

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2321 of 2009**

Gaind Ram Sahu, Aged about 40 years, S/o. Ghasiya Ram Sahu,
R/o. Magarload (Kurud), District Dhamtari, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, thorough: Secretary, Panchayat & Welfare Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Janpad Panchayat, Magarload, Through Chief Executive Officer, Janpad Panchayat Magarload, District Dhamtari, Chhattisgarh
3. Rupendra Kumar Sahu, S/o. Vishnu Ram Sahu, Shiksha Karmi Grade-III, Primary School, Village Mohera, Janpad Panchayat Magarload, District Dhamtari, Chhattisgarh
4. Sanjay Kumar Sahu, Shiksha Karmi Grade-III, Primary School, Nawagaon (Dhao), Janpad Panchayat Magarload, District Dhamtari, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Dheeraj Wankhede, G.A.
For respective Respondents	:	Mr. Govind Dewangan, Advocate Ms. Shreya Mishra, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****13/08/2018**

1. The grievance of the petitioner in the instant case is that the petitioner has been arbitrarily held ineligible from appointment on the post of Shiksha Karmi Grade-III in the recruitment process which was initiated in the year 2008 holding the petitioner to be age barred.
2. The brief facts of the case relevant for adjudication of the present case is that an advertisement was issued by the respondents for filling up of the post of Shiksha Karmi Grade-III on 09.01.2008. The last date for submission of the forms as per the advertisement was 09.02.2008. The terms and conditions determining the eligibility

criteria was as was provided under the recruitment rules under the Chhattisgarh Panchayat Shiksha Karmies (Recruitment and Conditions of Services) Rules, 2007 and all those circulars/ instructions issued by the State Government from time to time. Under the Rules the maximum age limit for recruitment was 35 years. The petitioner's date of birth was 14.07.1968 and on the date when the advertisement was published and even on the last date that was prescribed under the advertisement, the petitioner was below 40 years. The petitioner belonged to the OBC category and therefore the petitioner was entitled for the age relaxation provided by the State Government for a period of 5 years.

3. Thus the maximum age limit within which the petitioner could seek employment was 40 years. The contention of the petitioner is that since in the advertisement there was no cutoff date prescribed for determining the age of the petitioner, then under the legal position as it stands in the light of the various judgments of the Hon'ble Supreme Court, the last date of submission of forms would be determined as the cutoff date. That in the instant case the last date of submission of forms was 09.02.2008 and on 09.02.2008 the admitted position so far as the age of the petitioner was 39 years and 8 months. The respondents however determined the age taking the cutoff date to be the first day of January the year following the date of written examination i.e. 01.01.2009.
4. The counsel for the petitioner submits that the issue raised in the present writ petition stands squarely decided by the decision of this Court in the case of **"Sandeep Kumar Shrivastava & Anr. v. State of Chhattisgarh & Ors."** in WPS No. 4829/2008 which was decided

on 22/02/2010. The only issue which now require to be considered is whether the stand of the respondents that the cutoff date has to be presumed to be 01.01.2009 instead of last date of submission of the forms as per the advertisement.

5. It would be relevant at this juncture to take note of the judgment of the Hon'ble Supreme Court in the case of **"Ashok Kumar Sonkar v. Union of India & Ors."** [2007 4 SCC 54], wherein in paragraph No.20 it has been held as under:-

"20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application."

6. The Hon'ble Supreme Court in the case of **"Dipitmayee Parida v. State of Orissa & Ors."** [2008 10 SCC 687] has reiterated the aforesaid legal position and has observed that ordinarily the extra qualification laid down for recruitment should be considered as on the last date of submission of the application, unless otherwise the advertisement itself specifically prescribed the cutoff date. This Hon'ble Court also in WPS No. 4829/2008 relying upon the judgment of the Hon'ble Supreme Court in the case of **"Ashok Kumar Sonkar"** (supra) has allowed the writ petition on 22.02.2010.

7. In the instant case the advertisement is silent so far as the cutoff date is concerned. In the absence of a specific cutoff date in the advertisement the legal position as has been laid down by the Hon'ble Supreme Court in the case of **Ashok Kumar Sonkar** (supra) would come into play and for all practical purposes under such circumstances, the cutoff date has to be presumed as the last date of submission of forms, which in the instant case was 09.02.2008. Undisputedly on the last date of submission of forms, the petitioner was below 40 years of age. In the backdrop of the fact that the petitioner was a candidate belonging to OBC category the upper age limit for participation in a recruitment process for the reserved category candidate was 40 years. Thus the petitioner accepting the cutoff date to be 09.02.2008 i.e. the last date of submission of forms was duly eligible for participation in the recruitment process, which by wrong interpretation, the respondents have denied the petitioner for participation in the said recruitment process. The said action on the part of the respondent No.2 is thus not sustainable and the same deserves to be and accordingly set-aside/quashed.
8. So far as the claim of the petitioner is concerned, it is the contention of the petitioner is that the petitioner is more qualified than the respondent No.3 in as much as the respondent No.3 does not have D.Ed. qualification, whereas the petitioner does have a D.Ed. qualification and the guidelines envisages that only in the event of there is no candidate with D.Ed. would a non D.Ed. be considered.
9. Given the said factual matrix of the case this Court is inclined to allow the writ petition and direct the respondent No.2 to consider the case of the petitioner from the stage the claim of the petitioner was not

considered by them for appointment and in case if the petitioner is found suitable, then the case of the petitioner be considered for appointment after due comparison with the credentials of the respondent No.3 and whoever is more meritorious would decide the nature of order to be passed.

10. Let this exercise be concluded within a period of 90 days from the date of receipt of order of this Court.
11. The writ petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved