

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 262 of 2018**

1. Rakesh Kumar Khatri S/o Late Misrilal Khatri Aged About 37 Years R/o Village Gurur, Police Station And Tahsil Gurur District Balod Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Food And Civil Supplies , Mahanadi Bhawan Rakhi New Raipur District Raipur Chhattisgarh.
2. Director, Department Of Food And Civil Supplies , Block No. 2, Illrd Floor, Indravati Bhawan New Raipur District Raipur Chhattisgarh.
3. Controller, Chhattisgarh Vyavsaahik Pariksha Mandal (Chhattisgarh Vyapam) Madhayamik Shiksha Mandal Parisar, Pension Bada , Raipur Chhattisgarh. 492001.
4. Ramendra Kumar Pandey S/o Radheshyam Pandey Aged About 37 Years R/o Shastri Nagar , Belgahana , Bilaspur Chhattisgarh.
5. Raghvendra Pratap Singh S/o Ram Niwas Singh Aged About 36 Years R/o 43/2 Radhika Nagar , Supela , Bhilai Durg District Durg Chhattisgarh.
6. Gour Singh Jatree S/o Kartik Ram Jatree , Aged About 36 Years R/o House No. 605/2, Sai Nagar (Jora) Post Krishak Nagar, Raipur Chhattisgarh.
7. Lakeshwar Prasad Verma S/o Kaliram Verma, R/o Housing Board Colony, L I G - 213, Hatkeshar , Dhamtari District Raipur Chhattisgarh.

---- Respondent

For Appellant
For Respondent/State

Shri Sushobhit Singh, Advocate
Shri U.N.S. Deo, Govt. Advocate

Hon'ble Shri Justice Ajay Kumar Tripathi, CJ
Hon'ble Shri Justice Prashant Kumar Mishra

Judgment

Per Ajay Kumar Tripathi, CJ.

02/08/2018

1. Writ petition of the appellant was dismissed by the learned Single Judge vide order dated 6-2-2018. Primary reason why the writ petition of the appellant, against the direction for his appointment as Food Inspector, was dismissed is that a stand was taken by the State that the life of the panel had expired and that since the appellant had already participated in the process of recruitment and failed to beget appointment, therefore, he will be barred from claiming any relief.
2. Appellant was one of the applicants for appointment on the post of Food Inspector under the category of Ex-Servicemen. When the initial advertisement was issued the number vacancies were 26. This went up to 84 and finally to 116. Ex-Servicemen were entitled to 11 posts under their quota. Appellant was one of the shortlisted candidates and his merit position was shown at S.No.10. Recommendation had also been made in his favour for such appointment, but it seems that during the process of approval which is said to be 19-11-2014 the Model Code of Conduct came in force. The concerned authority, therefore, wrote a letter to the State Election Commission that since the validity of the merit list was going to expire on 12-12-2014, therefore, due permission should be granted to make such appointment. The Court is not unmindful of the fact that this letter was written on 11-12-2014 i.e. just one day before the so called validity of the merit list was to expire.

3. The State Election Commission in a mechanical fashion rejected the prayer and, therefore, the appellant was not appointed on the post despite finding place in the merit list and a right for such appointment having been created in his favour specially when similarly situated persons have come to be appointed, who too were recommended along with the appellant and those appointments some how have been carried out and notified on 28-11-2014 which is evident from Annexure – P/7 to the writ petition.
4. Obviously there is something fishy when it came down to the appointment of the present appellant is concerned. On 19-11-2014 a plea is taken that the Code of Conduct was in force, therefore, appointments could not be carried through and the permission of the State Election Commission was required whereas by virtue of the same recommendation on 28-11-2014 many a persons who are 21 in number have been appointed because the notification certifies that position.
5. The expiry of the list or validity of the list cannot be, therefore, used as a ploy to defeat or steal the right of the appellant because if the Code of Conduct did not come in the way of appointment of others who were also recommendees along with the appellant keeping in mind his merit position, then two yardsticks cannot be adopted that in case of appellant his appointment would be barred due to Code of Conduct being in place whereas for the rest the same would not be an impediment.

6. Even otherwise, if there was a Code of Conduct, the same would not end the exercises which had already been completed and only a formality of appointment was left to be made. By a deeming fiction, therefore, the validity of the merit list would subsist and await the Code of Conduct to end. But even otherwise since other persons have come to be appointed despite the Code of Conduct being in place and only the appellant was denied appointment on the basis of the Code of Conduct being in place obviously he has been discriminated and such decision violates Articles 14 & 16 of the Constitution of India.
7. Counsel for the State, on instructions, informs the Court that there are two posts still vacant under the Un-Reserved (Ex-Servicemen) category. Since there was no fault of the appellant in not begetting the appointment and since he did not suffer from any other infirmity after having made it to the merit list, denial of appointment is *per se* irrational and arbitrary.
8. The writ appeal is allowed. The impugned order of learned Single Judge dated 6-2-2018 is set aside because in the given facts none of the reasons given by the learned Single Judge can be said to be cogent and valid reasons for dismissing the writ petition.
9. It goes without saying that the appellant's appointment will be for all practical purposes treated to be the same date on which

appointments with regard to the rest of the recommendees had been made and notified i.e. 28-11-2014, even for the purposes of seniority. However, other perks & privileges like salary, etc. will be drawn from the date of issuance of notification of joining, which must be done within a period of two weeks from today.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri