

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No.449 of 2008**

- Murlidhar Yadav S/o. Shri Madho Ram Yadav, Resident Of Village And Polt Salkhan, Via Kharod, Distt. Janjgir-Champa(C.G)

**---- Petitioner****Versus**

1. State Of Chhattisgarh through the Secretary, Department of Health and Family Welfare, Mantralay, DKS Bhawan, Raipur, Tahsil and District Raipur (CG)
2. The Director Directorate Of Health Services, Chhattisgarh, Raipur, Tahsil And Distt. Raipur (C.G)
3. The Chief Medical And Health Officer District Hospital Janjgir Champa, District. Janjgir Champa (C.G)
4. Shri Rakesh Kumar Tandon S/o. Shri Paigram Tandon, R/o Village And Post Kodabhat, Tah. Pamgarh, Distt. Janjgir-Champa (C.G), (Proposed Posting Place - Primary Health Centre Portha, Sakti)
5. Shri Murli Manohar Sahu S/o. Shri Bhaiya Ram Sahu, R/o. Village Bawanbudi, Post Kashigarh, Jaijaipur, Distt. Janjgir Champa (C.G), (Proposed Posting Place - Primary Health Centre Raipura, Jaijaipur)
6. Shri Sunil Kumar Singh S/o. Shri R.P.Singh R/o. Ward No.7, Janjgir, Distt. Janjgir - Champa, (Proposed Place Of Posting - Primary Health Centre Hasod, Jaijaipur)
7. Shri Rajesh Kumar S/o. Shri Hari Lal Jaiswal, R/o. C/o. O.P.Jaiswal, Ward No.17, Chandaniyapara, Janjgir, Distt. Janjgir Champa (C.G) (Proposed Place Of Posting Primary Health Centre Bargaon, Pamgarh )
8. Shri Mahendra Pal Sahu S/o. Shri Narayan R/o. Village Rogada, Post Sioorh (Nawagarh) , Distt. Janjgir-Champa (C.G) (Proposed Place Of Posting Civil Dispensary Baradwar , Sakti)
9. Shri Sukcharan Sahu S/o. Shri Vimal, R/o. Village Limtara, Post Sakarra, Tah. Sakti, Distt. Janjgir-Champa(C.G), (Proposed Place Of Posting - Primary Health Centre Chandrapur, Dabhra)
10. Shri Manoj Kumar Patel S/o. Shri Murlidhar Patel, R/o. Village And Post Ludeng, Tah. Pathalgaon, Distt. Janjgir-Champa (C.G), (Proposed Place Of Posting Samudayaik Swasthya Kendra Dhabra)
11. Shri Rajesh Kumar Soni S/o. Shri Nohar Lal Soni, R/o. Shri Jewelers Main Road Pamgarh, Distt. Janjgir - Champa (C.G), (Proposed Place Of Posting - Primary Health Centre Gatwa, Baloda)

---- Respondents

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For Petitioner : Shri Amrito Das with Shri K. Rohan, Advocates  
 For Respondent/State : Shri Satish Gupta, GA  
 For Respondent No.4, 6, 7 & 8: Shri Ayaz Naved, Advocate  
 For Respondent No.5, 9 & 10: Shri Pawan Shrivastava, Advocate

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**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**14/09/2017**

Heard.

2. Rejection of petitioner's candidature for appointment to the post of Pharmacist Grade II has been challenged on following two grounds-

- (1) That live registration with the employment exchange, as on the date of advertisement i.e. 02-12-2006, was not essential condition and the petitioner's application was wrongly rejected, even though, the petitioner was granted registration with Employment Exchange on 14-12-2006, which is prior to the last date of submission of application dated 19-12-2006.
- (2) There was no requirement in the advertisement that along with the application form, mark sheet of qualifying examination is also required to be attached. All that was required to submit was the certificate of degree/diploma of Pharmacy, recognized by the Government of Madhya Pradesh, which was submitted by the petitioner.

3. Learned counsel for the petitioner submits that in view of the judgment of this Court in the case of ***Nitish Vachhani vs. State of Chhattisgarh and another***, (WPS 2221/2013 and batch of petitions, decided on 13-12-2013) and order passed by the Full Bench of this Court in Writ Appeal No.411/2014 and batch of matters (***State of Chhattisgarh and another vs. Roshni Sahu***) on

21-10-2016, the requirement of live registration with the Employment Exchange is not mandatory condition and even if, there is no registration, application form is not liable to be rejected. According to learned counsel, the petitioner, in any case, has obtained the registration on 14-12-2006, which was submitted along with the application form and as the last date of submission of application form was 19-12-2006, rejection of petitioner's application on that ground was not legal. Other submission is that the advertisement did not clearly state that the candidate is required to submit mark sheet of he having passed Pharmacy Examination. Therefore, though the petitioner had given all the information as required under the advertisement, which included the total marks obtained and the percentage with which, he had passed Pharmacy Examination, the mark sheet was not submitted and therefore, without there being any essential condition of submission of mark sheet along with the application form, the application could not be rejected. He submits that two candidates of OBC category, to which, petitioner belongs, who obtained lesser marks than the petitioner, were selected. Therefore, in these circumstances, the petitioner is entitled to direction for appointment on the post of Pharmacist Grade II.

4. Per contra, learned State counsel would submit that even though, it was not specifically stated in the advertisement that the mark sheet is required to be attached, it was implicit in the terms of the advertisement that the candidate is required to submit the mark sheet along with the degree/diploma certificate. He submits that there is no ambiguity in the advertisement and it was obvious that the mark sheet was required to be submitted. On the issue of rejection of application on the ground of petitioner's registration being dated 14-12-2006 and not in existence, on the date of advertisement i.e. 02-12-2006, learned State counsel would submit that rejection of petitioner's application form is proper.

Learned State counsel would submit that the order passed by the Full Bench of this Court in the case of **Roshni Sahu** (supra), turned on factual premise that the candidates therein though not possessed of live registration with Employment Exchange, were allowed to participate in the process of selection and therefore, their candidature was saved, notwithstanding that they were not possessed of the relevant certificates, whereas in the present case, the petitioner's candidature was rejected at the threshold of the process of selection and it is not a case that the petitioner was allowed to participate in the process of selection. It is argued that in the present case, all that was required to be done was to prepare the merit list of the candidates on the basis of marks obtained in the qualifying examination. Therefore, the reliance placed on the judgment of the Full Bench of this Court in the case of **Roshani Sahu** (supra) is misplaced. In so far as other judgment in the case of **Nitish Vachhani** (supra) is concerned, it is submitted that in view of the judgment passed in the Writ Appeal deciding the similar issue, law laid down by the Full Bench would prevail.

6. Learned counsel appearing for private respondents would support the stand taken by the learned State counsel and in addition, submit that even if, this Court finds that the petitioner is entitled to appropriate direction for appointment, the private respondents, have continued to work for the last 9 years, therefore, at this stage, their selection may not be set aside and instead, direction may be issued to appoint the petitioner against any available post of Pharmacist Grade II. It is submitted that even now, number of posts of Pharmacist Grade II are available within the jurisdiction of Chief Medical Officer, Janjgir Champa.

7. Advertisement dated 02-12-2006 required applicants for appointment to the post of Pharmacist Grade II, to submit certificates of registration of Chhattisgarh Pharmacy Council, as also live registration from District

Employment Office. It is not in dispute that the petitioner was possessed of live registration of Chhattisgarh Pharmacy Council. However, as far as the live registration with District Employment Office is concerned, the petitioner got himself registered only on 14-12-2006, which is subsequent to the date of advertisement, but before the last date of submission of application.

8. In the case of **Nitish Vachhani** (supra), the issue with regard to rejection of candidature on the ground of being not possessed of live registration with Employment Exchange was extensively considered and examined in the light of various decisions of the Supreme Court. This Court, after having examined the legal position adumbrated by the Supreme Court in the case of **Union of India and others vs. N. Hargopal and others, (1987)3 SCC 308, Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao and others, (1996 )6 SCC 216**, held as under :-

***“Thus, the law is well settled that an employer is not obliged to recruit only those who are sponsored by the employment exchanges. Impliedly, whether or not a person is registered with the employment exchange has no nexus with his suitability for the post. Although the advertisement makes it compulsory for a candidate to have live registration with one of the District Employment Exchange within the State, but yet the said registration has nothing to do with his qualification or suitability for the post.”***

The aforesaid decision of this Court answers the first issue that the requirement of live registration with Employment Exchange is not essential condition but it is additional. Therefore, even if the petitioner did not have live registration, it would affect his eligibility. Therefore, rejection of petitioner's application on the ground of he being not possessed of live registration as on 02-12-2006, cannot be sustained in the eye of law.

It takes me to other ground that the petitioner had failed to submit the mark sheet along with application form for the post of Pharmacist. A perusal of advertisement dated 02-12-2006 would indicate that the candidate was required

to submit diploma/degree of Pharmacist as stated in Clause “अ”. As stated in clause “ब”, some other certificates are required to be submitted. A composite reading of two clauses do not reveal that petitioner was also required to submit his mark sheet. There is no other stipulation in the advertisement to say that in view of the specific requirement, the candidate was required to submit mark sheet also. The requirement of submission of documents along with the application form must be explicitly stated in the advertisement and it cannot be left to be understanding of the candidates. Terms and conditions of advertisement have to be clear and explicit, so that the candidates fully knows about the documents and informations, which he is required to submit along with the application form. Candidates cannot be left to their own wisdom to decide as to what documents would be required by the respondents. It is found that the advertisement indeed required candidates to give details of the marks obtained and the percentage of marks in the qualifying examination. That by itself, without any specific stipulation in the advertisement, would not lead to conclusion that mark sheet was also required to be necessarily submitted.

11. In many cases, various informations and details are obtained but the credentials in respect of those information and details are sought at a later stage of selection. Moreover, in the advertisement, there was no stipulation that the only basis for selection would be marks obtained in the qualifying examination. In fact, advertisement is completely silent as to what would be the mode of selection, whether it would be written examination followed by interview or only interview or selection on the basis of marks obtained in the qualifying examination. It is nowhere stated in the advertisement, therefore, it cannot be presumed that the candidate would know that his candidature would not be considered unless he necessarily submits mark sheet.

12. Therefore, in the absence of there being any stipulation in the

advertisement, rejection of petitioner's application for want of mark sheet is bad in law. The petitioner applied for the post of Pharmacist as OBC candidate. Though, there were 26 candidates, who applied for the post as OBC candidates and records speak that only two candidates i.e. Respondents No.5 & 10 in the instant writ petition, who were selected and appointed in the OBC category, having secured 60.71 and 60.41 marks respectively, which is lower than the percentage of marks 60.83 obtained by the petitioner, which is clear from the document filed along with the application for taking document on record.

13. Therefore, in these circumstances, this Court is inclined to hold that the rejection of petitioner's candidature was illegal and as per the mode of selection, the petitioner was entitled to be appointed because the candidate, lower in rank, was selected and appointed against the post of Pharmacist Grade in the OBC category. Next question would be whether at this stage, this Court should direct appointment of petitioner by setting aside the selection of one candidate.

14. After giving my anxious consideration on this issue, particularly taking into consideration that other two candidates, have remained in job for the last 9 years, I am not inclined to set aside their appointment to pave way appointment to the petitioner.

15. In the result, the petition is allowed in the manner that the respondent No.3 shall appoint the petitioner against any available vacancy of Pharmacist Grade II within his jurisdiction because emphatic statement is made that large number of vacancies are still available. The petitioner shall be entitled to notional seniority from the date when he would have been appointed i.e. from the date when two OBC candidates namely Murli Manohar Sahu and Manoj Kumar Patel were appointed.

SD/-  
(**Manindra Mohan Shrivastava**)  
**Judge**