

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (S) No. 1220 of 2009**

Pushpranjan Kumar Sen S/o. Shri Ram Ratan Sen, aged about 23 years, R/o. Village-Amaldiha, Post Bartori, Tahsil-Bilha, District Bilaspur (CG)

---- Petitioner**Versus**

- 1.** The State of Chhattisgarh, Through: The Secretary, Department of Health, D.K.S. Bhawan, Raipur (CG)
- 2.** The Director, Health Services Government of Chhattisgarh, Raipur (CG)
- 3.** Chief Medical Officer, Bilaspur, District Bilaspur (CG)
- 4.** Anwar Khan S/o. Badruddin Khan, R/o. Village-Khongapani, District Korba (CG)
- 5.** Mukesh Kumar Jaiswal S/o. Hari Prasad Jaiswal, R/o. Village-Parsada, P.S. Pali, District-Korba (CG)
- 6.** Rameshwar Prasad Sahu, S/o. Jagannath Prasad Sahu, R/o. Village-Bhilai, District-Bilaspur (CG)
- 7.** Rajkumar Sahu, S/o. Manak Ram Sahu, R/o. Village-Meau, District-Janjgir-Champa (CG)
- 8.** Rahul Rathore, S/o. Chhotelal Rathore, R/o. Village-Nan-dorekapa, District Janjgir-Champa (CG)
- 9.** Chanchal Dewangan, S/o. Ramkumar Dewangan, R/o. Vidya-up Nagar, near Shiv Mandir, Bilaspur, District Bilaspur (CG)

And**WP (S) No. 1221 of 2009**

Jeewan Lal Patel, S/o. Shri Damrudhar Patel, aged about 25 years, R/o. Village-Hardadih, Tahsil-Masturi, District Bilaspur (CG)

---- Petitioner**Versus**

- 1.** The State of Chhattisgarh, Through: The Secretary, Department of Health, D.K.S. Bhawan, Raipur (CG)
- 2.** The Director, Health Services Government of Chhattisgarh, Raipur (CG)
- 3.** Chief Medical Officer, Bilaspur, District Bilaspur (CG)

4. Anwar Khan S/o. Badruddin Khan, R/o. Village-Khongapani, District Korla (CG)
5. Mukesh Kumar Jaiswal S/o. Hari Prasad Jaiswal, R/o. Village-Parsada, P.S. Pali, District-Korba (CG)
6. Rameshwar Prasad Sahu, S/o. Jagannath Prasad Sahu, R/o. Village-Bhilai, District-Bilaspur (CG)
7. Rajkumar Sahu, S/o. Manak Ram Sahu, R/o. Village-Meau, District-Janjgir-Champa (CG)
8. Rahul Rathore, S/o. Chhotelal Rathore, R/o. Village-Nandorekapa, District Janjgir-Champa (CG)
9. Chanchal Dewangan, S/o. Ramkumar Dewangan, R/o. Vidya-up Nagar, near Shiv Mandir, Bilaspur, District Bilaspur (CG)

---- Respondents

For Petitioners	:	Mr.Gautam Khetrapal, Advocate
For Res.No.1 to 3	:	Mr.P.K. Bhaduri, G.A.
For Res.No.4 to 7	:	Mr.Atul Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/02/2017

1. Since common question of law and fact are involved in these writ petitions, they are heard analogously and being decided by this common order. The aforesaid two writ petitions have been filed for quashing the selection of respondents No.4 to 9 on the post of Pharmacist Grade-II for Bilaspur district.
2. Mr.Gautam Khetrapal, learned counsel appearing for the petitioners, would submit that the petitioners are members of Other Backward Class (hereinafter called as "OBC") and they have been submitted their provisional caste certificate

issued by the Tahdildar and Naib-Tahsildar respectively and their candidature were considered against OBC category and their names have also been reflected in the merit list, but in the final select list issued on 23.4.2008 respondents No.4 to 9 have been selected though they have secured less marks than the petitioners. He would further submit that merely on the ground that caste certificate filed was not issued by the competent authority, their candidature were not considered, whereas they have produced permanent caste certificate issued by the competent authority on 2.7.2008 and 23.1.2008 respectively. Therefore, selection of respondents No.4 to 9 deserves to be quashed. He would reply upon the judgment of the Supreme Court in the matter of **Dolly Chhanda Vs. Chairman, Jee and others**¹.

3. Mr.P.K.Bhaduri, learned Government Advocate appearing for respondents No.1 to 3/State, would submit that there were seven posts of Pharmacist Grade-II for OBC category at the relevant point of time and five persons namely respondent No.4-Anwar Khan, respondent No.5-Mukesh Kumar Jaiswal, respondent No.6-Rameshwar Sahu, respondent No.7-Rajkumar Sahu and respondent No.8-Rahul Rathore have already been appointed and their appointment orders have already been issued on 28.2.2009, but their appointment

¹ (2005) 9 SCC 779

orders have not been challenged by the petitioners in this writ petitions. He would further submit that after 2009 again recruitment process has been taken place in the year 2012 for the post of Pharmacist Grade-II and as such, there is no vacant post of Pharmacist Grade-II of the year 2009 at present, therefore, the writ petitions deserve to be dismissed.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the documents appended with the writ petitions with utmost circumspection.
5. It is established on the record that the petitioners are members of Other Backward Class. Petitioner-Pushpranjan Kumar Sen filed provisional caste certificate issued by the Tahsilar, Bilaspur on 10.1.2008 and petitioner-Jeevanlal Patel filed provisional caste certificate issued by the Naib-Tahsildar, Masturi on 18.6.2007. On the basis of application and other documents, merit list was prepared and their names were shown at Sr.No.112 and 160 respectively in that list, but they were not selected on the ground that they were not having permanent caste certificate issued by the competent authority at the time of submission of their application form.
6. The Supreme Court in the matter of **Dolly Chhanda** (supra) considering its earlier judgment in the matter of **Charles K.**

Skaria Vs. Dr.C. Mathew² held that the general rule is that while applying for any course of study or post, a person must possess the eligibility qualification on the last date fixed for such purpose either in admission brochure or in application form as the case may be unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

7. Judgment of the Supreme Court in **Dolly Chhanda** (supra) definitely helps the case of the petitioners and their candidatures ought not to have been rejected on the ground of non-submission of permanent caste certificate as

² (1980) 2 SCC 752

they were having provisional caste certificate at the time of submission of their applications as they were issued with permanent caste certificate subsequently. But after issuance of selection list on 24.2.2008, the writ petitions were filed as late as on 27.2.2009 and in the meanwhile, appointment orders of respondents No.4 to 8 were issued on 28.2.2009, but appointments have not been challenged by the petitioners in these writ petitions by amending the petitions. Likewise, there is no specific averment that post of Pharmacist Grade-II of 2009 is lying vacant and post of Pharmist Grade-Ii has been filled as this Court in WP (S) No.3323 of 2008 (Suryakant Mani Jaiswal Vs. The State of Chhattisgarh and others) by order dated 30.6.2008 has stayed the appointment of Pharmacist Grade-II in Bilaspur district and thereafter, on 16.2.2009 modified the interim order directing only one post of Pharmacist Grade-II be kept vacant for that writ petitioner-Suryakant Mani Jaiswal. In these writ petitions, there is no interim order to keep the post vacant till the final disposal of the writ petitions. Since there is no material on record that post of Pharmacist Grade-II advertised in the year 2009 is lying vacant by interim order of this Court or otherwise and appointments of selected candidates have become final, for want of challenge in these writ petitions, no relief can be granted to the writ petitioners and as such the writ petitions deserve

to be and are accordingly dismissed leaving the parties to bear their own cost.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-