

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1737 of 2019**

Sadique Ui Malik S/o Ashraf Ul Malik Aged About 25 Years R/o Hemu Nagar In Front Of Gudaku Factory, Near Over Bridge, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of General Administration, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Professional Examination Board, Through Its Secretary, North Block Sector - 19, Atal Nagar Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Director Accounts, Audit And Pension Mantralaya, Atal Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. Engineer In Chief Public Works Department, North Block Sector - 19, Atal Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sunil Otwani, Advocate
For State	:	Mr. Rahul Mishra, Dy. GA

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/03/2019**

1. With the consent of the parties matter is heard finally at admission stage.
2. The brief facts relevant for adjudication of the present dispute is that the petitioner has applied for the Post of Assistant Programmer in the recruitment process which was initiated by nine different departments of the State Government as per the instructions of the Chhattisgarh Professional Examination Board, Raipur.

3. The grievance of the petitioner is that petitioner having applied was also found selected in written examination and thereafter he was called upon for the counseling and the petitioner was not subjected to counseling on account of the petitioner not having live registration in the concerned employment exchange on the date of filing of the application.
4. Counsel for the petitioner referring to the Full Bench decision of this Court rendered in the case of **State of Chhattisgarh & Another Vs. Roshni Sahu (writ appeal No. 411/2014 & other connected matters decided on 21/10/2016)** submitted that requirement of Registration in the employment exchange itself is a clause which is held to be non mandatory Clause for recruitment purpose and thus prayed for direction to the respondents to subject the petitioner in a fresh counseling and proceed further with the recruitment process so far as his claim is concerned.
5. State counsel opposing the petition submits that the petitioner knew about the conditions at the time of the filing of the application itself and at that point of time, the petitioner having not challenged the same, the petitioner cannot now turn around and challenge the recruitment process and the advertisement at a later stage and thus prayed for the rejection of the writ petition.
6. Having heard the contentions put forth on either side and on perusal of record, admittedly on date of filing of the application, the petitioner did not have live registration in the concerned employment exchange, though, petitioner had got the live registration at a later stage well before the counseling date. What is relevant at this juncture to

consider is whether the registration in employment exchange is mandatory or not.

7. The matter in the past came up before the Supreme Court in the case of **Union of India and Others Vs. Pritilata Nanda, (2010) 11 SCC 674**, in which the Supreme Court in very categorical term held that that it would not be mandatory to appoint only those persons who were sponsored from the employment exchange. In the said case itself Supreme Court further went on deciding that the candidates who had not been sponsored by the employment exchange and if they had been permitted to take part in the selection process and has been successful, could not be late on denied only on the ground of their names not been sponsored by the employment exchange.
8. For ready reference, paragraph 20 & 21 of the said judgment reads as under :-

“20.The issue deserves to be considered from another angle. It was neither the pleaded case of the appellants before the Tribunal and the High Court nor any evidence was produced by them to prove that notification/advertisement dated 31.1.1987 was sent to all the employment exchanges including the special employment exchanges in the State of Orissa. Before this Court also, no document has been produced to show that the advertisement was circulated to the employment exchanges in the State. In this backdrop, it is not possible to approve the stance of the appellants that the respondent was not appointed because she did not get her candidature sponsored by an employment exchange. “

“21.We also agree with the High Court that once the candidature of the respondent was accepted by the concerned authorities and she was allowed to participate in the process of selection i.e., written test and viva voce, it was not open to them to turn around and question her entitlement to be considered for appointment as per her placement in the merit

list on the specious ground that her name had not been sponsored by the employment exchange. In our considered view, by denying appointment to the respondent despite her selection and placement in the merit list, the appellants violated her right to equality in the matter of employment guaranteed under [Article 16](#) of the Constitution.”

9. The issue further came up for consideration before Full Bench of this Court and Full Bench of this Court in the Case of State of Chhattisgarh Vs. Roshni Sahu(Supra) had again taken the same view following the judgment of the Supreme Court in the case of **Pritilata Nanda(Supra)**, and held that denial of consideration from public employment only on the ground of not having live registration in the employment exchange to be bad in law.
10. This Court fails to understand the fact that once when there is a Full Bench decision of this very High Court and the judgment having been passed in Writ Appeal preferred by the State Government itself, the authorities ought to have been ensured that order of the Full Bench passed by this Court should have been honoured in its later and spirit. Respondent authorities should have ensured that such conditions which have been deprecated by the Full Bench of this Court as well as by the Supreme Court time and again should not be part of the recruitment process or a condition in the advertisement. Yet, the respondents have insisted upon the same and the petitioner now becomes a victim of the same.
11. Given the aforementioned facts and reasons, this Court is of the opinion that the case of the petitioner squarely is covered by the judgment of the Supreme Court in the case of **PritiLata Nanda(Supra)** as well as the Full Bench decision of this Court in the case of **Roshni Sahu(Supra)** and the same deserves to be and is

accordingly allowed. The decision of the respondents in not considering the case of the petitioner for counseling is therefore held to be bad in law and the same is accordingly quashed. Respondents are directed to forthwith call upon the petitioner for a fresh counseling and thereafter proceed further in accordance with the rules and regulations. Meanwhile, it is further directed that the respondents, till the process so far as the petitioner is concerned is not complete, they shall keep one post vacant on the post which the petitioner had applied.

12. The writ petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rohit