

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 531 of 2018**

1. Sanjay Paithankar S/o. Late Vishnu Rao Paithankar Aged About 43 Years R/o. Behind Choubey Colony, Arvind Nagar, Bandhwapara, PS- Sarkanda, Bilaspur Chhattisgarh.
2. Kedar Nath Patel S/o Shri Uday Ram Patel Aged About 38 Years, R/o. 47/47, Sohaga Mandir Road, Azad Chowk, Brahmanpara, PS- Azad Chowk, Raipur Chhattisgarh.
3. Trilok Patel S/o. Shri Shiv Charan Patel, Aged About 38 Years, R/o. House No. 200, Sec. 25, Rakhi, PS- Rakhi, Naya Raipur, Chhattisgarh
4. Ramchandra Sahu S/o. Shri G R Sahu Aged About 33 Years, R/o. Purana Dhamtari Road, Shashwat Nagar, Boriyakhurd, PS- Tikrapara, Raipur Chhattisgarh.

----Appellants**Versus**

1. State of Chhattisgarh Through: The Secretary, Department Of Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Chhattisgarh Board Of Secondary Education Through: The Secretary, Bairan Bazar, Pension Bada, P.S- Civil Lines, Raipur Chhattisgarh.

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For Appellants	:	Shri N. Naha Roy, Advocate.
For State/Respondent No.1.	:	Shri Gary Mukhopadhaya, Government Advocate.
For Respondent No.2	:	Shri Alok Bakshi, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu****Judgement on Board****Per Ajay Kumar Tripathi, Chief Justice****29.08.2018**

1. Subject-matter of challenge before the writ Court was to the advertisement dated 08.01.2018 for filling up the post of Assistant Grade - III and Data Entry Operator.

2. Submission before the Learned Single Judge was that the petitioners who are now appellants had tried to apply for the post of Assistant Grade- III and Data Entry Operators but their applications could not be considered on the ground that they had crossed the permissible age limit, which was laid down in the advertisement. It was also contended that the prescribed age limit indicated in the advertisement was in contravention of the Chhattisgarh Board of Secondary Education Recruitment and Promotion Rules, 2010 (in short 'the Rules'), since the appellants were also working as daily wages ranging between 9–15 years, therefore, relaxation in age etc, should have been duly provided for.
3. Clause 4 of the advertisement laid down that on 01.01.2018, the candidate should not be less than 18 years or more than 30 years of age, however, for permanent residents of the State of Chhattisgarh, the age limit was extended to 40 years instead of 35 years. Benefits of age-relaxation in relation to other reserved category of people etc was to be dealt with according to the necessary notifications which are in place.
4. The argument with regard to the Rules is also advanced before us. It is contended that as per the Rules, the conditions for eligibility of candidates for direct recruitment has been laid down in Rule 8 and the corresponding Schedule is Schedule III where for Assistant Grade III, the age provided is 18 – 35.
5. It is on this basis, that argument is made that the advertisement is contrary to the Rules. Admittedly the appellants are residents of Chhattisgarh and for persons of Chhattisgarh, instead of 35 years, the age limit has been extended to 40 years, but it seems that even that 10 years of window, which has been provided for in the advertisement is not coming to the aid and assistance of the appellants, because some of them are even beyond 40 years of age, when the advertisement was issued.

6. If a special concession was being looked at by virtue of being daily wagers, then such expectations are misplaced and the concession in age has already been taken care of by the concerned respondent authorities, when they have provided maximum age of 40 years for candidates, who happen to be resident of Chhattisgarh. But if the appellants are looking for further concession in age after 40 years, this Court can only observe that they are not worthy of such employment or hiring, because both their ability and capability to deliver and make any significant contribution to the post and public service is a suspect after certain number of years.
7. An alternative argument is made now, that there is a so called statutory body which is known as Executive-Cum-Finance Committee, which has been constituted under Section 19 of Chhattisgarh Madhyamik Shiksha Adhiniyam, 1965. In their meeting held on 17.09.2012 a decision was taken that in matters of direct appointment, a one time priority (प्राथमिकता) would be required to be given to daily wagers, who had been appointed prior to 1st January 2012.
8. Even this argument is of no avail to the appellants because that decision talks in terms of preference. When we talk of preference, there is an underlying requirement of a candidate being placed at par with yet another candidate before preference can be extended to him. Preference cannot be given to the daily wagers, when they have not even participated or qualified in the exercise so conducted for selection in terms of the advertisement.
9. The whole effort on the part of these appellants is to some how clamber on to the employment by one argument or the other even though they are over the hill now, and they themselves somehow chose not to participate in the examination on a lame kind of excuse that since their age was against them, as per the advertisement, so they did not apply.

10. The order of the Learned Single Judge dated 01.05.2018, therefore, cannot be said to be erroneous which requires further consideration.
11. The appeal has no merit. It is dismissed.

Sd /-
(Ajay Kumar Tripathi)
Chief Justice

Sd /-
(Parth Prateem Sahu)
Judge