

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.7517 of 2007**

- Smt. Anju Singh W/o N.P. Singh, Aged About 30 Years R/o Hostel Warden Residence, Hostel- A, National Institute Of Technology, Raipur, District Raipur, Chhattisgarh , Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Mining Department, D.K.S. Bhawan, Raipur, Chhattisgarh , Chhattisgarh
2. Chhattisgarh Public Service Commission, Through The Secretary, Shankar Nagar Road, Raipur, Chhattisgarh , District : Raipur, Chhattisgarh
3. Shiv Shankar Nag, Mining Officer, Official Address- Mining Officer, Collectorate Office Premises, Raigarh, District Raigarh Chhattisgarh Residential Address Village Mudpar Dakhni, Post Sarona, Police Station And Tahsil Narharpur, District Kanker, Chhattisgarh , District : Kanker, Chhattisgarh

- - Respondents

For Petitioner	:	Shri Prateek Sharma with Shri G. I. Sharan, Advocates
For Respondent/State	:	Shri Satish Gupta, GA
For Respondent No.2	:	Shri Abhishek Sinha, Advocate
For Respondent No.3	:	Shri Manoj Paranjpe, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**CAV Order****26/03/2018**

By this petition under Article 226 of the Constitution of India, the petitioner has assailed correctness and validity of Select List dated 03-11-2007 in the matter of selection for appointment to the post of Mining Officer pursuant to advertisement dated 29-11-2006 as amended on 13-062007.

The second respondent, Public Service Commission issued an advertisement on 29-11-2006 in the Employment Newspaper inviting applications for appointment on three posts of Mining Officer in the department

of Mining, Government of Chhattisgarh. Due to increase in number of vacancies, advertisement was further amended vide corrigendum dated 13-06-2007. The petitioner, respondent No.3 and many other candidates applied. Having cleared the written examination, the petitioner was called for interview vide interview call letter dated 09-10-2007. Though, it was not there in the advertisement, but, in the interview call letter, it was stipulated that the candidate possessed of Green Card would be entitled to 5% weightage marks in the interview. The petitioner, however, did not possess such certificate, but then in order to seek benefit, she obtained and submitted medical certificate issued by the Medical Officer of the Hospital, where the petitioner had undergone Tubectomy operation.

2. The impugned select list was issued on 03-11-2007. The petitioner was not awarded any weightage marks with the result that she could not succeed in securing place in the merit list. The petitioner approached respondent authorities, but as no relief was granted, this petition was filed.

3. Learned counsel for the petitioner contended that the petitioner was entitled to be given benefit of 5% weightage marks in the interview because he had undergone Tubectomy operation from the hospital recognized by the State for the purpose and a certificate to that effect was also submitted at the time of interview. He would add that at the time, when selections were made and candidates including the petitioner were required to submit Green Card, State of Chhattisgarh had stopped issuing green card, which otherwise was required to be issued in view of the State Government's circular dated 30-11-1989, providing for weightage of marks to those candidates, who had undergone Tubectomy operation. The said circular was issued in the erstwhile State of Madhya Pradesh prior to re-organization of State of Madhya Pradesh. By virtue of provisions contained in the Madhya Pradesh Re-organization Act, 2000, all

such circulars unless amended, modified or cancelled by the successor State of Chhattisgarh, continued to remain in force and in operation in the successor State and in any case, till the time, selections were made. Relying upon the decision of Division Bench of this Court in the case of ***State of Chhattisgarh and others Versus Sushil Kumar Banchhor and others, (Writ Appeal No.1010/2012 and batch of appeals, decided on 04-04-2014), Vishvanath Sinha vs. State of Chhattisgarh & another*** (WPSNo.4208/2010), decided on 27-07-2012 and orders passed in the case ***Abdul Ahmad Khan vs. State of Chhattisgarh & another***, (WPS No.2309/2013), decided on 11-11-2013 and ***Rajkumar Tiwari vs. State of Chhattisgarh and others***, (WPSNo.5135/2010), decided on 19-06-2014, it is submitted that the benefit of relaxation of weightage marks provided under circular dated 30-11-1989 could not be denied only on the ground that Green Card was not obtained and submitted at the time of interview. In the aforesaid decisions, it is argued, it has been held that once a person has undergone Tubectomy Operation, he is entitled to benefit, even if the technical requirement of submission of green card is not fulfilled. In the present case, as no order was issued by the authorities, a duly signed certificate that the petitioner had undergone Tubectomy Operation, countersigned by the Chief Medical & Health Officer of the Government Hospital was submitted. Relying upon the memo dated 10-08-2006 of Chief Medical & Health Officer, Raipur addressed to the City Hospital, where the Tubectomy Operation was performed, filed along with an application for taking documents on record, it is argued that the hospital where the petitioner underwent Tubectomy Operation was duly recognized by the government for the period 01-07-2006 to 30-07-2007. The petitioner having undergone Tubectomy Operation on 31-07-2006, was entitled to weightage of marks as stipulated in the interview call letter. Had those weightage marks been awarded to the petitioner, he would have secured

more marks as compared to respondent No.3.

4. Per contra, learned counsel for the State argued that the State of Chhattisgarh had stopped granting benefit of Green Card, after reorganization. He would further submit that the certificate of green card could be issued by the competent authority only. It is also argued that the certificate was not authentic because it was issued by the Private Institution, though countersigned by the Chief Medical & Health Officer. It was also argued that though the petitioner impleaded respondent No.3 in the petition, during the pendency of the petition, the appointment order of respondent No.3 was issued in the year 2008 itself, which was not challenged until filing of amendment application only recently, therefore, on this ground of delay in challenging appointment, the petition is liable to be dismissed.

5. Learned counsel for the respondent-PSC submits that the petitioner could not, as of right, claim benefit of weightage marks, because it was not provided in the advertisement. Governing recruitment rules did not provide any such weightage marks. Therefore, the petitioner cannot take advantage of mistakes committed by the PSC in incorporating provision of award of weightage marks at the time of issuing interview call letters. Further submission is that though there is requirement of submitting Green Card, but, after receiving interview call letter, the petitioner did not make any effort towards issuance of Green Card. The petitioner did not challenge the condition of submission of Green Card but he appeared in the interview along with the medical certificate which was not acceptable. The pre-condition of submission of Green Card to avail weightage marks was not challenged by the petitioner. Having failed to submit Green Card and denial of weightage marks, the petitioner cannot turn around and challenge the process of selection. Next submission is that the certificate submitted by the petitioner is not a Green Card as it has not been issued by the competent

authority of the State Government. Mere countersign by the Chief Medical & Health Officer would not cure the defect. The PSC, later on, realized the mistake and therefore, no candidate was granted benefit of Green Card because it was not stipulated in the advertisement.

6. Learned counsel for respondent No.3 would submit that the petition is liable to be dismissed on the ground of delay and laches in challenging the appointment order. Even though, process of selection was challenged, there was no specific challenge to the appointment of respondent No.3. Other candidates, who were, later on, selected and appointed, have also not been impleaded as respondents. According to him, mere challenge to selection is not sufficient and once there is issuance of appointment order, it is required to be challenged within a reasonable time. The respondent No.3, in the meantime, having been selected and offered appointment, left the earlier government job and joined the services on the post of Mining Officer and continued on the post of Mining Officer. Later on, he received promotion also on the next higher post of Deputy Director. Further submission is that if the petitioner would be granted benefit of weightage marks, it would amount to changing the rules of games, after the process of selection began. He would also submit that there was no stipulation in the advertisement that those candidates who were possessed of Green Card would be entitled to relaxation/weightage of marks. He next submitted that a candidate, who is holding Green Card as per the terms of the advertisement, could only be considered for age relaxation and nothing more. Once, it was not stipulated in the advertisement, it was not open for the PSC to invite candidates to submit Green Card at the time of holding interview. The government recruitment rules did not provide for weightage marks, though, it provided for relaxation in age to the candidates, who are holding Green Card. Once, rules were framed, the provision contained in circular dated 30-11-1989

were overruled, in so far as weightage aspect is concerned. Grant of weightage marks would therefore be, contrary to the provisions contained in the government rules and thus, no mandamus could be issued contrary to the provisions of law.

In the alternative, it is submitted that even if it is found that the selection of respondent No.3 was illegal, as it is not challenged on the ground of favoritism or nepotism, at this stage, selection of respondent No.3 may not be quashed as he had accepted appointment after due selection, whereafter, he had resigned from earlier government job. In support of submissions made hereinabove, reliance has been placed on the decisions of the Supreme Court in the case of ***Munindra Kumar and others vs. Rajiv Govil and others, (1991) 3 SCC 368, Roshni Devi and others vs. State of Haryana and others, (1998) 8 SCC 59, Tridip Kumar Dingal and others vs. State of West Bengal and others, (2009) 1 SCC 768, Girjesh Shrivastava and others vs. State of Madhya Pradesh and others, (2010) 10 SCC 707 and Vikas Pratap Singh and others vs. State of Chhattisgarh and others, (2013) 14 SCC 494.***

7. By way of rejoinder, learned counsel for the petitioner argued that the submissions of State/PSC/respondent No.3 are against their own pleadings and none of them have questioned the applicability of the State policy in the matter of grant of weightage marks to those who were holders of Green Card, but the petitioner's claim is resisted on the ground that the petitioner was not holding Green Card. Once the State does not dispute that the hospital where the petitioner underwent Tubectomy Operation was duly recognized, irrespective of whether Green Card was issued to the petitioner or not, the benefit of weightage marks ought to be extended to him. He would also submit that right from the beginning, the petitioner had not only challenged the selection of respondent No.3 but he was also impleaded in the petition. In the present case, an interim

order was also passed by this Court that any appointment made pursuant to select list dated 03-11-2007 shall be subject to the decision of this Court. Issuance of appointment order, during the pendency of the petition, therefore, was also subject to final outcome of the petition. Even though, it was not required to be challenged, only by way of abundant caution and in order to place the same on record, challenge to the appointment order of respondent No.3, issued during pendency of the petition, was incorporated by way of formal amendment, which was allowed by this Court.

8. Serious objection regarding maintainability of the petition has been raised by learned counsel for the respondent, particularly by the respondent No.3 on the submission that though the petitioner had challenged selection of respondent No.3, when the select list was prepared, later on, an order of appointment of respondent No.3 was also issued on 14-10-2008, but the same was not challenged until an amendment application was filed in the year 2014 which was allowed vide order dated 18-07-2014. Thus, for a period of six years, the petitioner did not challenge the appointment of the respondent No.3, therefore, merely because the selection of respondent No.3 was under challenge, delay in challenging the appointment could not be condoned and the petition was liable to be dismissed on the ground of delay and laches. Reliance has been placed on decisions of the Supreme Court in the case of ***Karnataka Power Corpn. Ltd. Through its Chairman & Managing Director Versus K. Thangappan and another, (2006) 4 SCC 322, Shiba Shankar Mohapatra and others Versus State of Orissa and others, (2010) 12 SCC 471, State of Jammu and Kashmir Versus R. K. Zalpuri and others, (2015) 15 SCC 602.***

9. However, this Court is not inclined to dismiss this petition on that ground because selection of the respondent No.3 under select list dated 03-11-2007 (Annexure P/5) was challenged by the petitioner right from the beginning. In

fact, vide order dated 02-01-2008, application for grant of interim relief filed by the petitioner was disposed off, directing that any appointment made pursuant to select list dated 03-11-2007 shall be subject to the decision of this Court. Therefore, the appointment of respondent No.3 made during the pendency of the petition, vide order dated 14-10-2008 was also subject to final outcome of this petition. Later on, the petitioner was directed to carry out formal amendment for quashing appointment order, which was final outcome of the petition. In these peculiar facts of the case, when selection of respondent No.3 was already under challenge and subject to final outcome of the petition, I am not inclined to dismiss the petition on the ground of delay and laches and the aforesaid decisions cited above, are distinguishable on facts, as those were not the cases where the selection were already under challenge right from the beginning and though, by judicial order, selection were subject to final outcome of the petition, yet the petition was held liable to be dismissed only on the ground that the appointment order issued during the pendency of the petition was not challenged by way of amendment.

10. There is yet another objection put forth by the respondents that as all the candidates selected along with the petitioner have not been impleaded as respondents, the petition is liable to be dismissed on the ground of non-rejoinder of necessary parties. The submission must fail because the petitioner has sought to challenge the appointment of respondent No.3 only and has prayed for quashing his selection. In the petition also, there is nothing to show that the petitioner had challenged the entire select list or prayed for quashing of appointment of all the selected candidates on the ground of any irregularities having vitiating effect on the entire process of selection. The petitioner has chosen to challenge the appointment of respondent No.3 because according to the petitioner, if he would have been granted weightage marks of 5% in the

interview, he would have obtained more marks than respondent No.3 and in that eventuality, he would have been selected in place of respondent No.3. Looking to this limited challenge, this Court is not inclined to dismiss the petition on the ground of non-joinder of other selected candidates.

11. The petitioner and the respondent No.3 both had applied for appointment to the post of Mining Officer, pursuant to the advertisement dated 29-11-2006 as amended on 13-06-2007. The eligibility qualifications, age of eligibility, relaxation in age were provided in the advertisement itself. Though, the advertisement provides for relaxation of age of two years to those who are possessed of Green Card under in Clause (5)(Two)(1), in the entire advertisement, there is no provision for granting any weightage marks in the written test or in the interview much less weightage of 5% to those who are possessed of Green Card. It is not the case of the petitioner that the grant of weightage marks of 5% was provided under the governing Recruitment Rules.

Recruitment to the post of Mining Officer in the Department of Mining under the State of Chhattisgarh are governed by the Rules, which are known as Chhattisgarh Geology and Mining, Class I and II Service Recruitment Rules, 2005 (In short “the Recruitment Rules of 2005”). Rules lay down the provisions with regard to grant of relaxation in age as also the criteria for selection. The relevant rules being relevant are extracted hereinbelow, for ready reference :-

7. “ Appointment to the Service. - All appointments to the Service after the commencement of these Rules shall be made by the Government and no such appointment shall be made except after selection by one of the methods of recruitment specified in rule 6.

8. Conditions of Eligibility for direct Recruitment.- In order to be eligible to be selected, a candidate must satisfy the following conditions,

namely-

(I) :- (a) He must have attained the age of (as in column 4 of Schedule- III) but not attained the age of (as in column 5 of the said schedule III), on the first day of January, which comes after the date of commencement of the selection.

(b) The upper age limit shall be relaxed up to a maximum of (5) five years if a candidate belongs to a Scheduled Caste/Scheduled Tribe or Other Backward Class.

The upper age limit for female candidates shall also be relaxed up to 10 years on all duty posts of direct recruitment but an additional relaxation of five years in general upper age limit shall be given to widow, destitute and divorced female candidates. to women candidates in accordance with provisions of Rule-4 of

(c) The upper age limit shall also be relaxed in respect of candidates who are or have been employees of the Chattisgarh Government to the extent and subject to the conditions specified below:~

(i) A candidate who is a permanent or temporary/Government servant of Chhattisgarh should not be more than 38 years of age.

(ii) A candidate, holding a temporary post, including work charged employees, person getting pay from contingency and person employed in Project Implementation committee, applied for any other post should not be more than 38 years in age.

(iii) A candidate, who is a retrenched Government servant shall be allowed to deduct from his age the period of all temporary services previously rendered by him up to a maximum limit of 7(seven) years even if it represents more than one spell provided that the resultant age does not exceed the upper age limit by more than three years.

Explanation:- The term "retrenched Government Servant denotes a persons who was in temporary Government Service of this State or of any of the constituent units, for a continuous period of not less than six months and who was discharged because of reduction in establishment not more than three years prior to the date of his registration at the employment exchange or of application made otherwise for employment in Government service.

(d) A candidate who is an ex-serviceman (Military) shall be allowed to deduct from his age the period of all defense service previously rendered by him provided that the resultant age does not exceed the upper age limit by more than three years.

Explanation :- The term "ex-serviceman" (Military) denotes a person who belongs to any of the following categories and who was employed under the Government of India for a continuous period of not less than 6 (six) months and who was retrenched or declared surplus as a result of the recommendation of the Economy Unit or due to normal reduction in establishment not more than three years before the date of his registration at any employment exchange or of application made otherwise for employment in Government service:-

(1) Ex-servicemen(Military) released under mustering out concessions,

(2) Ex-servicemen (Military) enrolled for the second time and retired, (a) On completion of short term employment, (b) After fulfilling the condition of recruitment,

(3) Ex~personal of Madras Civil Unit;

(4) Officers (Military and Civil) discharged on completion of their contract (including short service Regular Commissioned Officer);

(5) Officers discharged after working for more than six months continuously against leave Vacancies,

(6) Ex-servicemen discharged on the ground that they are unlikely to become efficient soldiers,

(7) Ex-servicemen who are medically discharged on account of gun-shot, wounds, etc.

(e) Relaxation of two years in maximum age limit shall be given to a candidate holding green card under family, welfare programme.

(f) Relaxation of five years in general maximum age limit shall be given to general category partner of a couple, prized under the intercaste marriage promotion scheme of schedule caste/tribe and backward class welfare department.

(g) Relaxation of five years in general maximum age limit shall be given to a player candidate awarded with Vikram Puraskar.

(h) Relaxation up to 38 years age limit in maximum age limit shall be given to the employee of Chhattisgarh State Corporation/Board.

(I) Relaxation, of the period equals to the services rendered by volunteer home guards and non-commissioned officers in Home guard service shall be given in general maximum age limit. Limit of this relaxation will be 8 years, means the age of home guard/non-commissioned officer should not be more than 38 years including this relaxation.

N.B.- Candidates who are admitted to the selection under the age concessions mentioned in para 8(1) (c) (I) and (ii) above will not be eligible for appointment if after submitting the application, they resigned from service either before or after the selection. They will, however, continued to be eligible, if they are retrenched from the service or post after submitting the applications. In no other case will these age limits be relaxed.

Departmental candidates must obtain previous permission of the appointing authority to appear for the selection.

(j) In addition to above, the instructions issued from time to time by General Administration Department regarding age limit will be applicable.

(II) Educational Qualification- the candidate must possess the educational qualification prescribed for the service as shown in Schedule III. Provided that:-

(a) In exceptional cases, the Commission may on the recommendation of the Government, treat as qualified candidate, who though not possessing any of the qualifications prescribed in this clause, has passed examination conducted by other institutions by such a standard which, in the opinion of the Commission, justifies the consideration of the candidate for selection, and

(b) Candidates who are otherwise qualified but have taken degrees from foreign Universities, being Universities not specifically recognized by Government may also be considered for selection/admitted to the examination at the discretion of the Commission.

(III) **Fee** :- Candidate would have to pay fee prescribed by the Commission.

12. List of Candidates recommended by the Committee:- (1) The Commission shall forward to the government a list arranged in order of merit of the candidates who have qualified by such standard as the Commission may determine and of the candidates belonging to the Scheduled Castes and Scheduled Tribes and Other Backward Class who, though not qualified by that standard but declared by the Commission to be suitable for appointment to the Service with due regard to the maintenance

of efficiency of administration. The list shall also be published for general information.

(2) Subject to the provisions of these rules and of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961, candidates will be considered for appointment to the available vacancies in the order in which their names appear in the list.

(3) The inclusion of the candidate's name in the list confers no right to appointment unless the Appointing Authority is satisfied, after such enquiry as may be considered necessary that, the candidate is suitable in all respects for appointment to the Service.

(4) The Select list shall be valid for a period of one year from the date of issue by Commission."

If the selection criteria for appointment to the post of Mining Officer is considered in terms of the provision contained in the government statutory recruitment rules framed by the Governor in exercise of powers under proviso to Article 309 of the Constitution of India, it is clear that there is no provision for granting any weightage marks on the basis that the candidate is possessed of Green Card. It would be relevant to mention here that the recruitment rules do permit grant of relaxation in age to those who are possessed of Green Card. It is thus clear that under the recruitment rules, criteria of selection would only be marks obtained in the written test and in the interview and that alone could be made a basis for assessing the merit of the candidates. Once, there is specific provision in the recruitment rules prescribing the criteria for assessment of merit, the petitioner could not claim, as of right, that he should be awarded 5% of weightage marks in the interview under circular dated 30-11-1989 issued by the then State of Madhya Pradesh prior to reorganization of State of Madhya Pradesh under Madhya Pradesh Re-organization Act, 2000. As long as the recruitment rules in the matter of direct recruitment to the post of Mining Officer were not framed in the State of Chhattisgarh, the circular dated 30-11-1989, which was in force in the State of Chhattisgarh, in view of the decision of Division Bench of this Court in the case of ***State of Chhattisgarh and others***

Versus Sushil Kumar Banchhor (supra). That was a case where age relaxation was claimed under circular dated 30-11-1989. In those cases, on facts, it was neither raised nor the Court had any occasion to decide as to what were the relevant recruitment rules applicable in the matter of those recruitments. The State also did not come out with any case that in the State of Chhattisgarh, after re-organization under the Madhya Pradesh Re-organization Act, 2000, separate recruitment rules were framed which provided for selection criteria without providing for any weightage marks in the interview, who was holding Green Card. Other two decisions cited by learned counsel for the petitioner in the case of Abdul Ahmad Khan vs. State of Chhattisgarh and another, (decided by this Court on 11-11-2013 in WPS No.2309/2013), Rajkumar Tiwari vs. State of Chhattisgarh and others, (decided by this Court on 19-06-2014 in WPS No.5135/2010) are also related to claim of age relaxation and on facts, it was not a case that recruitment rules framed after re-organization, provided for different criteria of selection which did not provide for grant of weightage marks to those, who were possessed of Green Card.

12. It was clearly stipulated in Clause 12 of the advertisement that in the event, written examinations are held followed by interview, the selection shall be based on the total marks obtained in the written examination and interview. There is no provision for grant of weightage marks in the said advertisement. It is, therefore, clear that even though, the recruitment rule did not permit award of weightage marks in interview to those candidates who are possessed of Green Card nor did the advertisement made any such provision and on the contrary, the recruitment rules and the advertisement prescribed the process of selection based on total marks of written examination & interview, the Public Service Commission, under mistaken belief that the candidates possessed of Green Card are entitled to weightage marks in interview, in the midst of the selection

process provided for a new criteria, that too, in the interview call letter, which is clear from the interview call letter. This was wholly impermissible. Criteria for selection and grant of weightage marks, could not be altered at later stage/at the fag end of selection by incorporating new criteria of selection, when it was neither permissible under the Recruitment Rules nor provided under the advertisement.

Once the Recruitment Rules provide that the selection shall be based on merit and the performance in the written examination and interview, the earlier criteria of grant of weightage of 5% marks to those, who are possessed of Green Card under Circular dated 30-11-1989 issued by erstwhile State of Madhya Pradesh, would no longer continue to remain in force, since the date of promulgation of recruitment rules. Present is not a case where the recruitment were held prior to coming into force of the Rules of 2005 and under the circular dated 30-11-1989, the Green Card Holders were entitled weightage of 5% marks in interview. Once the recruitment rules were promulgated and came in force, circular dated 30-11-1989, an executive instruction providing for grant of weightage marks of 5% in interview which was wholly inconsistent and contrary to the statutory scheme lost its efficacy and could no longer be made a basis by any candidate to claim such weightage marks on the ground that he is possessed of Green Card or that he had undergone Tubectomy Operation. If any candidate is awarded such weightage marks, it will be contrary to the provisions of the rules and therefore, impermissible under the law. Therefore, the present case is distinguishable from the line of decisions rendered in the cases of ***State of Chhattisgarh and others Versus Sushil Kumar Banchhor, Rajkumar Tiwari and Abdul Ahmad Khan*** (supra), referred to hereinabove.

13. It is well settled legal position that no writ can be issued in violation of law. Any direction to respondents to consider the claim of the petitioner for grant of

weightage marks in the matter of selection to the post of Mining Officer, shall be contrary to the statutory prescription under the governing Recruitment Rules of 2005.

14. In view of the aforesaid legal position, I am not inclined to examine other issues, though raised by learned counsel for the parties and the petition is liable to be dismissed and is accordingly dismissed.

SD/-
(**Manindra Mohan Shrivastava**)
Judge