

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.7918 OF 2011**

Budhram S/o Bhoklu Aged About 38 Years R/o Village Pondi, Post Tekapar, Tehsil - Balod, District – Durg, Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through- The Secretary Urban Administration and Development Department, Mantralaya, D. K. S. Bhawan, Raipur, District- Raipur, Chhattisgarh.
2. Chief Municipal Officer, Nagar Palik Council, Dhamtari, District - Dhamtari C G.
3. Deputy Director, Urban Administration Department, Raipur, District Raipur Chhattisgarh.
4. Collector, Dhamtari, District Dhamtari Chhattisgarh.
5. Pawan Kumar Vishwakarma S/o Bhojram Vishwakarma Aged About 32 Years R/o Naharpar Behind Police Line, Tahsil and District – Dhamtari, CG.
6. Directorate, Employment and Training, Employee Office, Durg, District – Durg, CG.

... Respondent(s)

For Petitioner	:	Shri Ravi Maheshwari, Advocate.
For Respondent-State	:	Shri DK Wankhede, Govt. Advocate.
For Respondent No.2	:	Shri YS Thakur, Advocate.
For Respondent No.5	:	None, though served.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12.09.2018

1. The challenge in this petition is to the order dated 03.01.2009 (Annexure P/1) whereby the respondent No.5 has been granted appointment under the respondent No.2 on the post of Carpenter.
2. Brief facts of the case is that the respondents had issued an advertisement on 14.08.2008 (Annexure P/5) calling applications for filling up of the different posts. One such post was that of Carpenter. There was only one post of Carpenter advertised and which was from unreserved

category. The minimum qualification prescribed under the advertisement was that the candidate should have Govt. ITI training certificate or should have five years working experience. The petitioner being an eligible for participating in the said post had applied for the same. However, he was not called for interview and subsequently the respondent No.5 was granted appointment. It is this order of appointment of the respondent No.5 which is under challenge in the present petition.

3. The contention of the petitioner is that the respondents have mala fide not considered the claim of the petitioner for the said post and have shown favour in granting appointment to the respondent No.5. According to petitioner, the respondent No.5 does not fulfill the minimum eligibility criteria fixed as is evident from the advertisement, yet he has been granted appointment. The petitioner has relied upon an information provided by the department under Right to Information Act so far as the experience certificate is concerned which certifies that the respondent No.5 had an experience of about nine months. He submits that there is no other substantive material available with the respondents to determine the experience of the respondent No.5. On the contrary, the petitioner was a candidate who had undergone five years ITI training and he also had experience of more than what the respondent No.5 had, but for the reasons best known, the candidature of the petitioner was not considered by the respondents and respondent No.5 has been granted appointment on 03.01.2009.
4. The counsel for contesting respondent No.2 submitted that the case of the petitioner was not considered on the ground that the petitioner did not have live registration certificate from the concerned employment exchange.

5. The said ground of the respondent No.2 may not be sustainable for two reasons. Firstly, the writ petition itself is supported with a document Annexure P/5 of the petitioner which clearly shows that the petitioner did have a live registration certificate with the employment exchange. Thus, the ground so raised by the respondent No.2 is not sustainable. Moreover, the requirement of live registration certificate has been held to be bad in law by this court in any sort of employment. The recent being Full Bench decision of this High Court in case of State of Chhattisgarh & Anr. Vs. Roshini Sahu, Writ Appeal No. 411 of 2014, decided on 21.10.2016.
6. In the light of the Full Bench decision of this court wherein it has been held that the condition of requirement of live registration certificate from the employment exchange is illegal, insisting for the same by the respondents, if any, is also not sustainable. Though in the present case the petitioner, it appears did have a live registration certificate as per Annexure P/5 of the writ petition.
7. So far as the experience of the petitioner as compared to the respondent No.5 is concerned, that would be a matter of subjective verification of the authorities who would have to conduct the comparative assessment of the documents produced by the petitioner to be compared with the document which the respondent No.5 has provided at the time of his employment. Non consideration of the petitioner therefore seems to be bad in law and therefore deserves to be held as illegal and arbitrary.
8. The writ petitioner therefore is allowed. Let the respondent authorities call for the petitioner for interview and subject him to interview and thereafter if he is found eligible and has all other requisite qualification as is reflected in the advertisement dated 14.08.2008 and is better placed than the respondent No.5 , then the petitioner would be considered for employment.

9. Needless to mention that at the same time the respondent No.2 shall also make a comparative assessment of the merits of the petitioner as compared to the respondent No.5 and thereafter pass an order. Meanwhile, the employment of the respondent No.5 stands protected. Further, in case if the petitioner is found more meritorious then he would have to be given an order of appointment.
10. The writ petition thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy
Judge