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HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition(S) No. 3053 of 2013**

1. Prashant Gupta S/o Shri S.K.Gupta, aged about 37 years, R/o Rajatalab, near of Shiv Mandir, Gali No. 02, Raipur, PS Civil Line, Distt Raipur, CG
2. Krishna Rav Mathankar S/o Shri Manikram Mathankar, aged about 35 years, R/o G.E.Road, Raipur, PS Phaphadih Chowk, Distt Raipur, CG
3. Jitendra Sharma S/o Shri Har Narayan Sharma, aged about 36 years, R/o J.K.Colony, Banjari Nagar, infront of Pahadi Talab, Kushalpur, Raipur, PS Purani Basti, Distt Raipur, CG
4. Naresh Sharma S/o Lt Shri Bhagawati Prasad Sharma, aged about 37 years, R/o House No.-O-203, R.D.A. Colony, Boriyakhurd, Raipur, PS Tikarapara, Distt Raipur, CG
5. Sunita Yadav W/o Shri Kamal Yadav, aged about 43 years R/o G.E.Road, PS Ganjthana, Distt Raipur, CG
6. Bajrang Mishra S/o Shri Ramabhilash Mishra, aged about 35 years, R/o Shri Hanuman Mandir, infront of Ashirwad Bhawan, Baeran Bazar, Raipur, PS City Kotwali, Distt Raipur, CG

---- Petitioners**Versus**

1. State of Chhattisgarh through its Principal Secretary, Department of Forest, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt Raipur, CG
2. Additional Secretary, Department of Forest, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt Raipur, CG
3. Chief Conservator of Forest (Administration) Aranya Bhawan, Medical College Road, Raipur, Distt Raipur, CG

---- Respondents

For Petitioners	: Shri Mateen Siddiqui, Advocate
For Respondents/State	: Shri R. K. Gupta, Dy. Advocate General

Writ Pition (S) No. 3824 of 2013

1. B. Ravi Rao S/o Late Mohan Rao, aged about 42 years, presently working as Data Entry Operator in the office of Divisional Forest Officer, Rajnandgaon, R/o Qtr. No.2, Forest Colony, Gaurav Path, Kaurin Bhata, P.S. Basantpur, Civil & Revenue Distt. Rajnandgaon, C.G.
2. Nomesh Kumar Verma S/o Shri Kisan Lal Verma aged about 39 years presently working as Data Entry Operator in the office of Distt. Forest Officer, Khairagarh, R/o Ward No.18, Gokul Nagar, Khairagarh, P.S. Khairagarh, Civil & Revenue Distt. Rajnandgaon C.G.

3. Chandrashekhar Yadu S/o Late Jagdish Prasad Yadu aged about 39 years, presently working as Data Entry Operator in the office of Principal Chief Conservator of Forest, Raipur, R/o HIG-1/497, New Borsi, Durg, P.S. Padmanabhpur, Durg, Civil & Revenue Distt. Durg, C.G.
4. Anil Jain S/o Uday Chand Jain, aged about 40 years, presently working as Assistant Programmer in the office of Principal Chief Conservator of Forest, Raipur R/o C/o Ajay Verma, Nav Durga Chowk, Raja Talab P.S. Pandri, Raipur, Civil & Revenue Distt. Raipur C.G.

---- **Petitioners**

Versus

1. The State of Chhattisgarh, through the Principal Secretary, Department of Forest, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, C.G.
2. Principal Chief Conservator of Forest, Aranya Bhawan, Jail Road, Raipur, C.G.
3. Conservator of Forest, Durg Circle, Durg, Distt. Durg, C.G.
4. Conservator of Forest, (Administration) Aranya Bhawan, Jail Road, Raipur, C.G.

---- **Respondents**

For Petitioners	:	Shri N. N. Roy, Advocate
For Respondents/State	:	Shri R. K. Gupta, Dy. A.G.

Writ Petition (S) No. 4222 of 2013

Ved Prakash Sharma S/o Shri Ramavatar Sharma, aged about 40 years, Post Data Entry Operator, R/o Behind Kosha Kendra, Kumharpara, Po Jagdalpur, PS City Kotwali, Distt Bastar at Jagdalpur, CG

---- **Petitioner**

Versus

1. State of Chhattisgarh through its Principal Secretary, Department of Forest, Ministry, Mahanadi Bhawan, new Raipur, Distt. Raipur, CG
2. The Chief Conservator of Forest (Administration), Forest Department, Aranya Bhawan, Medical College Road, Raipur, Dist Raipur, CG
3. Conservator of Forest, Jagdalpur Circle, Distt Bastar at Jagdalpur, CG
4. Divisional Forest Officer Bastar Forest Division, Jagdalpur, Distt. Bastar, CG

---- **Respondents**

For Petitioner	:	Shri Alok Dewangan, Advocate
For Respondents/State	:	Shri R. K. Gupta, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

21/06/2016

These are the three writ petitions wherein the issue involved in and the relief claimed for being same and the dispute also being of the same recruitment process, these three writ petitions are heard and decided analogously.

2. There are six petitioners in W.P.(S) No.3053 of 2013, four petitioners in W.P.(S) No.3824 of 2013 and one petitioner in W.P. (S) No. 4222 of 2013. All the petitioners in these three writ petitions are claiming same relief that of a direction to the respondents for allowing them to participate in the selection process providing them the maximum age relaxation limit of 45 years.

3. The admitted facts in the instant case are that all these petitioners in the three writ petitions belong to the general category and are working with the respondents either as a daily wage employee or as a contractual employee performing the duties of Data Entry Operator since long. The respondents somewhere in the mid 2013 issued an advertisement calling upon eligible candidates for various posts to be filled in the Forest Department under the Raipur Forest Range.

4. Since all these petitioners were discharging the duty of Data Entry Operator either as a daily wage employee or a contractual employee, they intended to apply for the said post. However, in the said advertisement, the age limit that was prescribed was minimum

18 years and maximum 35 years as on 01.08.2013 with a rider that the candidates belonging to SC, ST, OBC, Ex-servicemen and Women category will get the age relaxation in accordance with the Rules and conditions as prescribed by the State Govt. from time to time.

5. Shri Mateen Siddiqui, learned counsel appearing for the petitioners in W.P.(S) No.3053/13 submits that so far as petitioner No.5 namely Sunita Yadav is concerned, he would not press any relief for the reason that Women category candidates have relaxation of 10 years and the said Sunita Yadav being only aged about 43 years, she would be eligible for the selection process taking into account the relaxation for women category candidates.

6. Thus, the petition so far as the petitioner No.5 in W.P.(S) No.3053/13 is concerned, stands dismissed as not pressed.

7. Learned counsel appearing for the petitioners took the Court through the recruitment Rules governing the field i.e. Chhattisgarh Class III (Clerical Cadre) Forest Service Recruitment Rules, 2012 (hereinafter referred as 'the Rules') and referred to Clause 8 which deals with the age limit and the relaxation in the age limit permissible under the Rules. They submitted that Rule 8 (ए) very specifically envisages that the candidates can take the relaxation of age prescribed under the Rules but the age under any circumstances cannot exceed 45 years. Applying the said analogy, if the petitioners are granted the relaxation for their service that they had rendered with the respondents in the past, they would also become eligible for consideration to the post of Data Entry

Operator. According to the counsel for the petitioners, on the one hand Rule 8 (V) gives the upper age limit of recruitment to be 45 years, on the other hand the advertisement restricts the upper age limit to be 35 years and as such there is a direct conflict between the advertisement and the Rule. They submitted that the petitioners' case should be considered in the light of the judgment of the Division Bench of this Court rendered in W.P.(S) No. 2711/09 wherein this court has held that the benefit of age relaxation that is provided to the Siksha Karmis up to the age of 45 years but denying the same to the other persons who are not Siksha Karmi serving with the State Govt. is discriminatory and violative of Article 14, 16 & 21 of the Constitution of India. Therefore, the case of the petitioners also should be considered as per the ratio and principle laid down by the Division Bench in the said judgment.

8. Counsel for the petitioners further submitted that the case of the petitioners is on the better footing as they are discharging the same duties of the post for which they have applied i.e. the post of Data Entry Operator, therefore, the respondents rather would be benefited if the petitioners are given relaxation and considered for recruitment. In fact, these petitioners are more meritorious than the persons who are otherwise found to be eligible and participated in the recruitment by virtue of sheer experience that of the petitioners discharging the work of Data Entry Operator for the past many years. It was submitted that since as a matter of Policy the State Govt. has granted the benefit of age relaxation to the Siksha Karmis for their service that they have rendered up till the

maximum age of 45 years, the petitioners also should be considered on parity and should be granted similar benefit. Counsel for the petitioners also made a submission that in the instant case, all these petitioners by virtue of the interim order passed by this Court have been permitted to participate in the selection process but their results have not been declared. However, the petitioners feel that they have done well and have been found meritorious, therefore, at this juncture, the State Govt. should consider the case of the petitioners for recruitment to the post of Data Entry Operator taking into account the merit of the petitioners by granting relaxation for the period that they have served with the respondents either as a daily wage employee or as a contractual employee. Thus, counsel for the petitioners prayed for allowing the petitions directing the respondents to permit the petitioners to participate in the recruitment process and consider for the post of Data Entry Operator in accordance to their merit.

9. Per contra, Shri R. K. Gupta, Dy. Advocate General appearing for the respondents-State submitted that all the three petitions are totally misconceived and deserve to be rejected. He submitted that the sole base of the petitioners before this Court is the judgment of the Division Bench passed in W.P.(S) No. 2711/09 decided on 29.03.2012 but the ratio and the principle laid down in the said judgment cannot be made applicable in the instant case. The findings given by the said Bench would not come to the rescue of the petitioners as the said judgment was passed under entirely different contractual background as compared to the

present case. It was submitted that in the said case, the petitioners were in fact, the persons who had challenged the advertisement itself at the threshold and also participated in the selection process but were claiming relief at par with that of the Siksha Karmis who in the said advertisement had been granted certain additional relaxation. It was further submitted that the petitioners in the said case were more qualified than the Siksha Karmis and were more eligible for the post that they had applied for but the Siksha Karmis by virtue of the relaxation would be having the upper hand in the selection process which led to the decision passed by the Division Bench. Such is not the fact in the present case and therefore the said judgment cannot be made applicable in the factual matrix of the present petition.

10. Having considered the total facts and circumstances of the case what is evidently clear is that the advertisement was issued in mid 2013 under the Chhattisgarh Class III (Clerical Cadre) Forest Service Recruitment Rules, 2012 which is a Rule framed under Article 309 of the Constitution of India. A perusal of the Rules would very clearly reflect that the Rules itself provide for granting relaxation to various categories of candidates which includes the candidates belonging to Reserved category, Women category, Ex-servicemen category, permanent and temporary employees of the State Govt., contingency paid employees and the retrenched employees of the State Govt. Likewise, the age relaxation has also been provided to the Green Card holders etc. However, the case of the petitioners does not fall within any of these categories

prescribed under the Rules and therefore, prima facie, the petitioners do not fall within any of those categories making them eligible for age relaxation. However, on 30.01.2012, the State Govt. had issued a circular which can be considered to be an executive instruction whereby they have as a matter of policy decision decided to grant age relaxation to the employees working with the State Govt. as contractual employees but the said circular also puts a cap on the relaxation of upper age limit to be 38 years. The said circular of the State Govt. read with the conditions of the advertisement, that the Rules and circulars of the State Govt. issued from time to time would be applicable if read together would show that the petitioners also in fact would be benefited of the relaxation but with an upper age limit of 38 years. Admittedly, all the petitioners in the three writ petitions have crossed the age of 38 years on the date when the advertisement was published. Thus, even if the relaxation is granted to the petitioners, they would not be eligible for being considered.

11. Another aspect which has to be borne in mind is that in the three writ petitions neither the advertisement nor the recruitment Rules on the basis of which the advertisement was issued has been challenged. 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 no person could have got any advantage or relaxation unless the Rules provide for the same. In the instant case also, the Rules as it stand today do not permit any relaxation of age to the contractual employees. However, if the

circular of the State Govt. dated 30.01.2012 is taken into consideration, even then all the petitioners in the three writ petitions have crossed the upper age limit of 38 years.

12. So far as the judgment of the Division Bench is concerned, as has been rightly pointed out by the State counsel, the said judgment has been passed under entirely different contextual background and that the ratio and principle laid down in the said judgment cannot be made applicable in the instant case as the facts and circumstances which led to the filing of the said writ petition before the Division Bench were entirely different from that of the dispute in the present three writ petitions. In the instant case, admittedly, the advertisement has been issued purely in accordance with the recruitment Rules governing the field. Until and unless the recruitment Rules are amended, the Authorities concerned have to adhere to the Rules and if the advertisement is issued in the light of the recruitment Rules, the same cannot be said to be bad in law, arbitrary, mala fide or discriminatory more particularly when neither the recruitment Rules nor the advertisement is under challenge. Since the petitioners do not fulfill the eligible criteria laid down under the statutory Rules governing the Service Conditions nor do they fulfill the eligible criteria as stipulated in the advertisement, without challenging either the Rules or the advertisement, the petitioners cannot be permitted to question the selection process itself.

13. Considering the total facts and circumstances of the case, this Court is of the opinion that no good case is made out for

allowing the petitioners to participate in the selection process by providing them the maximum limit of age relaxation 45 years.

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

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