

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No.3766 of 2005**

- Mohan Lal Tiwari, S/o Banmali Ram Tiwari, aged about 55 years, at present working as Assistant Grade-II, in the office of District Judge, Bastar at Jagdalpur, R/o Subhash Ward, Jagdalpur, District Bastar (C.G.)

---- Petitioner**Versus**

1. The Registrar General, High Court of Chhattisgarh at Bilaspur, District Bilaspur (C.G.)
2. District and Session Judge, Bastar at Jagdalpur, District Bastar (C.G.)
3. District and Session Judge, Raipur at Raipur (C.G.)
4. State of Chhattisgarh through the Secretary, Law Department, D.K.S.. Bhawan, Raipur (C.G.)

---- Respondents

For Petitioner	Shri Vishnu Koshta and Shri Shobhit Koshta, Advocates
For Respondent-State	Shri Chitendra Singh, PL
For Respondent Nos.1 to 3	Shri Abhishek Sinha, Advocate

Hon'ble Justice Shri Prashant Kumar Mishra**Order On Board****05/09/2019**

1. Petitioner was appointed as LDC in the establishment of District and Session Judge, Raipur on 10.12.1986. He joined the services on 26.12.1986. A condition was imposed in his appointment order that he has to pass Hindi Typing Examination within 2 years of joining.

The petitioner did not pass Hindi Typing Examination within 2 years, therefore, his services were regularized w.e.f. 01.01.1991 on attaining the age of 40 years on the ground that under the State Government's circular dated 15.11.1984, an LDC, who has failed to pass Hindi Typing Examination, shall be regularized on attaining the age of 40 years. The petitioner's representation for allowing the benefit of regularization from the date of initial appointment was sent back by the High Court to the concerned District Judge, who allowed petitioner's representation on 09.11.1998 allowing him to be regularized w.e.f. 26.12.1986. The issue concerning his salary fixation remained pending with the District and Sessions Judge, Bastar, therefore, the said Officer sought guidance from the High Court vide his communication (Annexure-P-15) moved in August, 2000, to which the High Court passed the impugned order (Annexure-P-16) holding that the petitioner is entitled to be regularized w.e.f. 01.01.1991, therefore, the order passed by the District Judge on 09.11.1998 is cancelled.

2. Assailing the impugned order, Shri Koshta, learned counsel for the petitioner, would submit that once the petitioner was already regularized on 09.11.1998, the Registrar General had no jurisdiction to review the order and cancel the District Judge's order dated 09.11.1998. He would also submit that under the circular dated 01.08.1986, the petitioner having completed 35 years of age on the date of entry into the service, he was entitled to be regularized, therefore, for this reason also, the impugned order deserves to be set aside.

3. Per Contra, Shri Sinha, learned counsel for the respondent Nos.1 to 3, would submit that the circular dated 01.08.1986 would apply to the serving employees, who would attain the age of 35 years after joining the services and not to any other employee who at the threshold i.e. on the date of joining has completed 35 years of service. He would also refer to the conditions mentioned in the order of appointment specifically obligating the petitioner to pass Hindi Typing Examination within 2 years.
4. Having considered the rival submissions and on perusal of the documents available on record, it appears, on bare perusal, that the circular dated 01.08.1986 applies to such appointed and serving LDCs who have attained the age of 35 years on 01.08.1986 exempting them from passing Hindi Typing Examination and thereafter regularizing them. The circular also says that it is a one time measure without extending the exemption in future.
5. If the circular dated 01.08.1986 is read in the manner sought to be canvassed by learned counsel for the petitioner, then every LDC who is more than 35 years of age and appointed after 01.08.1986 would be entitled to be exempted from passing Hindi Typing Examination, which was otherwise an eligibility condition under the recruitment rules for appointment as LDC. The intention of the circular was to exempt serving LDCs and not any freshly recruited LDC, who may be more than 35 years of age. Reading otherwise would create an analogous situation in the sense that a person who is ineligible to hold the post of LDC on the date of entry would be exempted from eligibility condition for the purposes of regularization.

6. The argument concerning lack of jurisdiction to the Registrar General is *sans substratum* for the reason that the order itself refers to a memo sent from the Office of the District and Session Judge, Bastar to the High Court. Under the memo, the District Judge, Bastar had sought guidance from the High Court as to the fixation of pay scale of the petitioner. While replying to the said memo, the High Court found that the petitioner could not have been regularized w.e.f. the date of appointment but he is to be regularized on attaining the age of 40 years under the circular issued by the General Administration Department of the State Government on 15.11.1984. Such being the case, the High Court was fully justified in guiding the District and Session Judge in the matter of pay fixation of the petitioner. Even otherwise, if a wrong circular has been applied in favour of the petitioner conferring any such benefit for which he was not entitled in law, nothing precludes the employer who has control over the services of the petitioner to put the record straight and pass an order, which seeks to take away any undue benefit which may not be admissible to an employee. It is not a case where the petitioner has been punished on commission of certain misconduct where the clock cannot be set back. It is a matter, purely administrative in nature, which can be corrected at any stage of service career when the benefit has wrongly been conferred.
7. In view of the above, the writ petition is dismissed.

Sd/-
Prashant Kumar Mishra
Judge