case of the petitioners only would be considered for relaxation of age in the light of the observations made above by the State Government and the State Government would inform the Public Service Commission about the decision taken by it. In turn, the Public Service Commission would take necessary steps in that regard after receiving the intimation from the State Government and thereafter, the Public Service Commission would be free to declare and publish the result of the selection, in accordance with law.”

12. We are of the considered view that this case is squarely covered by the judgment rendered in the aforesaid case. The Appellant is also entitled to the same benefit of age relaxation for the period of contract service rendered by him as Data Entry Operator. If after giving him the relaxation for this period, he is eligible to be considered for appointment, he shall be so considered. Decision in this behalf be taken latest by 31.12.2016.

13. The writ appeal is allowed in the aforesaid terms.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE