

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No.672 of 2011

Himanchal Prasad Patel S/o Shri Tilakram Patel R/o Village Tayang
Post Jaimura, Tah. Kharsia, Distt. Raigarh, CG

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Panchayat Department,
DKS Bhawan, Raipur, CG
2. The Secretary, Health Department, DKS Bhawan, Raipur, CG
3. Janpad Panchayat Pali, through the Chief Executive Officer, District
Korba, CG
4. Chhattisgarh Professional Examination Board, Raipur, CG
5. Block Education Officer, Pali, District Korba, CG

----Respondents

For Petitioner	:	Mr. Prateek Sharma, Advocate.
For State	:	Mr. P. Acharya, P.L.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

08/11/2019

1. The relief sought for in the present writ petition is for a direction to the respondents to consider grant of appointment to the petitioner on the post of Shiksha Karmi Grade-III in OBC category under science subject at Janpad Panchayat, Pali, district Korba by granting two years age relaxation on the petitioner being a green card holder.
2. Brief facts of the case are that an advertisement was published by the respondent no.4 for appointment to the post of Shiksha Karmi

Grade-III at Janpad Panchayat Pali. There were 16 posts reserved for OBC category in science subject. The petitioner having all requisite eligibility criteria had applied for the said post. The petitioner was called for written examination and he successfully passed written examination by obtaining 1st rank in OBC category in science subject. However, the petitioner subsequently was not called for counseling as on verification the petitioner was not considered holding him to be age barred.

3. As per the advertisement, the upper age limit was 35 years with the age relaxation that was applicable for reserved category candidates. The reserved category candidates were entitled for 5 years relaxation in upper age limit. In addition, the advertisement also envisages that the other age relaxation given by the State Govt. would also be applicable. The petitioner on the date of advertisement was 41 years 10 months and 7 days.
4. According to the petitioner, he had L.T.T. certificate which shows that the family of the petitioner had undergone family planning operation enabling him the green card and the benefits arising therefrom. According to the petitioner, as per the Govt. policy itself a person who has a green card would be entitled for age relaxation of 2 years in Govt. employment. Therefore, if the petitioner gets the advantage of 2 years by virtue of being a green card holder, the petitioner would be entitled to participate in the recruitment process upto 42 years and therefore denial of the petitioner from further participating in recruitment process was arbitrary and bad in law.

5. The State counsel referring to the reply that the State has filed in the writ petition submits that the maximum age limit or the age relaxation that the petitioner would have been entitled for was up till 40 years. Since the petitioner was more than 41 years on the date the advertisement was issued, he became ineligible and that was the reason the petitioner was not called for counseling. Further contention of the State was that since the State of Chhattisgarh had stopped issuance of green card to the persons who had undergone family planning operation, the petitioner could not have availed the benefit of the same.
6. This High Court in the case of Dr. (Major) Thakur Ajit Singh and others Vs. State of Chhattisgarh & others decided on 27.09.2010 had held that the benefit of green card would also be given to those persons who have not undergone sterilization operation but their spouses have undergone the said operation. This Court in the said case had further held that the persons cannot be deprived of the benefit only because their spouses have undergone the operation or they have only a certificate but not a green card. The said judgment of this High Court was also affirmed in Writ Appeal No. 42 of 2011 decided on 4th April, 2014.
7. Subsequently, another batch of writ petitions came up for hearing before this High Court on 27th day of July, 2012 and one among them being WPS No. 3065/2010 which were allowed and disposed of on the same day i.e. on 27.07.2012 where in paragraphs- 15 & 16 it has been held as under:

“15. In the circular dated 30.11.1989, it is clearly provided that if a woman has performed sterilization operation after two children, she would be given the green card. The fact that the wives of the petitioners have undergone sterilization operation after two children is not in dispute. Thus, even if the green card was not given, which she was entitled to, the petitioners are equally entitled to the reliefs as provided under the aforesaid circular. Out of several reliefs, one is two years age relaxation, preference in reservation and 5% concession in interview. The petitioners are claiming age relaxation on account of the above stated facts, which they are entitled to.

16. In view of the above-stated facts and circumstances of the case, if the petitioners, after granting two years age relaxation, come within the prescribed age limit, the petitioners are to be allowed for participation in the selection process for appointment, thereon, in accordance with law and on its own merits.”

8. Reiterating the same law this High Court again in WPS No. 2309/2013 in the case of **Abdul Ahmad Khan Vs. State of Chhattisgarh and another** decided on 11.11.2013 relying upon the earlier decision rendered in WPS No. 3065/10 allowed the writ petition.
9. The said judgments were further followed in another writ petition i.e. WPS No. 5135 of 2010 in the case of **Rajkumar Tiwari Vs. The State of Chhattisgarh and others** decided on 19.06.2014 wherein again the aforementioned judgments were taken note of and this High Court allowed the writ petition and held in paragraph-5 as under:

“5. For the foregoing, this Court is of the opinion that the petitioner was entitled for age relaxation upto two years in the maximum age limit. Accordingly, the respondents No. 2 & 3 are directed to reprocess the petitioner's candidature after giving him age relaxation upto two years and thereafter if the petitioner is fully qualified and eligible and any person who is less meritorious than the petitioner has been offered appointment on the post of Shiksha Karmi Grade-I, the petitioner's case shall also be considered for appointment. The needful shall be done within a period of two months from the date of production of certified copy of this order before the competent authority.”

10. In the instant case, there is no dispute so far as the petitioner having a certificate in his favour as is evident from Annexure P-3. The wife of the petitioner had undergone family planing operation and they have also been issued with a green card. There is also no dispute so far as the petitioner having participated in the recruitment and having stood 1st rank in OBC category.

11. Given the aforesaid facts and circumstances of the case, particularly taking note of the aforesaid judgments which have been rendered by this High Court in similar set of facts, this Court is of the opinion that the non-consideration of the petitioner and declaring the petitioner ineligible on the ground of being age barred is not proper, justified, particularly when the petitioner was entitled for the further age relaxation of 2 years on account of the petitioner being a green card holder. In the light of the judgments of this High Court referred in the preceding paragraphs and the factual matrix of the present case also

being similar, the writ petition deserves to be and is accordingly allowed.

12. The question now would be as to the relief which the petitioner can be granted at this juncture.

13. Learned counsel for the petitioner referring to the judgment of the Hon'ble Supreme Court in the case of **Richa Mishra Vs. State of Chhattisgarh and others** reported in 2016 (4) 179 referred to paragraph-35 which for ready reference is being reproduced hereinunder:

“35. Thus, in ultimate analysis, we hold that the appellant was entitled to age relaxation as per Rule 4 of the 1997 Rules read with the State Services Examination Rules, 2003. She was, therefore, eligible to be considered for the post of DSP. The facts narrated above reveal that she participate in the selection process and in the merit list prepared, she was placed at Serial No.54. Person below her in the merit list have been appointed. She was excluded only because of the alleged age bar since we find that his impediment would not come in her way, the present appeal warrants to be allowed. The direction is issued to the respondents to appoint the appellant as DSP w.e.f. the date her juniors in the merit list, namely, Tarkeshwar Patel and Ranu Sahu are appointed. Her seniority and pay shall be fixed on that basis. However, she will not be allowed to make any claim for salary for the intervening period otherwise the intervening period shall count for all other purposes.”

14. Applying the same analogy as has been rendered by the Hon'ble Supreme Court in the case of Richa Mishra (supra) the respondents are directed to issue appointment order to the petitioner

granting him seniority over and above the person who was just below the petitioner in the merit list and has been appointed in the same category from the same recruitment in the same subject. As has been held by the Supreme Court in the aforesaid judgments, the petitioner in the instant case also would be entitled for seniority and salary on that basis. However, the petitioner shall not be entitled to claim any monetary benefits for the intervening period and the said intervening period would be given notional fixation and shall be counted as period spent on duty for all other purposes.

15. The writ petition stands allowed and disposed of.

**Sd/-
(P. Sam Koshy)
Judge**

Khatai