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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6924 of 2009

- Pawan Ojha, S/o Late O.P. Ojha, Aged about 34 years, R/o New Sarkanda, Jabda Road, Bilaspur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through:Secretary, Department of Commerce & Industries, DKS Bhawan, Raipur, District Raipur (CG)
2. Director, District Trade & Industry Centre, Directorate Of Industry, Second Floor, Jeevan Beema Commercial Campus, Pandari, Raipur (CG)
3. Additional Director, District Trade & Industry Centre, Directorate of Industry, Second Floor, Jeevan Beema Commercial Campus, Pandari, Raipur (CG)
4. Deputy Director (Public Information Officer), Directorate of Industry, Second Floor, Jeevan Beema Commercial Campus, Pandari, Raipur (CG)

---- Respondent

For Petitioner	Mr. Ali Asgar, Advocate
For Respondent/State	Mr. Shashank Thakur, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

12/4/2017

1. Heard.
2. The petitioner has prayed for a direction to the respondents to consider his candidature for appointment on the sanctioned vacant post of Assistant Manager in accordance with the provisions contained in the C.G. State Industries Service (Class III Executive) Recruitment Rules, 1985 (in short "the Rules, 1985").
3. The petitioner was granted compassionate appointment on the post of AG-III on 18.11.1996 with specific condition that his services shall be regularised on acquiring the qualification of Hindi Typing pass or attaining the age of 40 years, whichever is earlier. When the petitioner was denied candidature for competing in the Limited Competitive Examination to fill up the post of Assistant Manager from eligible Departmental candidates in the year 2008, the present petition was preferred by him.
4. During pendency of this writ petition, another advertisement was issued in the year 2016, however, once again, the petitioner's candidature was rejected on the ground that he has not completed 5 years of regular service from 1.1.2013.
5. On the strength of Schedule V of the Rules of 1985, it is contended by learned counsel for the petitioner that the petitioner having worked more than 5 years in permanent or at the worst in officiating capacity from the date of appointment, he is eligible for competing in the recruitment of Assistant

Manager, therefore, denial of such candidature is illegal and arbitrary being contrary to the rules.

6. Per contra, learned counsel for the State, would submit that the order passed by the respondent-Department would clearly mention that the petitioner has not completed 5 years of regular service from 1.1.2013 i.e. the date on which the Circular was issued by the State Government, doing away with the requirement of Hindi Typing pass for the post of AG-III, therefore, no interference is called for. The petitioner would be treated eligible as soon as he completes 5 years of regular service from 1.1.2013.
7. Indisputably, the petitioner has attained the age of 40 years during pendency of the writ petition, therefore, at present, he has been conferred the status of a regular employee. Similarly, the issue concerning the qualification of Hindi Typing pass for the post of AG-III has also been done away with effect from 1.1.2013, therefore, the said condition may also not come in the way of the petitioner.
8. The only issue remains to be considered is whether in view of the provisions contained in Schedule V of the Rules, 1985 together with the definition of an "officiating employee", as provided under Rule 2(d) of C.G. Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960 (in short "the Quasi-Permanent Service Rules, 1960"), the petitioner would be treated to have worked more than 5 years in officiating capacity, if not in permanent capacity.

9. Rule 2(d) of the Quasi-Permanent Service Rules, 1960 defines the expression "Temporary Service" to mean officiating or substantive service in a temporary post, and officiating service in a permanent post, under State Government, and also includes the period of leave with allowance taken while on temporary service and complete years of approved war-service, which have been counted for fixation of pay and seniority.
10. Schedule V of the Rules, 1986 provides for the scheme for filling up the posts of Inspectors by limited competitive examination from amongst the ministerial services of Directorate of Industries.
11. It is informed that the words "Inspector" and "Assistant Manager" have been used interchangeably and are one and the same.
12. Clause 2 of the Scheme provides for the eligibility for recruitment to the post of Inspectors/Assistant Managers. It says, only such members of ministerial services of the Directorate of Industries will be eligible for getting the benefit of the Scheme who possess the following qualifications namely :-
 - (i) Who have been working on any ministerial posts in the Directorate of Industries for at least 5 years in permanent or officiating capacity;

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13. The scheme nowhere uses the term “regular service”, however, the petitioner's candidature has been rejected by a communication dated 02.07.2016- Annexure P/2 by mentioning that he has not completed 5 years regular service after 1.1.2013. Even the advertisement dated 5/5/2016 -Annexure P/19 issued by the Directorate of Industries speaks about 5 years' service in permanent or officiating capacity and not by way of regular service.
14. A conjoint reading of clause 2(a) (i) of Schedule V of Rules, 1985 and Rule 2 (d) of the Quasi-Permanent Service Rules, 1960, would manifest that a person, who has completed 5 years service in the officiating capacity, is also eligible for competing in the Limited Competitive Examination for filling up the post of Inspector/Assistant Manager.
15. The petitioner was appointed in the year 1996 on compassionate ground and not as daily rated or adhoc employee. He was holding a regular post though his services may not have been regularised in view of condition No.3 of the appointment order. However, for the purpose of clause 2(a)(i) of the Rules, 1985, he has rendered more than 5 years of service in the officiating capacity. The Rules nowhere provide for rendering the service by way of regular service, therefore, rejection of his candidature by mentioning the said fact is wholly unjustified. The petitioner is, thus, eligible to compete for recruitment to the post of Assistant Manager.
16. At this stage, Mr. Ali Asgar, learned counsel for the petitioner,

would inform that as against 16 posts of Assistant Managers advertised in May 2016, only less than 10 posts have been filled up because of non availability of suitable candidates. It is also to be noticed that on 7.7.2016, this Court has passed an interim order keeping one post of Assistant Manager vacant and thereafter, another interim order was passed on 08.08.2016, making the appointment, if any made, subject to final outcome of this petition.

17. Since the posts are still lying vacant, this Court would not quash the selection process even though it was made subject to the final outcome of this petition. However, if the posts are lying vacant, the Recruiting Authority shall take a decision for taking the petitioner's examination by treating as if the recruitment process initiated in May 2016 is not yet complete in respect of the petitioner in view of the interim orders passed by this Court. The respondents shall proceed to complete the process in respect of the petitioner within a period of 3 months from today.

18. At this stage, learned counsel for the petitioner, would pray for a direction to the respondents to allow increments to the petitioner.

19. Since the above relief has not been prayed for in this petition, such direction cannot be issued, despite observations made by this Court in WP No.3854 of 2016 and other connected petitions on 2.2.2017. However, it will remain open for the petitioner to make representation in this regard before the competent

authority, who shall take decision in the matter in accordance with law.

20. The writ petition is accordingly disposed of.

Sd/-

Judge

(Prashant Kumar Mishra)

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