

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1801 of 2014**

Vijay Kumar Tiwari S/o late D. P. Tiwari, aged about 38 years, R/o Rajput Kirana store, Brijdhar Plastic, Santoshi Nagar, Raipur, Tahsil and District Raipur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Rural Engineering Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. Chief Engineer, Rural Engineering Service, Office of Development Commissioner, Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate
For Respondent/State	:	Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/04/2018**

Present writ petition has been filed challenging the order dated 14.03.2014 Annexure P-1 whereby the claim of the petitioner for grant of age relaxation on the ground of sterilization/family planning undertaken by his wife has been rejected.

2. Facts of the case are that the respondents had issued an advertisement for recruitment of the post of Sub-Engineer (Civil) in the Department of Rural Engineer Service on 28.04.2012. The last date for submitting application was 31.05.2012. The petitioner herein had also applied for the said post. While applying for the said post, the petitioner had not claimed for relaxation of age though in the advertisement, in Clause 3 (2) (1),

it was categorically mentioned that the green card holders would be granted age relaxation of two years. Since the petitioner on the date of advertisement was more than 37 ½ years, his application stood rejected on the ground of his being over age. Subsequently, the present writ petition was filed by the petitioner on 04.04.2014 i.e. after more than two years from the date of advertisement and the recruitment process having been concluded.

3. The sole ground raised by the petitioner is that there were other similarly placed persons like the petitioner who had preferred writ petitions before this High Court, the lead case being WPS No. 3906/2013 which stood decided on 17.12.2013. In the said writ petitions, the claim of the petitioners therein was that they had applied for the post seeking age relaxation on the ground that though they did not have green card but they had certificate of sterilization/family planning undergone by their spouse and therefore, the sterilization certificate holders and the green card holders should be treated at par and they should be granted relaxation of two years of age as is envisaged in Clause 3 (2) (1) of the advertisement. The said bunch of writ petitions were allowed by this Court vide order dated 17.12.2013 and the order has attained finality and the petitioners therein have got employment. It is thereafter that the present petitioner raised a claim before the respondents for considering his claim for relaxation of age as he too has a certificate of sterilization having been done in the year 2010 in his possession, therefore, he may be treated at par with the petitioners whose petitions stood allowed vide order dated 17.12.2013. This claim application was rejected by the respondents vide order dated 14.03.2014 leading to the filing of the present writ petition.

4. This Court finds it difficult to entertain the petition of the petitioner for the simple reason that from 28.04.2012 when the advertisement was issued and thereafter the recruitment process has been finalized, the petitioner did not have any grievance then. The petitioner woke up from slumber for the first time

after the writ petitions of other similarly placed persons were decided on 17.12.2013. Another factor which cannot be lost sight is that the petitioner while submitting his application for the post had not claimed for age relaxation neither did he claim for any relaxation of age in between. The only reason assigned by the petitioner is that since the advertisement reflected that only green card holders would be granted the advantage of age relaxation and as the petitioner did not have a green card, he did not apply for the same. According to the counsel for the petitioner, since the High Court allowed the bunch of writ petitions of other similarly placed persons vide order date 17.12.2013, the claim of the petitioner also fructified and therefore, his case also ought to have been considered by the respondents at par with the petitioners in the bunch of writ petitions.

5. This submission of the counsel for the petitioner cannot be accepted for the reason that the petitioners in that bunch of writ petitions, at the outset itself, had applied and claimed for age relaxation with the sterilization certificate which they had in their possession whereas in the instant case, the petitioner had not claimed for any relaxation of age at the time of submitting his application. Therefore, the present petitioner cannot be permitted to improve upon his case subsequent to his claim having been rejected by the authority for having not supported his claim application with any certificate at the first instance itself.

6. Counsel for the petitioner refers to the judgment of the co-ordinate Bench of this Court in the case of Rakesh Kumar Shrivastava Vs. State of Chhattisgarh and others passed on 28.08.2015 in WPS No. 3883 of 2014 wherein paragraph – 5 it has been held as under:

“In the case at hand, the authorities have refused to entertain the subsequently submitted certificate only on the ground that under Clause 11 of the advertisement, the certificate cannot be

entertained, however, in view of the law laid down by the Supreme Court, if the candidate had already acquired the qualification or eligibility before the cut off date, but the proof thereof was submitted later on, the same would not be fatal and the recruitment agency can consider the subsequently furnished certificate in proof of acquisition of the eligibility criteria before the cut off date.”

7. The said judgment also would not come to the rescue of the petitioner for the reason that the said judgment has been passed under entirely different factual matrix. The petitioner therein had claimed for the benefit though there was no proof available with him. In the instant case, the petitioner had neither applied for grant of age relaxation nor supported his application with a sterilization certificate which he had in his possession. Thus, the said judgment is distinguishable on its facts itself. The petitioner appears to be a fence-sitter who was waiting for the outcome of the writ petitions preferred by other similarly placed persons and only after they succeeded, the petitioner took step for claiming the advantage of sterilization certificate that he has in his possession. At this juncture it would be relevant to refer to the recent judgment of the Supreme Court in the case of **State of Uttar Pradesh Vs. Arvind Shrivastava** reported in **(2015) 1 SCC 347** wherein in paragraph-22.2 the Supreme Court has held as under:

“22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

8. The said judgment further refers to a catena of decisions rendered on the issue of delay and laches and after considering all the judgments, the Supreme Court has in very categorically held that the fence-sitters should not be granted the benefit of delay and laches which has occurred in between.

9. In view of the aforesaid facts and circumstances of the case, this Court finds it difficult to grant the relief sought for by the petitioner by way of the present writ petition when the petitioner at the first instance itself had not claimed for the benefit of age relaxation on the ground of his being in possession of a sterilization certificate.

10. The writ petition thus being devoid of merit stands dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**