

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6224 of 2019

1. Ramesh Kumar Vishwakarma S/o K. L. Vishwakarma Aged About 45 Years R/o Quarter No. 1 A Street No. 26, Sector-4, Bhilai Nagar, District Durg Chhattisgarh
2. Sanjay Kumar Dandare S/o Hari Narayan Dandare Aged About 43 Years R/o Room No. 15, Block No. 4, Street No. 9, Sector-4, Bhilai Nagar, District Durg Chhattisgarh
3. Mohammad Khalik S/o Mohammad Moinuddin Aged About 44 Years R/o Quarter No. 8/ A Street No. 32, Sector-5, Bhilai Nagar, Post Office Bhilai Civil Center, District Durg Chhattisgarh
4. Ajay Kumar Choubey S/o L. N. Choubey Aged About 43 Years R/o Quarter No. 12/ B, Street No. 9, Sector-4, Bhilai Nagar, District Durg Chhattisgarh
5. Mahendra Prajapati S/o Tej Bahadur Prajapati Aged About 44 Years R/o Quarter No. 1 A Street No. 26, Sector-4, Bhilai Nagar, District Durg Chhattisgarh
6. K. Someswara Rao S/o Late K. Papa Rao Aged About 43 Years R/o Street No. 32, Quarter No. 4/g, Post Khursipar, Zone -li, District Durg Chhattisgarh
7. Bhuneshwar Prasad Verma S/o Magaldas Verma Aged About 37 Years R/o Sunder Nagar, Kohka, Post Kohka, District Durg Chhattisgarh
8. Mohan Singh S/o Dulare Ram Singh Aged About 43 Years R/o Tata Line Kohka, Post Office Kohka, District Durg Chhattisgarh
9. Biseshwar Gajbhiye S/o Gyaniram Aged About 46 Years R/o New Krishna Nagar, Shyam Chowk, Supela, Bhiali Nagar, Risali, District Durg Chhattisgarh
10. Margana Shrinivas Rao S/o Margana Narsinga Rao Aged About 44 Years R/o Quarter No. Ews 395, Viashali Nagar, Bhiali 490023, District Durg Chhattisgarh
11. Abdul Salim Siddique S/o Abdul Rashid Siddique Aged About 43 Years R/o C/o Munir Buksh, Behind Rao Cottege, Kasaridih, Durg District Durg Chhattisgarh
12. Hemant Kumar Sahu S/o Kanwal Singh Sahu Aged About 44 Years R/o C/o Jaswani, General, Stores, New Market, Hatri Bazar, Durg, District Durg Chhattisgarh.
13. Daulat Ram S/o Sukhram Aged About 46 Years R/o Tata Line Kohka, Post Office Kohka, Bhilai, District Durg Chhattisgarh.
14. Imran Khan S/o G.M. Khan Aged About 43 Years R/o Quarter No. 10, D, Street No. 10 Sector-4, Bhilai, District Durg Chhattisgarh,
15. Baldau Kumar Soni S/o Pangu Ram Soni, Aged About 43 Years R/o Baiga Para, Gaura, Chowk, Durg, District Durg Chhattisgarh.
16. Tarsem Singh S/o Prakash Singh Aged About 41 Years R/o Plot No. 534, Street No. 4, Smriti Nagar, Bhilai District Durg, Chhattisgarh
17. Chandrakant Das S/o Late Parshuram Das Aged About 43 Years R/o Quarter No. 4/a, Street No. 8, Sector, 1, Bhilai District Durg Chhattisgarh.
18. Pramod Kumar S/o Madhukar Rao Aged About 44 Years R/o Quarter No. 4/a, Street No. 8, Sector-1, Bhilai Nagar, District Durg Chhattisgarh.

19. Daya Ram S/o Dhanai Aged About 43 Years R/o Rajesh Cycle Stores, Camp-1, Steel Nagar, Sector, -1, Bhilai, District Durg Chhattisgarh.
20. Ashish Kumar S/o Shyam Rao Suryavanshi Aged About 42 Years R/o Naya Amapara, Durg, Tahsil And District Durg Chhattisgarh.

---- Petitioners

Versus

1. Steel Authority Of India Limited Through Its Managing Director, Bhilai Steel Plant, Bhiali District Durg Chhattisgarh
2. The Executive Director, Bhilai Steel Plant, Ispat Bhawan, Bhilai, Nagar, Tahsil And District Durg Chhattisgarh.
3. Manager (Personnel Recrument) Bhilai Steel Plant, Ispat Bhawan, Bhilai, Nagar, Tahsil And District Durg Chhattisgarh.
4. District Employeement Officer, Durg, District Durg Chhattisgarh.
5. Arun Chouhan S/o R.V. Chouhan R/o Shanker Nagar, Durg, Near Ambedkar, Chowk, District Durg, Chhattisgarh.
6. Jaikaran Lal Verma S./o B.R. Verma, R/o 10- D, Street No. 25, Sector, 4, Bhilai District Durg Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Manoj Paranjpe, Advocate
For Respondents No.1 to 3/SAIL	:	Dr. Saurabh Pande, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

P. R. Ramachandra Menon, Chief Justice

21.08.2019

1. Correctness and sustainability of the common verdict passed by the Central Administrative Tribunal Jabalpur Bench, Circuit Sitting Bilaspur Chhattisgarh (hereinafter referred to as "Tribunal") with regard to the grievance projected in the Transferred Application Nos. 3 of 2013 and connected matters, is sought to be challenged by the Petitioners in this writ petition.
2. Heard the learned counsel representing the Petitioners as well as the learned counsel for the Respondent-Company.

3. The crux of the submissions is that, pursuant to the requisition made by the Respondent-Company to Employment Exchange for appointment to the post of 'Plant Attendant', list of candidates was furnished by the Employment Exchange, based on which, the process of selection was conducted and completed, which involved written test, interview and physical verification. Out of the total number of candidates i.e. 2400, only 517 candidates had cleared the written examination and they were called for interview and physical test. According to the Petitioners, they cleared the physical test as well, but the merit list was not prepared and published by the Respondent-Company. The appointment was kept in abeyance for quite long. Finally, the Respondent-Company conducted a 're-physical test', confining it to 200 employees, out of the 517 who had cleared the written test and attended the physical test and interview in the first round of selection leading to appointment of 74 persons to the posts in question. This made Petitioners to feel aggrieved, who filed writ petitions before this Court as Writ Petition Nos. 1536 of 2004, 7549 of 2007 and 6993 of 2006.
4. The above writ petitions were later transferred to the Tribunal as per order passed by this Court on 09.10.2012 and the matter was considered accordingly. The Respondent-Company sought to justify their action by raising various contentions, which according to the Petitioners was not correct or sustainable. Specific grounds were raised with regard to further course of action to be followed in the matter of selection, which however was not properly adverted to by the Tribunal; as contented by the Petitioners. The Tribunal passed order

dated 12.07.2019, whereby interference was declined, virtually accepting the version of the Respondents in toto, in turn leading to dismissal of the transferred applications. This is sought to be interdicted by filing the present writ petition.

5. Mr. Manoj Paranjpe, the learned counsel for the Petitioners submits, that the fundamental requirement of publishing a select list was not satisfied and everybody were kept in dark as to the course and events. It is stated that at one point of time, after conducting the written test, the interview and physical test, the recruitment process was kept in abeyance in view of a 'ban' imposed insofar as the superannuation age was enhanced from 58 years to 60 years, by virtue of which, many employees, who otherwise would have retired from the service, were let to continue in service. The Respondent-Company later proceeded with further steps to conduct a 're-physical test', confining it to just 200 candidates, instead of calling all the 517 candidates, who were successful in the written test in the earlier process. This aspect was not properly considered and no merit list was produced by the Respondent-Company before the Tribunal. This being the position, the Respondent-Company is to be directed to conduct a physical test of the Petitioners herein, so as to redress their grievance, submits the learned counsel.
6. In response to the averments raised by the writ Petitioner and the submissions made across the Bar, the learned counsel for the Respondent-Company submits that, pursuant to the requisition made to Employment Exchange, a total number of 2400 candidates were

sponsored by the Employment Exchange. In the written test conducted by the Respondent-Company, only 517 candidates turned out successful in the written test, all of whom were called for interview and physical test. The learned counsel asserts that after completion of the process, involving three different stages i.e., written test, interview and physical test, a merit list was prepared; but the appointment could not be pursued as the proceedings had to be kept in abeyance for some time by virtue of 'ban' and also coupled with the instructions issued based on a 'memorandum of understanding' executed between the Steel Authority of India Limited and the Government of India so as to reduce the manpower. After about four years, requirement was felt necessary to proceed with further steps and by that time, it hence was necessary to ascertain the 'physical fitness' of the persons to be recruited, by virtue of the very nature of the job specification and the duties attached to the post. It was accordingly, that a 're-physical test' was decided to be conducted and all the 200 persons who were included in the merit list were given an opportunity to submit themselves for 're-physical test' and intimation was sent in this regard. The learned counsel submits that some of the Petitioners, particularly, Sl. Nos. 11, 12, 20, 22 and 32 participated in the said proceeding, but they could not get qualified in the 're-physical test'; by virtue of which they lost their chance. The learned counsel also submits that the proceedings pursued by the Respondents are transparent in all the respects and all the persons, who were included in the merit list, were given opportunity to participate in the process. The learned counsel

adds that, all the relevant documents including the merit list were produced before the Tribunal, pursuant to the order dated 14.07.2016 passed by the Tribunal, as taken note of in paragraph 10 of the order under challenge. The documents and the proceedings were sought to be supported by an affidavit of Executive Manager (Personnel) of the Respondent-Company and it was after considering all the relevant materials, that the final verdict was passed by the Tribunal, whereby the Transferred Applications came to be dismissed, which is not assailable under any circumstance, submits the learned counsel.

7. The discussion made by the Tribunal is very much relevant, to ascertain whether there is pith of substance in the contentions put forth by the Petitioners; particularly that no merit list was published by the Respondent-Company. Paragraph 10 of the order under challenge is to the following effect :-

“10. In compliance of the directions of this Tribunal dated 14.07.2016, the respondents-BSP have filed following documents, though MA No.203/00949/2018, which was allowed vide order dated 20.09.2018 :-

- (i) Result of written test held on 13.09.1997 for the post of Plant Assistant*
- (ii) Assessment sheets of candidates appeared for interview 1998*
- (iii) Assessment sheets of candidates called for Physical Ability Test (PAT) 1998.*
- (iv) List of candidates called for Re-PAT in 2002*
- (v) Assessment sheets showing the marks of written test, interview and Re-PAT in 2002.*
- (vi) List of 80 candidates provisionally selected.*
- (vii) List of 74 candidates offered appointment after pre-employment medical examination.”*

From the above, it is very clear that the documents mentioned therein were produced by the Respondent-Company and they were perused

by the Tribunal before reaching the conclusion. It is also evident from 'paragraph 10.1' of the verdict that copies of the above documents were duly served upon the learned counsel for the Applicants, but the Applicants had failed to point out any illegality or irregularity in the selection made by the Respondent-Company during the course of final hearing.

8. The Tribunal has also taken note of that, among the 200 candidates who were included in the merit list and were given a chance to submit themselves for 're-physical test', only 74 candidates were appointed as found medically fit for the post in question. The Tribunal has placed reliance on various judgments, relevant to the context, as rendered by the Apex Court and the relevant portions have been extracted to the extent it was necessary to have had an effective adjudication. The observations made in paragraphs 13, 14 and 15 of the verdict under challenge are also relevant in this context and hence we find it appropriate to have the same extracted for convenience of reference :-

“13. Since in the instant case the specific stand of the respondents that the applicants did not qualify in the final selection process has not been rebutted by the applicants, we are of the considered view that the case of present applicants is fully governed by the aforesaid decision of the Hon'ble Supreme Court in the matters of **D. Sarojakumari Vs. R.Helen Thilakom and others**, (2017) 9 SCC 478 and therefore the applicants are estopped from questioning the authority of the respondent-BSP for conducting the re-physical test, and seeking relief.

14. Further, as regards the contention of the applicants in regard to appointments on the post of Attendant-cum-Technician, we find that the said issue was already challenged before the Hon'ble High Court of Bilaspur in the matters of **Shrilal Vs. Steel**

Authority of India Ltd. & Ors., Writ Petition No.258/2003, and the said matter was disposed of after assurance given by the respondent-BSP. Therefore, we do not find any merit in the said contention of the applicants.

15. As regards the contention of the applicants that the respondents were bound to fill up all the notified 200 vacancies of Plant Attendant, we find that recently the Hon'ble Supreme Court in the matters of **Kerala State Road Transport Corporation and another Vs. Akhilesh V.S. And others**, Civil Appeal No.3346 of 2019 decided on 01.04.2019 has held that the law stands settled that mere existence of vacancies or empanelment does not create any indefeasible right to appointment. The employer has the discretion not to fill up all requisitioned vacancies, but when has to be for valid and germane reasons not afflicted by arbitrariness. In the instant case we find that the respondent-BSP has specifically stated that in May 1998 a ban was introduced on recruitment in SAIL in accordance with the memorandum of understanding signed by the SAIL with the Govt. of India, where the BSP was required to reduce the manpower as per the restructuring plan approved by the Government. However, in 2002 when there was requirement of Plant Attendants in BSP, only 74 candidates were appointed as against 200 notified vacancies. Therefore, we do not find any arbitrariness in such a decision on the part of the BSP.

9. After hearing both the sides, we are of the view that the supervisory jurisdiction conferred upon this Court, in exercise of Article 227 of the Constitution of India, does not persuade us to take a different view, to hold that the Tribunal has gone wrong, in any manner. The writ petition is devoid of merit. It is dismissed accordingly.

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

Sd/-
(Parth Prateem Sahu)
Judge