

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2583 of 2013

Deepak Kumar Thakur, S/o. Shri Lakhan Lal Thakur, Aged about 33 years, R/o. Vijaypur Beda Colony, Dr. Patel Gali, Raigarh, P.S.H. Chakradhar Nagar, Raigarh, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through: Secretary, Agricultural Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. Director, Directorate Agriculture (Engineering) Raipur, Chhattisgarh
3. Upper Director, Agriculture (Engineering) Directorate, Raipur, Chhattisgarh
4. Joint Director, Agriculture, Bilaspur Division, Bilaspur, District Bilaspur, Chhattisgarh
5. Agricultural Engineer, Agricultural Engineering Division, Bilaspur/Surguja, Nutan Colony (In front of Indira Vihar Colony) Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh
6. Anil Kumar Tiwari, S/o. Shri Radheshyam Tiwari, Aged about 34 years, R/o. Village Nipania, Bhatapara, P.S.H. Bhatapara, Revenue District Baloda Bazar-Bhatapara, Civil District Raipur, Chhattisgarh
7. The Chief Municipal Officer, Nagar Palika Parishad Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Rishi Rahul Soni, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer
For Respondent No.6	:	Mr. Dinesh Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/02/2019

1. The challenge in the present writ petition is to the order of appointment issued in favour of the respondent No.6 by the respondent No.4 dated 02.05.2013.
2. The relevant facts necessary for the adjudication of the present dispute is that an advertisement was issued filling up of various posts by the respondent No.4 Annexure P/2 dated 16.08.2011. One

such post, which was advertised, was for the post of Driver (Heavy Vehicle). The eligibility criteria for the said post was 8th pass with heavy vehicle driving license.

3. The petitioner had participated in the said post of Driver (Heavy Vehicle) and the respondent No.6 and other candidates also had participated for the same. Finally, an order of appointment was issued in respect of the respondent No.6. It is this order of appointment of the respondent No.6, which is under challenge in the present writ petition.
4. The sole contention of the petitioner in the present writ petition assailing the appointment of the respondent No.6 is that the respondent No.6 has been wrongly granted excess marks for experience, by virtue of which the petitioner has been deprived of his right of appointment or else the petitioner would have become the meritorious candidate.
5. The counsel for the petitioner has, pending the writ petition on information received under the Right to Information Act on 17.11.2014, adduced certain details in respect of the period of engagement of the respondent No.6 with the respondent No.7- Nagar Palika Parishad, Bhatapara. The details of the employment, which the respondent No.6 has rendered with the Nagar Palika Parishad, Bhatapara i.e. respondent No.7 is that, the respondent No.6 had worked at different periods between 2002 to 2010. The respondent No.6 has worked for the following number of days in the year between 2002 to 2010:

Year	Number of days worked is
2002	28 days
2003	133 days
2004	147 days
2005	42 days
2006	84 days
2007	161 days
2008	28 days
2009	245 days
2010	304 days

6. According to the petitioner, for all these 9 years of period from 2002 to 2010, the respondent No.6 has been granted 2 marks per year, thus 18 marks have been given for experience. The experience certificate, which the Chief Municipal Officer, Municipal Council, Bhatapara had issued was on 11.08.2010 giving him experience certificate of 9 years.
7. The contention of the petitioner is that the difference of marks between the petitioner and the respondent No.6 is only of 2.01 marks. That if the marks allotted to the respondent No.6 for his experience is reduced, then the petitioner would had been the most meritorious candidate eligible for the appointment. Though the petitioner has only by way of amendment brought to the writ petition, the details of the experience that the respondent No.6 has, while working with the respondent No.7, the same has not been rebutted in any manner by the petitioner by any sought of rejoinder subsequently. Till date there is no averment by any of the contesting respondents that the averment brought by the petitioner in respect of the number of days worked by the respondent No.6 to

be either incorrect or false or any other material to disprove the same.

8. At this juncture, if we look into the reply of the respondents in paragraph No. "C" of their return, they have categorically made a comparative study of the marks allotted to the petitioner and the respondent No.6 under the different yardsticks taken by the selection Committee and it would reveal that except for the experience part, for all the other yardsticks, the petitioner had scored much more than the respondent No.6.
9. In view of the same, all that this Court now has to see is whether the respondent No.6 has been rightly provided the marks for the experience that he has been allotted in the light of the number of days that he has worked with the respondent No.7. The record would show that the respondent No.7 also is duly represented in the present writ petition and they have also not brought anything in rebuttal to the pleadings made by the petitioner.
10. The plain reading of the chart provided in the preceding paragraph to show the number of days that the respondent No.6 has worked with the respondent No.7 would reveal that out of the total 9 years between 2002 to 2010, for 4 years, the respondent No.6 has worked less than 100 days in year. In fact, in most of the cases, it is less than 50 days in year, except for one and for further 2 years, the respondent No.6 has worked for a period of less than 150 days in an year and it is only for 3 years i.e. for 2007, 2009 and 2010, the respondent No.6 has worked for more than 150 days. So far as

the criteria for granting marks for experience is concerned, the yardsticks applied by the respondent/State was granting two marks for one minimum completed years of service.

11. The plain reading of the aforesaid details of the number of days that the respondent No.6 has worked, it can easily be assumed that having worked for 28 days in year or less than 50 days in year, the person would not be entitled for the entire two marks that has been allotted for experience of one year. The authorities ought to have taken note of these facts or should have got it verified by the competent authority, who had issued the experience certificate.
12. Counsel for the respondent No.6 at this juncture submits that the respondent No.6 has an experience certificate issued by the respondent No.7 in his favour. The experience certificate does not disclose any clear bifurcation of the number of days, that he has worked. The experience certificate has not been held to be in any manner false, fake or fabricated, therefore the concerned authority should also conduct due verification of the fact before reaching to a conclusion.
13. The respondent No.6 heavily argued that the claim of the petitioner is not by the principle of “**Estopple**”. According to him since the petitioner had knowingly participated in the recruitment process he now cannot turn around and challenge the appointment of respondent No.6.
14. As far as the judgment cited by the counsel for the respondent No.6 is concerned, this Court is of the opinion that the said judgment

would not be applicable in the given set of facts, as it is not a case where the petitioner after having participated in the selection process is challenging the recruitment process in any manner. The petitioner in the present case is challenging only the appointment of the respondent No.6 and which he could have challenged only after an appointment order in favour of the respondent No.6 is issued.

15. As far as the challenge to the experience certificate is concerned, the claim of the petitioner has been further substantiated by him, by way of seeking information under the Right to Information Act from the respondent No.7, which has subsequently been brought on record. If for any reason, the same was either incorrect, false or fabricated information, the respective respondents contesting the case, had the right to challenge the same or atleast rebut the same by way of some cogent materials. In the absence of which, the information provided under the Right to Information Act by the respondent No.7 cannot be doubted.
16. Needles to mention that in case, if it is found that the respondent No.6 has been wrongly granted the marks of the experience, then the marks should be appropriately allotted to him and a fresh assessment should be made in accordance with the marks that each of the candidate would receive.
17. Given the said facts, this Court is of the opinion that the appointment issued in favour of the respondent No.6, therefore needs a reconsideration, particularly in respect of the marks, which have been allotted to him for his past experience. There is no

dispute in respect of the other eligibility criteria that the respondent No.6 has, particularly when it is established that the petitioner as well as the respondent No.6 both had license issued by the competent transport authority for driving a heavy vehicle. Thus, it appears that both were eligible for the said posts.

18. Given the aforesaid facts, let the respondent No.1 reconsider the entire case of the appointment of the respondent No.6 and on due scrutiny of the records and documents, take a fresh decision, whether the marks granted to the respondent No.6 for the experience was justified or not and an appropriate marks be given proportionate to the number of days of working.
19. Let this exercise be concluded within a period of 3 months from the date of receipt of the copy of this order.
20. With the aforesaid observations, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge