

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 363 of 2016**

{Arising out of order dated 21.06.2016 passed by the learned Single Judge in Writ Petition (S) No.1098 of 2013 and other connected matters}

- Mukesh Kumar Yadav S/o Shri Dilip Kumar Yadav, Aged About 45 Years R/o Behind Polytechnic Colony, Near Collegeor Niwas, Rudri, Thana Civil Line, Rudri, District Dhamtari Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary, Panchayat and Rural Development Department Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Secretary, General Administration Department Raipur Chhattisgarh
3. Chief Engineer, Rural Engineering Services Office of The Development Commissioner, Raipur Chhattisgarh

---- Respondents

WA No. 425 of 2016

- Kishore Kumar Gajendra S/o Shri Radheshyam Gajendra, Aged About 44 Years R/o Bastar Road, Sorid Nagar, Dhamtari, Thana City Kotwali, District Dhamtari Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary, Panchayat and Rural Development Department Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
3. Chief Engineer, Rural Engineering Services, Office of The Development, Commissioner, Raipur Chhattisgarh

---- Respondents

WA No. 426 of 2016

- Ashish Kumar Choubey S/o Shri Rameshwar Prasad Choubey, Aged About 42 Years R/o Sanjay Nagar, Ward No 01, Kurud, P.S. Kurud, District Dhamtari Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur District Raipur Chhattisgarh

2. Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
3. Chief Engineer, Rural Engineering Services, Office of The Development, Commissioner, Raipur Chhattisgarh

---- Respondents

WA No. 481 of 2016

- Ved Prakash Sharma S/o Shri Ramavatar Sharma, Aged About 43 Years Post Data Entry Operator, R/o Behind Kosha Kendra, Kumharpara, P.O. Jagdalpur, P.S. City Kotwali, Jagdalpur, Distirct Bastar Chhattisarh

---- Appellant

Versus

1. State Of Chhattisgarh Through Its Principal Secretary, Department Of Forest Ministry, Mahanadi Bhavan, New Raipur Distirct Raipur Chhattisgarh
2. The Chief Conservator Of Forest, Administration Forest Department, Aranya Bhawan, Medical College Road, Raipur, Distirct Raipur Chhattisarh
3. Conservator Of Forest, Jagdalpur Circle, Jagdalpur, Distirct Bastar Chhattisgarh
4. Divisional Forest Officer, Bastar Forest Division, Jagdalpur District Bastar Chhattisgarh

---- Respondents

WA No. 526 of 2016

- Pawan Kumar Dewangan S/o Late Shri Rajaram Dewangan Aged About 46 Years Technical Assistant, Janpad Panchayat, Mainpur, District Gariyaband Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through, The Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Secretary, General Administrative Department, Raipur, District Raipur Chhattisgarh
3. Chief Engineer, Rural Engineering Services, Office Of Development, Commissioner, Raipur Chhattisgarh

---- Respondents

WA No. 550 of 2016

- Sunil Kumar Patel S/o Shri Lal Kumar Patel, Aged About 42 Years R/o At Village Nansiya, P.O. Patelpali, Block Raigarh Tahsil Raigarh, Distirct Raigarh Chhattisgarh Pin 496100 Civil And Revenue Distirct Raigarh Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Thorough The Secretary, Rural Engineering Department Mantralaya New Raipur Chhattisgarh
2. Chief Engineer, Rural Engineering Services, Office of Development, Commissioner Raipur Chhattisgarh

---- Respondents

WA No. 588 of 2016

- Ajit Kumar Singh S/o Kapil Dev Singh Aged About 41 Years R/o MIG-27, Sector-4, Deendayal Upadhyay Nagar, Raipur, Police Station-Pt. Deendayal Upadhyay Nagar, Raipur, District- Raipur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, Police Station- Rakhi, District- Raipur, Chhattisgarh
2. Chief Engineer, Rural Engineering Services, Office of Development Commissioner, Chhattisgarh, Raipur, Police Station- Civil Lines, Raipur, District- Raipur, Chhattisgarh.

---- Respondents

WA No. 461 of 2016

- Yogendra Kumar Sahu S/o Late Shri Chhabilal Sahu Aged About 41 Years Technical Assistant, Janpad Panchayat, Khairagarh, District Rajnandgaon Chhattisgarh., Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through, the Secretary, Department of Panchayat and Rural Development, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. Secretary, General Administrative Department, Raipur, District Raipur Chhattisgarh.
3. Chief Engineer, Rural Engineering Services, Office Of Development, Commissioner, Raipur Chhattisgarh.

---- Respondents

For respective Appellants	: Shri Rajeev Shrivastava along with Shri D.R. Patel, Shri Manoj Paranjpe along with Shri Anshul Tiwari, Shri Ishan Verma, Shri Vinod Kumar Sharma, Advocates
For Respondent/ State	: Shri Sudeep Agrawal, Deputy Advocate General and Shri Amit Buxy, Panel Lawyer

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice.

23/10/2019

1. Whether the candidates who have participated in the process of selection and could not find a place in the select list could take a u-turn and challenge the process thereafter is the first question mooted for consideration. Second one is, whether the candidates who are stated as aggrieved of a particular clause contained in the notification for selection and appointment, having failed to challenge the advertisement, are justified in approaching the Court for getting the benefit of age relaxation with reference to the clause contained in the advertisement. The next point is whether the benefit stated as extended to some others, if a mistake, could be sought to be extended to others as well. Lastly, whether the select list, after expiry of the term, could be given effect to if at all the Appellants succeed on any count, is the other point to be considered.
2. The grievance projected in these appeals, arising from a common judgment, is mainly in respect of 'age relaxation'.
3. Shri Rajiv Shrivastava led the arguments on behalf of the Petitioners and is supported by Shri Dhani Ram Patel, Shri Manoj Paranjpe, Shri Vinod Kumar Sharma, Shri Ishan Verma and Shri Anshul Tiwari, Advocates. Stand of the

Respondents, particularly the State, was submitted by Shri Sudeep Agrawal, the learned Deputy Advocate General and was assisted by Shri Amit Buxy, learned Panel Lawyer.

4. The crux of the factual matrix is that Annexure P/2 advertisement was issued way back on 28.04.2012 by the Chief Engineer, Rural Engineering Services, Office of the Development Commissioner, Raipur for filling up of the posts of Sub Engineer (Civil), Sub Engineer (Electrical), Assistant Draughtsman and Tracer. The Advertisement contained various clauses; particularly with regard to the age group, the qualification and such other requirements stipulating the last date as 31.05.2012, which was subsequently extended to 28.05.2012. The Appellants put in their applications, though they were over aged as on the last date; the maximum age having been prescribed as 35 years as on 01.01.2013, subject to appropriate extent of relaxation as provided in the notification.
5. Writ Appeal No. 550 of 2016 is treated as the lead case. Reference is made to the parties and proceedings as given therein, except where it is separately mentioned, based on the context.
6. The Appellants/ Writ Petitioners, who are belonging to Scheduled Castes/ Scheduled Tribes/ Other Backward Class, though came to be shortlisted initially, could not later find a place in the subsequent proceedings and were reportedly weeded out. This made some of them to approach this Court by filing the Writ petition (S) No. 3176 of 2013 which was disposed of directing the competent authority to have the grievance considered and finalised as borne by Annexure P/5 verdict dated 12.11.2013. Pursuant to the said direction, the matter was considered and a finding was rendered that the writ

petitioners were not eligible to have the relief sought for and accordingly, their claim was turned down. This made them to approach this Court again, by filing writ petitions raising similar grievance and all the matters were considered together, leading to the final verdict dated 31.06.2016. As per the said judgment, the learned Single Judge observed that none the contentions raised by the writ petitioners was liable to be entertained, by virtue of the categorical declaration of law on the point by the Apex Court, and accordingly interference was declined and writ petitions were dismissed which led to the present appeals.

7. During the course and submissions, the learned counsel for the Appellants points out that the main grievance is with regard to the stipulation contained in clause 3(एक)(1) of the Annexure P/1 advertisement, whereby it has been stated that the Scheduled Castes/ Scheduled Tribes/ Other Backward Class groups, treating them as a class, will not be eligible to get other relaxations. The learned counsel submits that the relevant clause, apart from stipulation of relaxation for SC/ST/OBC under clause 3(एक)(1), provides for other types of relaxations as well, under clause 3(एक)(2) to 3(एक)(8). In the case of relaxation under clauses 3(एक)(2) to 3(एक)(8), it is available for all categories of persons, irrespective of any caste status; subject to the satisfaction of the requirements mentioned therein and this benefit is virtually denied to the persons belonging to Scheduled Castes/ Scheduled Tribes/ Other Backward Class who are being given the relaxation only by virtue of their 'caste status' as mentioned under clause 3(एक)(1). This virtually is against the constitutional mandate and hence ought to have been appreciated in the proper perspective by the learned Single Judge where miscarriage of justice has been resulted, and hence the challenge.

8. The learned Deputy Advocate General appearing on behalf of the State submits that the writ petitioners/appellants admittedly have not challenged the relevant clause in the advertisement and as such, they are not entitled to seek for any relief as now pressed before this Court. It is also pointed out that they had approached the Court only after losing the battle, virtually on not getting selected because of the age bar. After participating in the selection, by virtue of the law declared by the Apex Court, it is not open for them to turn back and challenge the proceedings, apart from the fact that the notification was never put to challenge. The factual and legal aspects have been subjected to meticulous analysis by the learned Single Judge, and it was accordingly, that interference was declined, which hence is within the four walls of law and is not assailable under any circumstance, submits the learned counsel.
9. The legal questions to be considered have already been formulated by this Court in the opening paragraph. With regard to the first question, the Appellants herein had participated in the process of selection. It is also stated that though, they were included in the provisional list, they subsequently came to be excluded by virtue of the higher age factor with regard to which also there is no dispute. The law declared by the Apex Court on the point as per ***Madras Institute of Development Studies & Another v. K. Sivasubramaniyam & Others***; (2016) 1 SCC 454, is to the effect that after participating in the process of selection, it is not open for the parties concerned to challenge the process of selection. It is based on this ruling that the learned Single Judge has declined to grant any relief. We do not find anything wrong in this regard.

10. The next question is whether there is any merit with regard to the stipulation under clause 3(एक)(1) of the Annexure P/1 advertisement and if it could be interfered by this Court in this appeal ? The answer can only be an emphatic 'No'; insofar as the Appellants/Writ Petitioners have not chosen to challenge the advertisement or the relevant clause.
11. The next point to be considered is whether the claim put forth by the Appellants/ writ petitioners with respect to the benefit of age relaxation given to some other person like Prakash Chand Sonkar. The learned Single Judge has observed in 'paragraph 31' of the judgment that the said case is clearly distinguishable from the case projected by the writ petitioners. That apart, the principle of equality and issuance of a writ of mandamus is a positive concept, which cannot be with reference to a minus or negative trait. In other words, a mistake is always a mistake which has to be rectified at the earliest opportunity and it can't be perpetuated. The Government/authorities, if have extended some benefit by mistake to anybody, the same cannot be sought to be extended to others as well. We find support from the ruling rendered by the Apex Court in **Chandigarh Administration and Another v. Jagjit Singh and Another**, AIR 1995 SC 705.
12. Regarding the last point, it is not disputed that the process of selection was finalised years ago and the rank-list was published in the year 2013. The validity of the rank list, as per the relevant rules is admittedly over, as conceded during the course of hearing. Even by the farthest stretch of imagination, the said rank list cannot be in existence as on date, i.e. in 2019. It is also settled law, that there cannot be any appointment from an expired

rank-list. This being the position, even if the Appellants succeed in any manner with regard to the merits involved, they cannot be directed to be included in the expired rank list, so as to give them appointment.

13. In the above circumstance, we are of the view that the learned Single Judge was perfectly justified in turning down the claim and declining to grant the relief sought for. No tenable ground has been raised or substantiated before this Court so as to call for interference.
14. Appeals are devoid of any merit. They are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge