

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 5017 OF 2014**

Ambrish Kashyap S/o Shri Shyam Kashyap Aged About 30 Years R/o Deviganj Road, Roopdev Market P.S. Ambikapur Tahsil Ambikapur, Civil And Revenue Distt. Surguja, Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Tribal Welfare, Mantralaya Mahanadi Bhawan, New Raipur Distt. Raipur , Chhattisgarh.
2. The Commissioner, Tribal And Welfare Education Department Ambikapur Civil And Revenue Distt. Surguja, Chhattisgarh.
3. The Collector Surguja Ambikapur Distt. Surguja, Chhattisgarh.
4. Lokesh Kumar Dhruw S/o Shri Bhagwan Singh Druw Aged About 29 Years R/o Village And Post Darla P.S. And Tahsil Chhuragariyaband Distt. Gariyaband, Chhattisgarh.
5. Manoj Kumar S/o Shri Baratiram Aged About 35 Years R/o Inside of SBI, Ashirwad Automobile Ramanujanj P.S. And Tahsil Ramanujanj Distt. Ramanujanj Balrampur, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Sunil Tripathi, Advocate.
For Respondent-State	:	Shri Chandresh Shrivastava, PL.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19.06.2018

1. The challenge in the present writ petition is to the order dated 15.09.2014 (Annexure P/1) whereby the name of the petitioner has been reflected in the list of ineligible candidates who had applied for the post of Assistant Hostel Superintendent. The name of the petitioner reflects at serial No.34 in the said list.
2. The brief facts relevant for adjudication of the present dispute is that an advertisement was issued by the State for filling up of various posts under the respondent-Tribal Welfare Department. One such post was that of Assistant Hostel Superintendent and number of post advertised was only one. The petitioner being eligible and also having all requisite qualifications applied for the said post. The

minimum eligibility criteria fixed as per the advertisement for the said post of Assistant Hostel Superintendent was that of Graduation Degree with minimum 50 percent marks and experience of three years as Hostel Superintendent. The petitioner was initially found eligible as is reflected from Annexure P/4 wherein the name of the petitioner reflects at serial No.34 whereas the names of respondents No.4&5 reflect at serial Nos. 39 and 46 respectively.

3. According to the petitioner, a bare comparison of the credentials of the petitioner with that of the respondents No.4&5 would reveal that the petitioner is far more meritorious and suitable candidate than the respondents No.4&5 and as such he ought to have been held eligible for appointment on the said post. However, the respondents have malafidely not found the petitioner eligible and have placed his name in the list of ineligible candidates. The reason for his being ineligible is that he does not possess the valid experience certificate. He further submits that in the advertisement, the requirement was that of only three years experience certificate as Hostel Superintendent without specifically mentioning whether it would be from the private Hostel or for that matter from a government, semi-government or government aided Hostel, hence it has to be presumed that even the certificate from a private Hostel is of equal validity and the same could not have been refused from being entertained by the respondents.
4. It was further contended that even otherwise the respondents No.4&5 who have been found eligible for the said post could not have been considered ignoring the claim of the petitioner for the

simple reason that the petitioner was the sole candidate who belonged to the same district whereas, the respondents No.4&5 both belonged to different districts which again is clearly reflected from Annexure P/4 wherein the home district of respondent No.4 is shown as Balrampur and respondent No.5 as Gariyaband whereas the petitioner belonged to Surguja district itself. He further submits that the marks which the petitioner had obtained in the graduation also is far more than the respondents No.4&5. All of which would clearly reflect that he was more meritorious, and therefore not including the name of the petitioner in the list of eligible candidates is bad in law and therefore order impugned deserve to be set aside/quashed.

5. Learned counsel appearing for the State opposing the petition submits that it is a case where the respondents No.4&5 have been found suitable on account of their experience which they have from the government Hostel or government aided Hostel, and therefore, it cannot be said that the petitioner has been malafidely not considered eligible for the post. He further submits that the fact that requirement was experience certificate of three years implies that it ought to had been from a government Hostel or government aided Hostel and it could not have been from a private Hostel as has been claimed by the petitioner. He further submits that the authorities concerned, on scrutinizing the credentials of three candidates i.e. the petitioner and the respondents No.4&5, found the experience certificate of the respondents No.4&5 to be more authentic and therefore they have been found eligible for the said post. Thus prayed for rejection of the petition.

6. This court while entertaining the present writ petition on 23.09.2014 while considering the interim application had ordered that if any appointment is made, the same shall be subject to the final outcome of the present writ petition.
7. At this juncture, the counsel for the petitioner submits that on account of said interim order passed by this court, the authorities concerned have restrained themselves and have not issued order of appointment in favour of any of the respondents No.4&5 and the post still lies vacant.
8. Given the aforesaid facts and circumstances of the case, we now proceed to consider as to the requirement as per advertisement for the post of Assistant Hostel Superintendent. Annexure P/2 is the advertisement issued by the authorities. The eligibility criteria for the post of Assistant Hostel Superintendent is re-produced herein as under:

“मान्यता प्राप्त विश्वविद्यालय से न्यूनतम 50 प्रतिशत अंकों के साथ स्नातक उपाधि।
अन्य वांछित योग्यता—1. छात्रावास अधीक्षक के रूप में न्यूनतम 3 वर्ष का कार्य अनुभव।”

9. A plain reading of the aforesaid eligibility criteria would reveal that the primary eligibility criteria was that of Graduation degree from any recognized University with minimum 50 percent marks. The other essential qualification prescribed was three years experience as Hostel Superintendent. A perusal of advertisement further reflects that it does not specify as to whether the experience ought to have been from private Hostel or from the government Hostel or even from government aided Hostel. It was only an eligibility criteria of

three years experience irrespective of the status of the establishment.

- 10.** If the other provisions of the advertisement is taken note of, it clearly reflects that the respondents have categorically held that the eligibility criteria and the essential conditions were that from a recognized institution. No such requirement is reflected for the post of Assistant Hostel Superintendent which by itself means that it was not required that three years experience had to be from a government institution or government aided institution.
- 11.** Moreover, Annexure P/2 would also reflect that the respondents themselves at the first instance found the petitioner suitable for the said post while scrutinizing the other credentials of the petitioner along with other candidates. If the petitioner did not have minimum eligibility criteria reflected under the advertisement of not having valid experience certificate, the petitioner's name should not have been reflected at the first instance itself in Annexure P/4.
- 12.** The fact that eligibility criteria does not prescribe the requirement of the experience certificate from a government or government aided institution, placing of petitioner's name in the list of ineligible candidates only for the said reason would be arbitrary and bad in law. Unless the advertisement would had been specific and the petitioner having failed to produce the same, the respondents cannot on their own bring into certain conditions which were otherwise not reflected in the advertisement. Therefore, placing of petitioner's name in the list of ineligible candidates only on the ground of not having valid experience certificate is uncalled for.

- 13.** At this juncture it is also relevant to refer to document (Annexure P/6) which further reflects that there are government circulars and which have been re-iterated from time to time and which is also prevalent as on date so far as granting preference to candidate from the same district. In the instant case, Annexure P/4 would reflect that the respondents No.4&5 are from the different districts and are not from Surguja district whereas, the petitioner belonged to same district i.e. Surguja. The authorities concerned should have considered this aspect also.
- 14.** Given the aforesaid facts and circumstances of the case, the impugned order dated 15.09.2014 (Annexure P/1) reflecting the petitioner's name in the list of ineligible candidates is held to be bad in law. The same accordingly deserves to be and is hereby set aside. It is directed that the respondents shall place the name of petitioner in the list of eligible candidates and thereafter shall proceed with the recruitment process in accordance with rules.
- 15.** The writ petition accordingly stands allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge