

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3104 of 2017

Reserved on 18/09/2018

Delivered on 19/11/2018

Sonika Sharma D/o Subhas Sharma, Aged About 26 Years R/o Indu Chowk, Civil Lines, Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Panchayat and Gramin Vikas Department, Capital Complex, New Raipur, District Raipur Chhattisgarh
2. Zila Panchayat Bilaspur, Through Its Chief Executive Officer, Zila Panchayat, Bilaspur, District Bilaspur Chhattisgarh
3. Director, Pradhan Mantri Awas Yojna Rural Office Of Development Commissioner, Chhattisgarh, First Floor, Block No. 2, Room No.33, C V I, Indravati Bhawan New Raipur, District Raipur Chhattisgarh.
4. Development Commissioner, Pradhan Mantri Awas Yojna Rural Office Of Development Commissioner, Chhattisgarh, First Floor, Block No. 2, Room No.3, C V I, Indravati Bhawan New Raipur, District Raipur Chhattisgarh.
5. Umang Gauraha, S/o Umesh Gauraha, Aged About 26 Years R/o Songanga Colony, Seepat Road, Bilaspur, District Bilaspur Chhattisgarh

---Respondents

For Petitioner	:	Ms. Sangeeta Mishra, Advocate
For State	:	Mr. S.P. Kale, Dy. A.G.
For respective Respondents	:	Mr. Prateek Sharma, Advocate
		Mr. Surendra Ku. Dewangan, Advocate

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

1. The challenge in the present writ petition is to the selection/appointment of the respondent No.5 on the post of District Coordinator under Zila Panchayat, Bilaspur.
2. The relevant facts leading to the filing of the present writ petition is that an advertisement was issued on 28.04.2017 inviting applications for the post in the office of the Development Commissioner. The post

for which the advertisement was issued was 27 posts (one for each district) of District Coordinator. The petitioner and the respondent No.5 both had applied for the said post. The qualification prescribed for the post was B.E. (Civil) and three years of experience. Apart from the qualifications, there were certain other conditions also prescribed under the advertisement. It is the contention of the petitioner that she was more meritorious than the respondent no.5, but the respondents have malafidely and arbitrarily discarded the claim of the petitioner and while preparing the list of eligible candidates, published the names of 10 candidates, who had participated in the skill test as well as written examination. The petitioner was placed at serial No.2 and it was the respondent No.5, whose name appeared at serial No.1.

3. The petitioner immediately raised an objection so far as the eligibility of the respondent No.5 is concerned, and while challenging the same the petitioner had questioned his eligibility, both in respect of his experience, as also on the fact that he has applied for more than one district, which otherwise was not permissible under the advertisement. The objection so raised by the petitioner had not been decided and without deciding the same, the respondent No.5 had been issued with the order of appointment and who in turn also immediately joined his duties. The petitioner had also questioned the experience certificate, which the respondent No.5 has furnished.
4. Per contra, the counsel appearing for the respondent No.5 opposing the petition submits that the writ petition itself is not sustainable for the reason that during the course of selection, the selection committee did not find the petitioner qualified, in as much as, she did

not score the passing marks required and she was initially itself declared unqualified, which the petitioner has never questioned or challenged before any authority or Court of law, therefore she being a disqualified candidate could not have turned round and questioned the selection of the respondent No.5. It was also the contentions of the respondent No.5 that the petitioner has not disclosed these facts in the writ petition and therefore there is material suppression of facts, for which reason also the writ petition should be dismissed.

5. According to the respondent No.5, it is a case where a comparative assessment was made in respect of all the candidates, who had participated and the respondent No.5 had scored 65.97 marks, whereas the petitioner had scored 64.58 marks. So far as the experience part is concerned, it was the contention of the respondent No.5 that it is only experience, which was sought and it was not required that the experience should have been of a period only after having attained the qualification prescribed. So far as the respondent No.5 having participated in more than one district, the contention of the respondent No.5 as well as by the State Government was that the said condition was subsequently relaxed.
6. The counsel for the respondent No.5 referred to a catena of decisions in support of his contentions, so far as the maintainability of the writ petition, as also the legally enforceable right, if any, in favour of the petitioner. The judgments cited by the respondent No.5 are **2010(2) SCC 114 (Dalip Singh v. State of Uttar Pradesh & Ors.)**, **2016(1) SCC 454 (Madras Institute of Development Studies & Anr. v. K. Sivasubramaniyan & Ors.; S. Anandhi & Ors. v. K. Sivasubramaniyan & Ors.)**, **AIR 2008 SC 1913**

(Dhananjay Malik & Ors. v. State of Uttaranchal & Ors.), 2011(1) SCC 150 (Vijendra Kumar Verma v. Public Service Commission, Uttarakhand & Ors.), 2007(6) SCC 44 (Ram Singh Vijay Pal Singh & Ors. v. State of U.P. & Ors.) and AIR 1993 SC 1769 (R.K. Jain v. Union of India & Ors.).

7. Having heard the contentions put forth on either side and on perusal of the record, what is relevant at this juncture to be seen is the fact that undisputedly, the petitioner and the respondent No.5 both had participated for the post of District Coordinator under Zila Panchayat, Bilaspur. It is also not in dispute that after the recruitment process was complete, the final merit list was published vide Annexure P/4, where the name of respondent No.5 appeared at serial No.1 with 65.97 marks and the name of the petitioner stood at serial No.2 with 64.58 marks. This final merit list itself would show that the petitioner was also equally eligible and competent to participate in the recruitment process and on a comparative assessment, she has also been found suitable, but on the marks allotted, she was placed at serial No.2 with 64.58 marks and respondent No.5 with 65.97 marks was found to be most suitable and appointment orders were also issued.
8. This brings us to the two major objections, which the petitioner has raised. One is in respect of the respondent No.5 being not otherwise eligible for participating in the recruitment process at Bilaspur for the reason that he had already applied and participated in the recruitment process, which was conducted at district Janjgir-Champa as well as district Korba and that as per the advertisement and conditions attached thereto, the petitioner was not entitled for

participating in more than one district. The second objection being whether the petitioner fulfilled the requisite experience of three years.

9. Before entering into the other objections of the case, it would be relevant at this juncture to deal with these two basic objections, which the petitioner has raised. For better understanding of the issue, it would be relevant at this juncture to refer to the advertisement and the clauses referred thereto. The first paragraph in the advertisement itself reads as under:

“प्रधानमंत्री आवास योजना (ग्रामीण) के लिए प्रवेश के समस्त जिला पंचायतों में रिक्त संविदा जिला समन्वयक/सहायक अभियंता पदों के लिए आवेदन संबंधित जिले के मुख्य कार्यपालन अधिकारी, जिला पंचायत के नाम से दिनांक 22.05.2017 तक कार्यालयीन दिवस एवं समय पर आमंत्रित किये जाते हैं। एक ही पद के लिए एक से अधिक जिले में आवेदन नहीं करेगा।”

10. The minimum educational qualification and the eligibility criteria for the post of District Coordinator was as under:

- “1. बी.ई. (सिविल)
2. शासकीय एवं गैर शासकीय कार्य में कम से कम 03 वर्षों का अनुभव.”

11. So far as the rules and conditions, which were envisaged in the advertisement, some of the relevant clauses to be taken note were conditions No.1, 11 & 12. Now coming to the first objection, so far as a candidate be permitted only to participate in the recruitment process of one district. If we come to Annexure P/8, page 23, which is the list of the candidates, who had participated for the post of District Coordinator at district Janjgir-Champa and at serial No.10, it is the name of the petitioner. Likewise, Annexure P/9 again is a select list of the candidates, who had appeared for the post of

District Coordinator under the office of District Panchayat, Korba and the name of respondent No.5 appears at serial No.8. Likewise, again Annexure P/14 filed by the petitioner would show that the respondent No.5 had yet again applied for the post of District Coordinator under the District Panchayat, Mungeli and where candidature of the petitioner was rejected on the ground that the experience certificate was not enough to make him eligible as the experience showed by the petitioner was of the period prior to his obtaining the degree, which therefore would not be acceptable.

12. Now to counter this objection, the only arguments put forth by the respondent No.5 as well as by the State is that subsequently, the Rules has been diluted and the restriction for participating only in one district stands waived vide Memo dated 19.07.2017. If we look into the said circular dated 19.07.2017, it would clearly reveal that the same has been issued only after the recruitment process in the instant case has been completed. It is settled position of law that a policy decision taken by the department subsequent to the recruitment process having being initiated or completed is of no consequence as there would have been a large number of candidates, who could have still participated in the other districts as well including the petitioner, but who have not applied because of the conditions stipulated in the advertisement.
13. It is also the settled position of law that the rules of the game cannot be changed subsequent to the recruitment proceedings, having initiated. Thus the said ground raised by the respondent No.5 as well as by the State Government would not be sustainable. Apart from the said there does not seem to be any plausible justification

available to defend the eligibility of the petitioner. Thus, this Court is of the firm opinion that the candidature of the respondent No.5 at the outset itself is not sustainable and the same was liable to be rejected or the respondent No.5 ought to have been declared disqualified from participating in the selection process.

14. So far as the ground of the petitioner, not having experience is concerned, it would be relevant to take note of the contents of Annexure P/14 where the petitioner while participating in the recruitment process for appointment on the same post of District Coordinator for district Mungeli was declared unqualified on account of the fact that he lacked experience subsequent to attaining his qualification. The experience certificate furnished by the respondent No.5 which is filed as Annexure P/9 with the writ petition would show that the petitioner had submitted an experience certificate of having worked with M/s. B.B. Verma Engineering & Contractor between February, 2014 to March, 2017. The records reveal that the petitioner had completed his degree course in B.E. in August, 2014. Therefore, any experience which the respondent No.5 could have got would have been only subsequent to his obtaining the degree. Any experience if at all if the person has on the period before obtaining minimum degree required would be of no relevance as that cannot be said to be an experience obtained by a qualified person. It is only the period subsequent to his degree course, that he has obtained that could be counted as experience by a duly qualified person.
15. The advertisement in the instant case was published on 28.04.2017, by which time the petitioner had not admittedly completed three

years period after having obtained his degree, therefore there was no possibility of the petitioner having an experience of three years required for the recruitment process. The contention of the respondent No.5 that the experience reflected in the advertisement would not mean the experience gained only subsequent to his obtaining the degree course, but could also be the experience gained prior to his completing the course is not sustainable for the reason that the mandate of the legislature while prescribing qualification and experience is always that after having obtained the minimum prescribed qualification, the person, should also have a minimum experience as a qualified person. The respondents have not been able to show any justifiable defense on this front also.

16. Given the aforesaid reasons, this Court is of the opinion that the second objection raised by the petitioner, so far as the petitioner being an inexperienced person while being selected also has sufficient force. For the aforesaid reasons, without further dealing with the other objections and contentions raised on either side, this Court is of the opinion that the appointment/selection of the respondent No.5 as the District Coordinator by the respondents is bad in law and arbitrary and it appears that the petitioner has been malafidely, not granted appointment inspite of she being found to be otherwise suitable and was placed at serial No. 2 in the order of merit, as is reflected from Annexure P/4 enclosed along with the petition.
17. So far as the objection in respect of the maintainability of the petition, as also the other grounds that the respondents have raised, this Court is of the opinion that the same do not have much force for the

simple reason that Annexure P/4 is a document by the respondents whereby they have found the petitioner to be eligible for the said post and where she was also placed at serial No.2. The petitioner being disqualified her name would not have been reflected in the order of merit, particularly at serial No. 2.

18. So far as the judgments which have been cited by the respondent No.5 opposing the writ petition, this Court is of the view that, those judgments and the ratio envisaged in those judgments were under an entirely different factual matrix of the case and cannot be applied in a straight jacket formula.
19. Accordingly, the present writ petition deserves to be and is accordingly allowed and the appointment of the respondent No.5 is held to be bad in law and not sustainable and the respondents are directed to immediately take steps for canceling the appointment of the respondent No.5 and thereafter as a consequence, consider the case of the petitioner, whose name appears at serial No.2 in the order of merit in the selection list as published vide Annexure P/4.
20. Let this exercise be concluded at the earliest preferably within a period of 30 days from the date of receipt of the certified copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Ved