

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 14.11.2018

Delivered on11/2018

WA No. 36 of 2017

- Sanjay Sondhi S/o Shri W.M. Sondhi Aged About 40 Years R/o- C/o House No. 10, Yamuna Nagar, Mengla Bilaspur, P.S.- Civil Line, District- Raipur, Chhattisgarh, Chhattisgarh

**---- Appellant
(Petitioner)**

Versus

1. State Of Chhattisgarh Through The Secretary, General Administrative Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Raipur, Chhattisgarh, Chhattisgarh
2. Chhattisgarh Public Service Commission, Through Its Secretary Shankar Nagar, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. Dashrath Singh Rajpoot Through Chhattisgarh Public Service Commission Shankar Nagar, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
4. Ujjawal Porwal Through Chhattisgarh Public Service Commission Shankar Nagar, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
5. Shashank Pandey Through Chhattisgarh Public Service Commission Shankar Nagar, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Mateen Siddique, Advocate
For Respondent No.1	:	Mr. Prasun Bhaduri, Govt. Advocate
For Respondent No.2	:	Mr. B.D. Guru, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV Order

Per Parth Prateem Sahu, J

29/11/2018

1. The appellant by the instant appeal has questioned the order dated 2.1.2017 passed by the learned Single Judge in WPS No.640/2014 dismissing the writ petition filed by the petitioner/appellant.

2. The petitioner/appellant herein in his writ petition has sought following reliefs:-

“10.1.The Hon’ble Court may kindly be pleased to direct the respondent Chhattisgarh Public Service Commission to grant the upper age relaxation upto 10 years to the petitioner for Class – III posts.

10.2.To kindly direct the respondent Chhattisgarh Public Service Commission to consider the case of the petitioner for appointment on the post of Deputy Collector as per the Merit-list instead of Naib Tahsildar, in place of last selected/appointed candidate on the post of Deputy Collector of Unreserved category.

10.3.To direct the respondent Chhattisgarh Public Service Commission to enable the provision of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

10.4.To direct the respondent Chhattisgarh Public Service Commission and State to grant the upper age relaxation upto 10 years of age in case of Class II posts and also grant the upper age relaxation as per Circular 02.06.2004 (Annexure P-9).”.

3. The appellant has pleaded in the writ petition that respondent No.2 had published an advertisement for appointment on different posts of State Civil Services including Class-II & III posts in different departments. This advertisement was published on 28.12.2011. As per this advertisement, last date for submission of online application form was till 9.2.2012 and the preliminary examination was to be held on 6.5.2012. The appellant submitted his application form within the time limit prescribed in the advertisement and thereafter on 30.12.2013 selection list was published by the respondent No.2. The appellant was selected on the post of Naib Tahsildar as per Annexure P-6 (Page No.38 to the writ petition).

4. On 3.2.2014 the appellant filed a writ petition challenging the

eligibility criteria mentioned in the advertisement dated 28.12.2011, particularly Clause 8.2 (B) wherein age relaxation has been provided to the candidates of certain categories interested to appear in the said examination. The appellant urged a ground that the advertisement states about the age relaxation upto 10 years in Class-III posts to the physically disabled candidates having disability of 40% or more, but this relaxation has not been extended to Class-II posts published in the said advertisement. It has been further pleaded by the appellant that he was working as Shiksha Karmi and as per circular dated 2.6.2004 issued by the State Government, he was entitled for age relaxation for the period during which he worked as Shiksha Karmi, but the same was not considered and granted to him.

Other ground which the appellant has urged was that as per provisions of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (henceforth 'the Act of 1995'), the respondent No.2 has not reserved any post in Class-II cadre for appointment of the persons coming into category as provided under the Act of 1995.

5. Learned counsel for the appellant vehemently submitted that the learned Single Judge failed to appreciate the provisions of the Act of 1995 and also to consider the norms of age relaxation mentioned in advertisement in objective manner. He repeated the same grounds as urged before the learned Single Judge and places reliance on the same case law as cited by him and finds place in the judgment impugned.
6. On the other hand, learned counsel for the State and counsel appearing for the respondent Public Service Commission have supported the order impugned.
7. We have heard learned counsel for the parties and perused the record.
8. So far as the claim of the appellant regarding age relaxation for the period during which he had worked as Shiksha Karmi i.e. for about 5 years, is concerned, the same is not sustainable

because on the date of submission of application with respect to subject advertisement the appellant was not on the roll of Shiksha Karmi and further the appellant himself had not placed any material and particulars in his 'Application Form' submitted with the Public Service Commission substantiating his claim for age relaxation nor he has claimed any age relaxation on this count. Perusal of the extract of online application submitted by the appellant and annexed with the return filed by respondent No.2 goes to show that no details with respect to the period of employment as Shiksha Karmi has been given by the appellant. Even in the preference sheet filled-up by the appellant, as available in the record, the appellant has nowhere mentioned the period of his employment as Shiksha Karmi so as to avail the benefit which he is claiming. The circular dated 12.2.1981 also grants benefit of age relaxation for Class III & IV posts only. This circular is annexed as Annexure R2-1 and the same was not refuted by the appellant.

9. Record would also show that the State Government vide its notification dated 7.9.2006 has granted exemption in respect of the applicability of provision of Section 33 of the Act of 1995 for appointment to the posts of State Administrative Service Cadre. Since on the date of publication of advertisement the notification dated 7.9.2006 was in existence, the respondent No.2 could not have granted any reservation of post under the Act of 1995.
10. One important aspect which could not be lost sight of in view of the grounds urged by the appellant is that in response to the advertisement the appellant has submitted his application form, appeared in the examination and only after declaration of the results, he has challenged the eligibility criteria of the advertisement. It is settled position of law that any of the conditions/clauses of advertisement if required to be challenged before any Court of law, then it is to be challenged at the very first instance. After accepting eligibility criteria as mentioned in the advertisement, participation in selection process and completion of the entire selection process, it is not open for him to challenge the same before a Court of law.

Learned Single Judge after taking into consideration number of judgments rendered by the Hon'ble Supreme Court in this regard has held thus:-

“12..... Return was filed by the State Government in which it was brought out that by State Government circular dated 12-2- 1981, the State Government has taken a decision that differently abled persons will be entitled for age relaxation of ten years only Class-III and Class-IV posts. The said return was filed on 21-5-2014. The petitioner filed an application for amendment i.e. I.A.No. 4 for seeking leave to question the circular/notification dated 12-2-1981. This Court by order dated 2-9-2014 rejected the amendment finding it unnecessary and further holding that appropriate relief can be molded by the Court in exercise of powers under Article 226 of the Constitution of India. Thus, in fact, notification dated 12-2-1981 holding that age relaxation is applicable to the extent of ten years to the differently abled persons for the Class-III & Class-IV posts, holds the field, as challenge W.P.(S)No.640/2014 to that notification was not allowed by this Court to the petitioner. The petitioner has claimed age relaxation on the said post of Tahsildar and he was also granted age relaxation by the Chhattisgarh Public Service Commission, therefore, the petitioner having been opted for age relaxation and granted age relaxation on the basis of circular dated 12-2-1981 cannot turn around and claim after appointment that age relaxation should be granted to Class- II post also, particularly when his challenge to the notification dated 12-2-1981 has not been permitted to be raised by this Court and that order passed by this Court has attained finality. The petitioner having taken advantage of the circular dated 12-2-1981 by getting age relaxation cannot claim further age relaxation on the ground of delay and laches also, as advertisement for the post was issued on 26-12-2011 and mains examination was held on 4-5-

2013 and result was declared on 30-12-2013 and thereafter, he was appointed on the said post.

15. In *Madan Lal v. State of Jammu & Kashmir* in similar fact situation, Their Lordships of the Supreme Court have held that a candidate who consciously took part in the process of selection cannot turn around finding the decision unpalatable and question the method of selection. Paragraph 9 of the report states as under:-

"9. Before dealing with this contention, we must keep in view the salient fact that the Petitioners as well as the contesting successful candidates being Respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the Petitioners as well as the (1995) 3 SCC 486 W.P.(S) No.640/201 contesting Respondents concerned. Thus the Petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* has been clearly laid down by a Bench of three learned Judges of this Court that when the Petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioner."

16. Aforesaid judgment of the Supreme Court in *Madan Lal* (supra) has been followed with approval in *Dhananjay Malik and others v. State of Uttaranchal & others*; *Virendra Kumar Verma v. Public Service Commission, Uttarakhand and others*; *Ramesh Chandra Shah & others v. Anil Joshi & others*; *Madras Institute of Development Studies & another v. Dr. K. Sivasubramaniyan & others*.

17. The petitioner has also claimed in this writ petition that the Chhattisgarh Public Service Commission be directed to 2 AIR 1986 SC 1043 3 (2008) 4 SCC 171 4 (2011) 1 SCC 150 5 (2013) 11 SCC 309 6 AIR 2015 SC 3643 W.P.(S)No.640/2014 make reservation as per the provisions contained in Section 33 of the Act of 1995. The respondent/State has filed return that the State Government in accordance with proviso to Section 33 of the Act of 1995 issued notification dated 7-9- 2006 exempting the cadre post of State Administrative Service from the operation of Section 33 of the Act of 1995. The Chhattisgarh Public Service Commission has also filed reply in line with the reply filed by the State Government stating that the post of Deputy Collector is exempted from the provision of Section 33 of the Act of 1995.”

11. The appellant though claimed for appointment on the post of Deputy Collector as per merit list, but the documents available on record particularly the preference sheet (Annexure R2-2) clearly shows that the appellant has not given any preference for the post of Deputy Collector. It is the appellant who submitted his application form after going through the entire clauses and criteria mentioned in the advertisement and therefore, unless & until the appellant gives an option of preference for a particular post, he cannot be allowed at a later stage to seek appointment on a post for which he has not opted for.
12. So far as the submission of the learned counsel for the appellant with respect to grant of age relaxation on account of benefit accrued to him under the provisions of the Act of 1995 is concerned, as discussed above, the State Government has specifically exempted by issuing a notification which was in force during the entire selection process i.e. from the date of publication of advertisement till the declaration of results. In these circumstances, the learned Single Judge has rightly rejected this claim of the appellant by recording following findings after considering the law laid down by the Hon’ble Apex Court in this regard;-

“18. In order to decide the plea raised at the Bar, it would be appropriate to notice Section 33 of the Act of 1995 as under:-

"33. Reservation of posts.-Every appropriate Government shall appoint in every establishment such percentage of vacancies

not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from-

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

19. The proviso to Section 33 empowers the appropriate government who may have regard to the type of work carried on in any department or establishment by notification subject to such conditions exempt any establishment from provision of Section 33.

20. The Supreme Court in the matter of Union of India & another v. National Federation of the Blind and others while considering the proviso held as under:-

"33.3 ... The proviso also justifies the above said interpretation that the computation of reservation has to be against the total number of vacancies in the cadre strength and not against the identified posts. Had the legislature intended to mandate for computation of reservation against the identified posts only, there was no need for inserting the proviso to section which empowers the appropriate Government to exempt any establishment either partly or fully from the purview of the section subject to such conditions contained in the notification to be issued in the Official Gazette in this behalf. Certainly, the legislature did not intend to give such arbitrary power for exemption from reservation for persons with disabilities to be exercised by the appropriate Government when the computation is intended to be made against the identified posts."

21. The State Government in its return filed a copy of notification dated 7-9-2011 exempting the cadre post of State Administrative Service from the operation of Section 33 of the Act, which states as under:-

“छत्तीसगढ़ शासन
सामान्य प्रशासन विभाग
मंत्रालय

दाउ कल्याण सिंह भवन, रायपुर
// अधिसूचना //

रायपुर, दिनांक 7 सितंबर, 2006

कमांक-बी-1-26/2002/एक/4 :: निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का सं० 1) की धारा 33 के परन्तुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए राज्य सरकार, एतद् द्वारा, राज्य प्रशासनिक सेवा संवर्ग के पदों को निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का सं० 1) की धारा 33 के उपबंधों से छूट प्रदान करती है। छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार (जवाहर श्रीवास्तव) सचिव छत्तीसगढ़ शासन सामान्य प्रशासनविभाग”

22. The aforesaid notification clearly exempts the cadre post of State Administrative Service from the operation of Section 33 of the Act of 1995 and thereby State is not required to make reservation in line with Section 33 of the Act of 1995 in favour of person suffering from blindness or low vision, hearing impairment, locomotor disability or cerebral palsy. Therefore, the petitioner's claim that the State Government be directed to make reservation in accordance with Section 33 of the Act of 1995 cannot be accepted and as such, the writ petition deserves to be dismissed.”

13. Learned Single Judge while dismissing the writ petition as well claim of the appellant has considered the very object of the Act of 1995 and further considering the law laid down by the Hon'ble Supreme Court in this regard has rightly directed the State Government to revisit the notification dated 7.9.2006 and to take appropriate steps expeditiously. Para-30 of the impugned order reads thus:-

“30. In the light of above-stated analysis, the State Government is directed to reconsider the exemption notification dated 7- 9-2006 in light of the scheme and object of the Act of 1995 and the decision rendered by the Supreme Court in Madan Lal (supra), UOI v. National Federation of the Blind (supra), National Federation of Blind v. UPSC (supra) and Rajeev Kumar Gupta (supra) and take a decision expeditiously, preferably before advertising next examination on the cadre post of State Administrative Service.”

14. The appellant also urged and argued some other grounds before the writ Court and the learned Single Judge vide

impugned order has considered and answered all those grounds urged by the appellant elaborately and the same also do not call for any interference.

15. Perusal of records would also show that there was a circular of the State Government dated 12.2.1981 with respect to age relaxation of 10 years to the differently abled person, but it was only extended to the posts of Class III & IV. This document was not refuted by learned counsel for the petitioner.
16. In view of the above discussions and particularly the fact that the writ petition has been preferred only after completion of the entire selection process and also the appellant is not meeting the age criteria fixed for Class II posts, the appellant cannot be granted any relief as prayed by him except the direction which has already been issued by the learned Single Judge for taking a decision with respect to notification dated 7.9.2006 in the light of law laid down by the Hon'ble Supreme Court with respect to applicability of Section 33 of the Act of 1995 for appointment of post of State Administrative Service cadre.
17. In the result, we do not find any infirmity or illegality in the order impugned passed by the learned Single Judge warranting interference in exercise of appellate jurisdiction. The writ appeal being devoid of merit and substance is liable to be dismissed and is hereby dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-