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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3440 of 2018**

1. Anshumala Xalxo D/o Shri Anjulesh Xalxo, Aged About 29 Years R/o H.No. 15/790, Tarbahar Dipupara, Bilaspur, District Bilaspur Chhattisgarh.
2. Vivek Kumar Kanwar, S/o Shri L.S. Kanwar, Aged About 29 Years R/o Ashoka -36, Kharoon Greens, Kumhari District Durg Chhattisgarh.
3. Mukesh Kumar Painkra, S/o Shri Mangaru Sai Painkra, Aged About 27 Years R/o Village Amdiha, Tahsil Farshababar, District Jashpur Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission Through Its Secretary, Shankar Nagar Road, Raipur Chhattisgarh.

---- Respondents

Writ Petition (S) No. 3683 of 2018

Jyoti Bhagat W/o Shri L.M. Bhagat, Aged About 41 Years R/o Plot No. 103, Krishnavatika Colony P.O. Boir District Janjgir Champa Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home Affairs Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission, Through Its Secretary, Shankar Nagar Road, Raipur Chhattisgarh.

---- Respondents

For Petitioners	: Shri Mateen Siddiqui, Advocate.
For Respondent/State	: Shri Y.S. Thakur, Additional Advocate General.
For Respondent/CGPSC	: Shri Y.C. Sharma, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**26/09/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. In both the writ applications, the grievance of the Petitioners was against Condition No.2, Schedule 3 of the Rule 8(2) of the Chhattisgarh Forensic and

Science Laboratory (Gazetted) Service Recruitment Rules, 2006 (hereinafter referred to as “the Rule, 2006”) wherein in respect of Scientific Officers, certain requirement of experience has been laid down. Since the Petitioners do not have the requisite experience, therefore, they decided to file the writ applications on the ground that in the notification and the Rule notified on 23.05.2006, a copy of which is Annexure P/1, it talks of giving concession to Scheduled Castes and Scheduled Tribes candidates wherever sufficient number of candidates are not available for direct recruitment.

3. Plea was taken in the writ applications that contrary to Rule 11(A)(6) of the Rule, 2006, the advertisement did not provide for such relaxation and therefore, a direction ought to be issued upon the Respondents to allow participation and consideration of their candidature, who admittedly do not have experience of the kind required.

4. When the matter was initially taken up on 01.05.2018, the Division Bench provisionally allowed the applications of these Petitioners to be accepted as also provisionally allowed the participation in the competitive examination, subject to final adjudication of the writ applications.

5. Return has been filed on behalf of the Chhattisgarh Public Service Commission (“CGPSC”) as well as the State. The stand of the CGPSC is that prior to issuance of the advertisement itself, they had reverted to the State Government on the basis of requisition sent, seeking their response on the need to dilute the requirement of experience for the post of Scientific Officers in the Chhattisgarh Forensic Science Laboratory, as the posts were not being filled up in absence of qualified candidates being available. The communication of the State dated 16.11.2017 issued by the Home (Police) Department, Government of Chhattisgarh is on record. The State refused to make any changes or dilute the requirement. The letter categorically states that in the recruitment Rules, if certain

eligibility and requirement especially in relation to certain special posts and departments lays down, the requirement of work experience of five years it is mandatory and not directory.

6. In other words, submission of counsel for the CGPSC is that issue was raised by them as a recruiting agency before the State Government, but since State Government refused to make any concession or leeway on the minimum eligibility of experience etc. in relation to the Scheduled Castes and Scheduled Tribes candidates, the advertisement was issued without the necessary relaxation having been provided to any class or category of the applicants.

7. Stand of the State in their counter-affidavit is that certain eligibility and requirement in relation to certain specialized posts have been laid in the concerned Rule itself, this has been done with the object of having the right man for the right job and since the post of Scientific Officers in the Department of Forensic Sciences must have minimum five years of experience, therefore, in the name of providing employment to Scheduled Castes and Scheduled Tribes people, the requirement of experience cannot be waived. Even otherwise, Rule 11(A)(6) of the Rules, 2006 is not mandatory, but is only directory or discretionary.

8. It is further submitted that Rule 11(A)(6) of the Rules, 2006 does envisage a situation when candidates belonging to Scheduled Castes and Scheduled Tribes are not found eligible to be appointed due to experience, concession can be made therein. But that is where the posts do not require any specialized knowledge or experience. Discretion can be used by the State to extend the benefit of waiver but that cannot be used as thumb rule for such appointment on specialized posts.

9. This Court is of the opinion that since the posts and position of Scientific Officers in the Chhattisgarh Forensic Science Laboratory are of vital importance and since their reports and inputs are equally important for dispensation of

criminal justice delivery, therefore, untrained people with no experience cannot be allowed to be appointed by granting concession and leeway, merely because the candidates of such category are not available otherwise. This Court is not unmindful of the importance of the posts of Scientific Officers in the Forensic Science Laboratory.

10. Counsel for the Petitioners submits that since there is no institution or facility where experience can be gained in the State of Chhattisgarh, therefore, a direction be issued upon the State of Chhattisgarh to make such provision or else the candidates belonging to the Scheduled Castes and Scheduled Tribes will never be able to get employment at least in the Organization in question.

11. Providing institution for gaining experience and knowledge is not within the ambit and domain of the adjudication of the present writ applications. Therefore, that argument cannot be used or utilized for overcoming the rigor or the eligibility which has been laid down for the posts in question. Even otherwise, the Court is of the view that eligibility as well as experience which the employer is looking at by way of recruitment on the basis of an advertisement has to be given weightage as well as discretion, because the employer knows best as to the kind of person they would like to recruit. In other words, the right man for the right job is the underlying principle behind such object. If that is taken into consideration, this Court will not exercise its discretion by reading down or compelling the Respondents to relax the experience, which is a part of the requirement of the Rule.

12. It is evident from the stand of the State as well as the CGPSC that they will go by in terms of the advertisement and the requirement laid down therein and they are not willing to dilute the experience part so far as recruitment on the posts of Scientific Officers in the Chhattisgarh Forensic Science Laboratory are concerned.

13. In view of the above, we do not feel that a mandamus can be issued upon the State to waive the condition or requirement of experience on the basis of Rule 11(A)(6) of the Rules, 2006.

14. Both the writ applications are dismissed being devoid of merit.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE

Anu