

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 2646 OF 2017

- Hiteshwar Kumar, S/o Shri Purushottam Rai, aged about 32 years, C/o Shri S.K. Narang, I-11, Green Aurchid Colony, Daldal Seoni, Raipur, District Raipur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Housing and Environment, Mahanadi Bhawan, New Raipur (C.G.)
2. Chairman, Chhattisgarh Rent Control Tribunal, Old R.D.A. Building, Director, 1st Floor, Shastri Chowk, Raipur, Raipur (C.G.)
3. Registrar, Chhattisgarh Rent Control Tribunal, Old R.D.A. Building, Director, 1st Floor, Shastri Chowk, Raipur, Raipur (C.G.)
4. Dinesh Kumar Yadav, S/o Shri Vayas Narayan, aged about 27 years, R/o Paras Nagar, Gali No.2, Shayam Bai Chaoushan's House, Raipur (C.G.)
5. Kuleshwar Prasad Sahu, S/o Shri Purushottam, 08/23 Ispat Nagar, Risali, District Durg (C.G.)
6. Kishor Kumar Uike, S/o Late Shri Sharad Uike, MIG 1/884, W-27, MPHB, J/E Near BNS School, Bhilai, District Durg (C.G.)

... Respondents

For Petitioner	:	Mr. Rakesh Dubey, Advocate.
For Respondent-State	:	Mr. S.P. Kale, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/06/2017

1. Challenge in the present Writ Petition is to the non-consideration of the Petitioner's case for appointment against the post of Process Server.
2. The facts of the case are that the Respondent - Chhattisgarh Rent Controlling Authority had issued an advertisement on 9.2.2017 (Annexure P-3) for filling up of the post of Process Server. Minimum qualification prescribed for the said post was Class 8th pass from any of the recognised Board. There was only one post in the Unreserved category which was advertised. In all, there were four candidates who had applied for the said post. The candidature of all the four persons who had applied was scrutinised by the respondent authorities and in the course of scrutiny, they

found that except for Respondent No.4 all the other three candidates had suppressed certain information so far as their qualification is concerned. The Petitioner had suppressed material facts so far as his educational qualification is concerned from the respondent authorities while filling up of his application form, therefore his candidature was rejected and Respondent No.4 was granted appointment as he was found to be most suitable as there was no defect in his application form.

3. Learned Counsel for the Petitioner submits that the said action on the part of the Respondents cannot be accepted, for the reason that it would not amount to any suppression of fact and that it is only an inadvertence on the part of the Petitioner in not giving the entire qualification and giving only the required qualification in the application form. He also submits that on scrutiny it would reveal that in fact the Petitioner is the person who is most qualified and therefore he is most eligible for the said post. He places reliance on the judgment of the Madhya Pradesh High Court in the case of **Triveni Sharan Mishra v. Life Insurance Corporation of India & Others**, 2006 (2) M.P.L.J. 339 and submits that the said judgment of the Madhya Pradesh High Court has also been affirmed by the Hon'ble Supreme Court.

4. Learned Counsel for the State however opposes the petition and submits that plain perusal of the document dated 4.4.2017 which is a part of Annexure P-1 with the writ petition would itself clearly demonstrate that it is not a case where the Petitioner's case has been rejected on account of his being overqualified. Rather, it is a case where the Petitioner's candidature was rejected on the ground that the Petitioner while filling up of his application form itself has suppressed material facts in so far as his educational qualification is concerned. State Counsel further submits that it is also a case where the other candidates similarly placed also have not

been considered by the respondent authorities and therefore it cannot be said that the Petitioner has been discriminated in any manner.

5. Having considered the rival contentions and on perusal of the record what clearly strikes the mind of this Court is the fact that the Petitioner does not dispute the fact that he in his application form had not disclosed his higher educational qualification that he had at time of filling up of the application form. Similar is the case of other two candidates also whose candidature has been refused by the respondent authorities. Given the said admission on the part of the Petitioner, this Court has no hesitation in reaching to the conclusion that the said act on the part of the Petitioner does amount to suppression of material facts from being considered at the time of appointment. Further, if we look into the proceeding that has been drawn by the respondent authorities it would clearly reflect that they have fairly considered the candidature of all the candidates who had applied for the said post and from the said list they have selected the candidate who has not suppressed any facts from the authorities and also fulfills the minimum qualification required for the post applied for. In the said circumstances, it cannot be said that the respondent authorities have in any manner committed any error of judgment while selecting Respondent No.4.

6. So far as the judgment cited by the learned Counsel for the Petitioner is concerned, facts of the said case are distinguishable from the present case, for the reason that it was a case where the petitioner therein had already been granted appointment and was subsequently terminated on the ground of suppression of facts. Whereas, in the instant case, appointment has not been made and it was only at the stage of scrutiny of documents the defect was detected and the respondent authorities have taken a decision to grant appointment to a candidate (Respondent No.4)

who had approached the authorities with clean hands without any suppression of facts and hence the judgment of the Madhya Pradesh High Court cited by the learned Counsel for the Petitioner cannot be applied in the facts of the present case in a straightjacket formula.

7. It is settled position of law by a catena of decisions of the Hon'ble Supreme Court, wherein proposition of law has been reiterated repeatedly that judicial review by the High Court in exercise of its power under Article 226/227 of the Constitution of India is confined only to the decision making process. The judicial review cannot extend to the examination of the correctness or reasonableness of the decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and is not discriminated in any manner. The judicial review cannot be equated to overall fresh decision but as review of the manner in which the decision is made. The proceedings arising under Article 226 of the Constitution of India are in the nature of judicial review and such review could be only in respect of process of decision and not the decision itself. The High Court in exercise of its writ jurisdiction would not substitute its own decision of an administrative decision taken with justified and cogent reasons.

8. The High Court in exercise of its writ jurisdiction has to see whether, the authorities have conducted themselves in accordance with the rules and that whether there was any arbitrariness on the part of the authorities in the selection process. In other words, what is expected to be seen is whether the authorities have in the process of finalisation of selection process conducted themselves fairly and have not discriminated the candidate in any manner. The perusal of the record would show that the respondents authorities have applied the same yardstick as regards the other candidates as well who have also done the same error, mistake or

have suppressed material facts. Thus, it is difficult to say that the respondent authorities have shown any extra favour to Respondent No.4 ignoring the genuine claim of the Petitioner.

9. The Writ Petition thus being devoid of merits is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/