

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6036 of 2011

Sachin Mishra, S/o Shri Shiv Sagar Mishra, Aged About 28 Years R/o
Guru Nanak Nagar, Supela, Bhilai, District Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Urban And Rural Administration, Mantralaya, D. K. S. Bhawan, Raipur, Chhattisgarh
2. Municipal Corporation Bilaspur Through Its Commissioner, Municipal Corporation, Bilaspur, District : Bilaspur, Chhattisgarh
3. Commissioner, Municipal Corporation, Bilaspur, District Bilaspur, Chhattisgarh
4. Bal Krishan Verma, S/o Late Shri Panchram Verma, Aged About 43 Years R/o D-278, Yadunandan Nagar, Tifra, Bilaspur, District Bilaspur, Chhattisgarh
5. Sanjay Mishra, S/o Late Shri Ramsundar Mishra, Aged About 43 Years R/o Opposite Mannulal Shukla School, Gondpara, Bilaspur, District Bilaspur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Malay Shrivastava, Advocate
For Respondents No. 2 & 3	:	Mr. A.S. Kachhawaha, Advocate along with Mr. B.L. Sahu, Advocate
For Respondents No. 4 & 5	:	Mr. Rahul Kumar, Advocate on behalf of Mr. R.S. Marhas, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/06/2018

1. The challenge in the present writ petition is to the order dated 25.08.2011, whereby the respondents No. 4 & 5 have been appointed in the office of the respondent No.2 on the post of Computer Data Entry Operator ignoring the claim of the petitioner.
2. The brief facts of the case is that the respondent No.2 on 07.08.2010 published an advertisement inviting applications for eligible candidates for appointment on the post of Computer Data Entry Operator by way

of direct recruitment. The petitioner and the respondents No. 4 & 5 and others had applied for the said post and after scrutiny the merit list which was published showed the name of the petitioner at serial No.8 in the list for unreserved category candidates and when the final order of appointment was issued, the respondents No. 4 & 5 were granted the appointment and the petitioner though fulfilled all the eligibility criteria has not been considered.

3. The grievance of the petitioner is that the respondents No. 4 & 5 were otherwise not eligible candidates and that they were at the relevant point of time over aged for participating in the recruitment process itself. The respondents have illegally, malafidely and ignoring the statutory or the rule position so far as direct recruitment is concerned have granted appointment to the respondents No. 4 & 5, which is sought to be quashed and in turn the petitioner be considered for the said post.
4. According to the petitioner, the respondent No.2 has wrongly granted age relaxation to the respondents No. 4 & 5 while it was not permissible under the recruitment rules governing the field. According to the petitioner, the advertisement itself very specifically mentioned that the age limit for participating in the recruitment process was as on 01.01.2010 to be minimum of 18 and the maximum of 35 with relaxation only to the reserved category candidates and that to would be as per the instructions of the Government. Thus it was the contention of the counsel for the petitioner that the respondents No. 4 & 5 who were general category candidates, for them the maximum upper age limit was 35 years and there was no relaxation provided for

this category of persons and therefore they have been illegally permitted to participate in the recruitment process.

5. It was further contended by the learned counsel for the petitioner that so far as granting of age relaxation to the respondents No. 4 & 5 was, the Commissioner, Municipal Corporation had vide its letter dated 28.10.2010 had sought sanction/approval from the State Government for age relaxation, which was rejected by the State Government initially on 22.03.2011. He submits that once when the State Government had rejected the same, the respondents No. 4 & 5 should not have proceeded further with the candidature of the respondents No. 4 & 5 and should have proceeded with the recruitment process minus the claim of the respondents No. 4 & 5 and in that situation the petitioner being the next most eligible candidate would have automatically become eligible. It was the further contention of the counsel for the petitioner that since the State Government had already rejected at the first instance, the approval for grant of age relaxation to the respondents No. 4 & 5, the Government subsequently was not empowered to grant a subsequent approval for granting age relaxation, which is therefore bad in law and beyond competence.
6. The counsel for the petitioner further refers to the circular of the State Government dated 16.09.2008, whereby the age limit for a general category candidate has been fixed by the Government at 30 and for the domicile of the State of Chhattisgarh, the upper age limit has been fixed at 35 and therefore it was argued that the respondents No. 4 & 5 are not entitled for any relaxation whatsoever, and the relaxation so granted is bad in law and liable to be set-aside/quashed.

7. Per contra, opposing the petition the counsel for the respondents has in very categorical terms refers to the recruitment rules governing the field i.e. the ***Chhattisgarh Municipal Corporation (Appointment and Conditions of Service of Officers and Servants) Rules, 2007***. According to the counsel for the respondents, rule 5 of the aforesaid rules of 2007 stipulates the conditions of the eligibility of direct recruitment and so far as the age criteria is concerned, rule 5.1 stands reproduced as under for ready reference:

“5.1. Age- In case of direct recruitment, the minimum and maximum age limit of candidate and the relaxation of upper age limit shall be the same as fixed by the State Government for the government service.”

8. It was further contended by the counsel for the respondents that rule 16 of the said rules of 2007 clearly provides the Appointing authority the power to relax the conditions. In such manner as may appear to be just and equitable with the riders that such relaxation has to be with the previous sanction of the State Government which is mandatory. According to the counsel for the respondents, invoking provisions of Rule 14, the Commissioner, Municipal Corporation, Bilaspur i.e. the respondent No.3 had sent a letter to the Government on 08.04.2011 bringing the fact to the notice of the Government so far as the power of relaxation of the Corporation with the approval of the State Government. According to the respondents, while sending the said letter to the Government, it was specifically contended by the Corporation that the respondents No. 4 & 5 have been working with the respondent-Corporation for long. That in the process of they discharging their duties with the Municipal Corporation they have crossed the upper age limit for direct recruitment and considering their

past experience, the Corporation intended to grant relaxation to these persons.

9. According to the respondents, this letter was acceded to by the Government and a sanction was granted on 24.08.2011 specifically relaxing the age so far as the respondents No. 4 & 5 are concerned. The said two documents are enclosed as Annexure R-2/3 and R-2/4 with the reply of the respondents. According to the counsel for the respondents, since Rule 16 empowers the Appointing authority for relaxation of any conditions of recruitment in an exceptional case subject to the approval of the State Government and the State Government also having approved the same, the appointment order issued in favour of the respondents No. 4 & 5 cannot be said to be bad in law or contrary to the rules governing the field.
10. It was further contended by the respondents that the respondents No. 4 & 5 were working with the respondent-Corporation since 1998 on Daily Wage basis/adhoc appointment and as such they had put in about 12 years of service, the respondents taking into account their performance thought it fit for granting relaxation so that they can be appointed against the sanctioned vacant posts. It was the contentions of the respondents that the equity also was in favour of the respondents No. 4 & 5 for the reason that they had already put in more than decade of service under the respondents No.2 & 3 and thus prayed for rejection of the writ petition.
11. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to refer to Rule 16 of the Rules of 2007 which for ready reference is reproduced herein under:

“16. Relaxation- Nothing in these rules shall be construed to limit or abridge the power of the appointing authority to deal with the case of any person to whom these rules apply in such manner as may appear to him to be just and equitable. Provided that before such action is taken the previous sanction of the State Government is necessary.”

12. Keeping the said relaxation powers of the Appointing authority if we consider the case of the respondents No. 4 & 5 apparently it appears that initially though a letter for relaxation of age was sought, which stood rejected on 22.03.2011 (Annexure P/4), but what clearly stands established is the fact that while seeking sanction at the first instance, the Corporation did not refer to the provision of Rule 16 while seeking relaxation. It appears that they had simply sought for a relaxation by virtue of the fact that the respondents No. 4 & 5 were working with the Corporation for the last 12 years alone. However when on the subsequent occasion, the respondents again made a correspondence with the State Government, specifically referring to the provision of Rule 16 which empowers granting of relaxation in the matters of recruitment, the authorities concerned has as a onetime measure has granted the approval vide their letter dated 24.08.2011 (Annexure R-2/4). This granting of sanction by the respondent-State in any manner cannot be said to be bad in law or arbitrary.
13. What is also pertinent to take note of is the fact that this granting of permission/sanction by the State Government has not been questioned or challenged by any person including the petitioner. If in the light of the aforesaid approval and sanction which has been given by the State Government, the Corporation authorities finalized the

recruitment process and have issued the order of appointment on 25.08.2011, the same again cannot be said to be in any manner contrary to the statutory provisions nor can it be said to be illegal or bad in law. It would be relevant at this juncture to refer to Rule 16, which clearly stipulates the circumstances when such relaxation has to be made.

14. Rule 16 clearly says that such relaxation can be granted when the Appointing authority feels that it would be just and equitable for grant of relaxation. Now if we look into the circumstances of the present case, it would reveal that the respondents No. 4 & 5 have been working with the respondent-Corporation for last over a decade and i.e. for about 12 years. At this juncture it would not had been just and proper for discontinuing the services of the respondents No. 4 & 5 and in their place appoint somebody who is young and falls within the age criteria prescribed under the recruitment rules. If the respondents No. 2 & 3 would have initiated a recruitment drive on an earlier occasions, which for reasons best known they have not done, the respondents No. 4 & 5 could have also applied for the said post. The respondents No. 4 & 5 also must being having a legitimate expectation while serving the respondent-Corporation of their services being either regularized as a permanent employee or they being granted relaxation for the services that they have rendered with the Corporation. We cannot also lose sight of the fact that the respondents No.4 & 5 in due course of time have crossed the normal permissible age limit for recruitment and if the relaxation is not given to the respondents No.4 & 5 by the respondents No. 2 & 3 they would be rendered unemployed after the recruitment process is finalized without considering them for

the said post and that would had been unjust and far more grave situation as that would had been detrimental not only to the respondents No.4 & 5, but also to the dependents of respondents No.4 & 5.

15. If for all the aforesaid reasons and circumstances the respondents No.2 & 3 have obtained sanction from the respondent No.1 for grant of special relaxation to the respondents No.4 & 5 under Rule 16 of the Rules of 2007, the same cannot be said to be either unjust or inequitable nor it can be said to be bad in law, arbitrary, malafide or contrary to the rules.
16. For the aforesaid reasons the present writ petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved