

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 901 of 2010**

Shri Avadh Pachori S/o Rajaram Pachori Aged about 29 years,
Occupation -Doctor Resident of Billage & Post- Sandi (Murhpar)
Tahsil – Palari, District -Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Acting through The Secretary, Department of Health & Family Welfare, Ministry of Health & Family Welfare, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Chhattisgarh Public Service Commission, Acting through its Secretary (Examination), Shankar Nagar Road, Bhagat Singh Square, Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Shri Siddharth Rathod, Advocate.
For PSC	:	Shri YC. Sharma, Advocate.
For State	:	Shri Jitendra Pali, Dy. A. G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****29/04/2019**

1. The grievance of the petitioner in the present writ petition is for non consideration of the petitioner's claim for appointment to the post of "Ayurvedic Chikitsa Adhikari" from the Unreserved Physically Handicapped Category.
2. The facts of the case is that the respondents initiated a recruitment process for filling up of the post of Ayurvedic Chikitsa Adhikari vide advertisement dated 22.06.2008, published on 28.05.2008.
3. The petitioner having all requisite eligibility criteria applied for the said post. While filling up of the application the petitioner had specifically mentioned that he belongs to the Unreserved Physically

Handicapped Category and for this reason medical disability certificate was issued in his favour by the District Medical Board.

4. The grievance of the petitioner is that, while the recruitment process was undergoing the persons were called for interviews, but for reasons best known, the petitioner was left out and it was learnt that the persons in the Unreserved Physically Handicapped Quota who have scored less marks than the petitioner is called for the interview.
5. The petitioner subsequently sought an information under the Right to Information Act from the respondents. The respondents No. 2, Chhattisgarh Public Service Commission vide its correspondence dated 01.02.2010, intimated the petitioner that the petitioner's candidature was inadvertently left out, by the agency which was granted, the assignment of Data Entry in respect of all applicants and the said agency erroneously did not reflect the petitioner belonging to the Unreserved Physically Handicapped Category. The said document is enclosed with the writ petition as (Annexure P/5). The writ petition is of the year 2010. More than Nine years have passed, there is no satisfactory explanation on the part of the respondent No. 2 to justify their action in not calling upon the petitioner for interview under the Unreserved Physically Handicapped Quota.
6. So far as the stand of the State Government is concerned in the return that have filed, he has categorically stated that the action in not calling upon the petitioner for interview was exclusively on the part of respondent No. 2, Public Service Commission and as such the reply or the stand of the PSC would be relevant for redressal of the grievance of the petitioner is concerned.

7. Given the aforesaid undisputed factual matrix as it stands, all that now this Court as to see, is as to whether it was justified on the part of the respondents in not calling upon the petitioner for interview for the post of Ayurvedic Chikitsa Adhikari from the recruitment process initiated vide advertisement dated 22.06.2008 (Annexure P/1). Along with the writ petition, there is a copy of the application which the petitioner had submitted for his candidature for the said post and in Column (9) it was specifically stated as to whether the petitioner belongs to Handicapped Quota or not. The petitioner in the said Quota, had filled up the form stating "YES" and from the application it is also indicated that in Column (7), he has specifically shown himself of belonging to the Unreserved Physically Handicapped Category.
8. The subsequent correspondence or the information provided by the respondent No. 2 vide Annexure P/5 dated 01.02.2010, stating that the Candidature of the petitioner was left out on account of an error that has crept with the agency which was granted the work of Data Entry in respect of the application received from the different candidate. It is prime facie established, that the petitioner, at no point of time, was at fault for not being called for interview for the said post. At the same time, from Annexure P/5 provided by the respondent No. 2 to the petitioner under the Right to Information Act, also stands established that the error that has crept was at the behest of the agency entrusted for scrutinizing the application i.e. the agency entrusted on behalf of respondent No. 2. Thus, it is implied that the error which has been crept was at the instance of the respondent No. 2.

9. From the perusal of the order-sheet of this Court, it reveals that this Court while admitting the petition on 03.03.2010 by way of an interim protection, ordered that one post of Ayurvedic Chikitsa Adhikari shall be kept vacant subject to the out come of the writ petition. As such it is presumed from the advertisement that was issued in 2008 for the post of Ayurvedic Chikitsa Adhikari, the respondent/ State must have kept one post vacant to be considered as per the out come of this writ petition.
10. Once when this Court reaches to the conclusion that exclusion of the petitioner or non calling upon the petitioner for interview or the petitioner not being shown as Unreserved Physically Handicapped Category and at the same time, the respondents having called other Unreserved Physically Handicapped persons for interview who have scored less marks than the petitioner in the written test, the petitioner has made out a claim for, also being considered for the post of Ayurvedic Chikitsa Adhikari against the post which is kept vacant as per the direction given by this Court.
11. Let the respondent No. 2 therefore call upon the petitioner for interview forthwith, who in turn, shall consider the candidature of the petitioner and thereafter take a decision as to whether the petitioner has been found eligible for appointment or not and would also decide the issue and the respondents No. 1 & 2 while granting appointment shall also consider the aspect whether the petitioner should be granted seniority at par to other persons who had scored less marks than the petitioner for appointment in the department from the same recruitment. Let this exercise be completed by the respondents within a outer limit of 4 months from the date of receipt of copy of this order.

12. The writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE

Jyoti