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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1655 of 2012**

Satyakam Sharma S/o Shri Suryakant Sharma, aged about 34 years, R/o House No. 365, Sundar Nagar Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Department of Public Health Engineerin, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Chief Engineer, Department of Public Health Engineering, Raipur, Chhattisgarh
3. Rakesh Kumar Sahu, S/o Udraj Singh Sahu, aged about 33 years, R/o village Kasaridih, Kanhaiyapuri, Durg, Chhattisgarh
4. Shekhar Kumar Bhardwaj S/o Babulal Bhardwaj, aged about 37 years, R/o Near Patel Bhawan, Annapurna Para, Kanker, District Kanker, Chhattisgarh
5. Laxmikant Verma S/o Chandrika Prasad Verma, aged about 34 years, R/o office of Public Health Engineering, Electrical/Mechanical Subdivision, Dantewada, District Dantewada, Chhattisgarh
6. Rakesh Kumar Kurrey Sub Engineer, O/o Public Health Engineering, Electrical/Mechanical Subdivision Narayanpur, District South Bastar Dantewada, Chhattisgarh
7. Shailendra Lakra (Deleted)
8. Mahendra Kuamr Kannoje S/o Horre Lal Kannoje, aged about 35 years, R/o village Dongitarai, Tahsil and District Durg, Chhattisgarh
9. Aditya Narayan Sahu, Presently posted as Sub-Engineer, Sub-Division Bijapur, O/o Executive Engineer (Civil/Mechanical), Bijapur, Post and Police Station Bijapur, District Bijapur, Chhattisgarh

---- Respondents

For Petitioner	: Shri Jitendra Pali, Advocate.
For Respondents/State	: Shri B.Gopa Kumar, Deputy Advocate General.
For Respondent No.3	: Shri Avinash Sahu, Advocate.
For Respondent No.4	: Shri C.Jayant K. Rao, Advocate.
For Respondent No.5	: None.
For Respondent No.6	: Shri G.P. Kurre, Advocate.
For Respondent No.8	: Shri Shashank Thakur, Advocate.

Hon'ble Shri P. Sam Koshy, Judge
Order on Board

17/04/2018

1. The challenge under the present writ petition is to the impugned order (Annexure P/1) dated 5.3.2011. By the said impugned order dated 5.3.2011, the Respondents have filled up the post of Sub-Engineer in the Public Health Engineering Department. The claim of the Petitioner is that the Petitioner was more meritorious than the private Respondents in the present writ petition yet the Petitioner's claim has not been properly appreciated by the Respondents and the private Respondents have been considered over and above the claim of the Petitioner.

2. The brief facts of the case is that an advertisement (Annexure P/3) was issued on 22.7.2010 for filling up of the post of Sub-Engineer (Electrical & Mechanical). Initially, the advertisement was for filling up the 15 posts. However, subsequently, the posts were enhanced and it was decided to filled up the 24 posts. Out of 24 posts, the number of posts reserved for the Unreserved Open Category is 11, of which, three posts for women, one post for handicapped and one post for Ex-serviceman quota were reserved and as such, from the 11 posts reserved for the Unreserved Open Category, only six posts were left to be filled from the Unreserved Open Category. The written examination was conducted by the Chhattisgarh Professional Examination Board and the results were published vide Annexure P/5. The Petitioner's position in the overall ranking stood at Sr.No.44. Subsequently, the selected candidates were called for the verification of the documents and after verification of the documents (Annexure P/7), the order of merit was published, in which the name of the Petitioner was reflected at Sr.No.15. Since, there were six posts of the Unreserved Open Category, the persons whose name at Sr.Nos.1 to 6 were selected, even though some belonged to the Reserved Category, but since they had secured more marks than the

Petitioner in the result of the written examination, they were placed in the Unreserved Open Category at Sr.Nos.1 to 6 to filling up the vacancy of Unreserved Open Category. Of the said list, one Prashant Godbole placed at Sr.No.3 did not join and in his place, the person placed at Sr.No.7 Jitendra Kumar Swarnakar was brought in at Sr.No.3 for appointment. The said Jitendra Kumar Swarnakar also did not join and in his place, the person placed at Sr.No.8 Laxmikant Verma, who is Respondent No.5 in the present writ petition, was brought in and was granted appointment.

3. The contention of the Petitioner is that subsequent to Respondent No.5 being brought in place against the person who did not join at Sr.No.3, the position of Laxmikant Verma was filled up by bringing the person placed at Sr.No.22 in Annexure P/7 at Sr.No.8 in place of Laxmikant Verma whose position was earlier upgraded in Sr.No.3 in place of Prashant Godbole and Aditya Narayan Sahu, i.e. Respondent No.9 in the present writ petition belonged to the OBC Category to which the Laxmikant Verma i.e. Respondent No.5 also belonged. The contention of the Petitioner is that the appointment given to Respondents No.3 to 9 were ignoring the conditons attached to the advertisement so also ignoring the merit of the Petitioner.

4. According to the counsel for the Petitioner, since the Petitioner was placed at Sr.No.15 in the select list, once when Prashant Godbole and Jitendra Kumar Swarnakar had refused to join services, being from the Unreserved Open Category, the case of the Petitioner should have been considered by Respondents No.1 and 2 as the Petitioner belonged to the General Category, his case should had been considered ahead of the other Respondents, particularly, Respondent No.9 as per the order of the merit list.

5. It was further contended by the Petitioner that so far as Respondent No.3 is concerned, he was otherwise disqualified from being considered on the ground

that his name was not available in the live register at the time of the advertisement.

6. So far as Respondent No.4 is concerned, the allegation made by the Petitioner is that he does not have the minimum experience of six years required for being considered for appointment as a Sub-Engineer.

7. So far as Respondent No.5 is concerned, it was alleged that he did not have any working experience in the Trade in which he had done the diploma.

8. So far as Respondent No.6 is concerned, it was again alleged that he too did not have the requisite experience as per the advertisement for being considered.

9. Respondent No.7 in due course of time was deleted from the writ petition as Respondent No.7 also did not join his duties.

10. So far as Respondent No.9 is concerned, the contention of the Petitioner was that firstly, he belonged to the OBC Category, he could not have been brought in the Unreserved Open Category unless he had secured more marks than the Petitioner for bringing himself as a meritorious candidate. It was the contention of the Petitioner that in the written examination also, Respondent No.9 had secured lower rank than the Petitioner and in the select list also, the position of Respondent No.9 was at Sr.No.22 whereas the Petitioner was placed at Sr.No.15 and therefore, the claim of the Petitioner should have been processed first instead Respondent No.9.

11. So far as Respondent No.3 is concerned, the allegation is that his name did not find place in the live register, the said ground raised by the Petitioner is no longer *res integra* as it is by now well settled principle of law decided by the Hon'ble Supreme Court as well as the High Courts in a catena of decisions wherein it has been held that non-registration in the Employment Exchange would

not by itself dis-entitle the person from being considered if he otherwise has all the requisite eligibility criteria. The recent decision in this regard has been passed by the Full Bench of this High Court in Writ Appeal No.411 of 2014 (State of Chhattisgarh v. Roshni Sahu) decided on 21.10.2016.

12. Now coming to the case of Respondent No.4, Respondent No.4 is a candidate who belongs to the SC Category whereas the Petitioner belongs to the General Category and as such, the Petitioner could not have been considered for appointment in place of Respondent No.4. Moreover, the only allegation against Respondent No.4 is that of not having the requisite experience of six years. Perusal of the record would show that Respondent No.4 has an experience of five years, eleven months and eleven days and there is a circular in the department which empowers the authority to round off the year to the next digit in case if the experience is more than six months in a calendar year. In the instant case, since Respondent No.4 has experience of five years, eleven months and eleven days, his experience was rounded off to six years. Thus, the challenge to the appointment of Respondent No.4 does not have much force.

13. We shall deal with the case of Respondent No.5 at a later stage. So far as Respondent No.6 is concerned, the allegation again was that he did not have the requisite length of service required for participating in the selection process. Perusal of the record would show that Respondent No.6 again is a candidate belonging to the SC Category and his appointment in any manner against SC category would not have adversely affect the Petitioner's claim for being considered in the Unreserved Open Category. Thus, the challenge of Respondent No.6 again does not have any force.

14. So far as Respondent No.8 is concerned, as in the case of Respondents No.4 and 6, Respondent No.8 also belongs to the OBC Category and his appointment against OBC category would also not in any manner adversely affect

the claim of the Petitioner against Unreserved Open Category. Thus, the challenge to the appointment of Respondent No.8 also does not have much force.

15. So far as Respondent No.9 is concerned, Respondent No.9 again is a candidate belongs to the OBC Category and he has been granted appointment when the person who was placed at Sr.No.8 i.e. Respondent No.5 Laxmikant Verma, whose position was upgraded and he was brought in as a meritorious candidate when the person who was at Sr.No.3 Prashant Godbole and the person who is at Sr.No.7 Jitendra Kumar Swarnakar refused to join their duties. Respondent No.9 again is a person whose appointment has been made against the vacancy reserved for the OBC Category. Thus, his appointment order also would not have any adverse consequence to the Petitioner's claim.

16. Now, coming to the credentials of Respondent No.5 is concerned, the documents attached with the writ petition so far as the certificate which have been produced by Respondent No.5 to obtain his employment would reveal that for a substantial period of time, his employment was in the fact that of an apprentice and the period during which the Petitioner was engaged as apprentice in an establishment cannot be considered as a regular employee. Apprenticeship is nothing but just a training which has been imparted to a particular person. It appears that Respondents No.1 and 2 have considered the case of Respondent No.5 only on the basis of proforma for recruitment which has been filled by Respondent No.5, which is Annexure P/10 with the writ petition wherein he has filled up Column No.11 showing him to be continuously in employment since 2000-2010 whereas both the service in Singh Engineering Works Bhilai so also the period between 13.9.2004 to 30.6.2005 with the Jindal Steel & Power, he has engaged as an apprentice for apprenticeship. It appears that Respondents No.1 and 2 have not in any manner scrutinized the credentials of Respondent No.5 before granting him appointment.

17. Respondent No.5 was duly noticed and he has also in person filed the reply, thereafter, he has not cared to further prosecute the petition and today also, he is not available to support his contention that he has raised in the reply. Further, in support of his reply also, there is no document which he has placed with which it could be ascertained that the Petitioner had the requisite six years of service experience required for being considered for the employment.

18. Another aspect which cannot be lost sight of is that Respondent No.5 belonged to the OBC Category, his position was upgraded and placed in the order of merit in place of candidates who did not join his duty, which was otherwise to be filled in by the Unreserved Open Category. In case, if Respondents No.1 and 2 would have scrutinized the document of experience of Respondent No.5 then they would have reached to the conclusion that Respondent No.5 did not have the requisite experience for employment and as a consequence perhaps the other candidate lower in the position would have been considered for being appointed in place of Respondent No.5.

19. Given to the aforesaid facts and circumstances of the case, this Court is of the opinion that the order of appointment to Respondent No.5 does not seem to have been assured after due verification of the records by Respondents No.1 and 2 and this Court has serious doubt to the credentials of Respondent No.5 and the experience that he has as per documents attached with the writ petition and the return filed by the concerned Respondents.

20. Thus, this Court is of the opinion that ends of justice would meet if the case of Respondent No.5 is once again scrutinized by Respondent No.2 and scrutinize the documents which he had furnished at the time of his appointment and verify whether with the said documents, can it be treated as sufficient to prove the length of experience required as per the advertisement. The Respondent No.2 thereafter on the basis of the assessment, pass an appropriate order. Needless to

mention that during the scrutiny, Respondent No.5 shall also be taken in confidence so that he can also provide necessary input for proper assessment and also gets an opportunity of hearing to justify his stand.

21. In the event, if Respondent No.2 finds that Respondent No.5 has been wrongly granted appointment, the same has to be cancelled and under such situation, the next person in the order of merit would be offered for employment and in case, if any of those candidates next in the line in the Unreserved Category is not available, then appropriate offers would be made to the Petitioner for filling of the said post.

22. With the aforesaid observation, this writ petition is allowed in part.

Sd/-
(P. Sam Koshy)
JUDGE

Anu