

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 9809 of 2019**

- Dr. Jai Shankar Yadav S/o Late Shri S.R. Yadav, Aged About 50 Years R/o Shakti Vihar Colony, Behind Dreamland School, Jorapara, Sarkanda, Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission, Through Its Secretary, Shankar Nagar Road, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents**WPS No. 9814 of 2019**

- Dr. Manish Saxena S/o Late Shri B.S. Saxena Aged About 44 Years R/o Rajendra Nagar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Its Secretary Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh.
2. Chhattisgarh Public Service Commission Through Its Secretary Shankar Nagar Road, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Shri Ishan Verma, Advocate
 For Respondents/State : Shri Chandresh Shrivastava, Dy. Advocate
 General

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

Order on Board

Per, P.R. Ramachandra Menon, Chief Justice

25/11/2019

1. The Petitioner has moved this Court with the following prayers :

“10.1. This Hon'ble Court may kindly be pleased to declare the condition prescribed in the advertisement dated 06.03.2019, mentioned at important note after clause 4 that maximum age limit will be 45 years and condition mention 8(j) in Chhattisgarh Education Services (Collegiate Branch Gazetted) Recruitment Rule 2019 are ultra-vires viz-a-viz Article 14 & 16 of the Constitution of India;

10.2. This Hon'ble Court may kindly be pleased to direct the respondents to allow the petitioner to submit application-form and further allow to participate in the selection process for the post of Sports Officer;

10.3. This Hon'ble Court may kindly be pleased to issue any other order or orders, writ or writs, direction or directions as this Hon'ble court may deem fit in the facts and circumstances of the case in favor of the petitioners, in the interest of justice.

2. Heard the learned counsel for the Petitioner as well as the learned Deputy Advocate General representing the State.
3. The learned counsel for the Petitioners submits that the stipulation in the relevant rules (which is under challenge) prescribing the maximum age limit of 45 years is not correct or sustainable and it has virtually taken away the rights of the petitioners to place the candidature for consideration for appointment to the post of Assistant Professor. The learned counsel submits that the last advertisement was issued about 27 years back, in the year 1992 and as such, the above rule virtually denies the opportunity to participate in the process of selection, hence under challenge.

4. The learned counsel representing the 1st Respondent submits that the nature of challenge, as involved in the present case, had come up for consideration before the Apex Court and as per the law declared in ***Hirandra Kumar v. High Court of Judicature at Allahabad***¹, the issue stands decided against the persons like the petitioners. Reference is also made to the verdict passed on 08.04.2019 by a Co-ordinate Bench of this Court in WP(S) 2343/2019, whereby similar challenge was repelled and writ petition was dismissed.
5. This Court is aware of almost a similar challenge raised in various writ petitions; such as WP(S) No. 3595/2019 and connected cases, which were considered together and a final verdict was passed by us on 22.07.2019. The prayers challenging the *vires* of the relevant rules have been extracted in the said verdict and ultimately we found that challenge was devoid of any merit. It was accordingly, that the writ petitions were dismissed. The operative portion as contained in paragraphs 11 and 12 are appropriate to be looked into and hence we reproduce the same as given below :

“11. In view of the precinct declaration of law, as aforesaid, and since there cannot be any interference with regard to the policy matters and further since no legally tenable ground is brought to the notice of this Court calling for interference, we are of the view that the writ petitions are not liable to be entertained.

12. Mr. Mateen Siddiqui, learned counsel for the petitioners submits that there is however a provision to grant 'relaxation' as envisaged under Rule 22 of the Chhattisgarh Educational Service (Collegiate Branch, Gazetted) Recruitment Rules, 2019. A true extract of the said Rules, as notified in the Gazette of the State, is given as part of Annexure P/2. The said Rule is reproduced below:-

1 2019 (2) SCALE 752

“22.Relaxation.- Nothing in these rules shall be construed to limit or abridge the power of the Governor to deal with the case of any person to whom these rules may apply in such manner as may appear to it to be just and proper: Provided that the case shall not be dealt with in any manner less favorable to him than that provided in these rules.”

On going through the said Rule, we find that it only speaks about the powers of the Governor to deal with the case of any person, on a case to case basis for 'just and proper' reasons. We do not find any merit in the writ petitions. They are dismissed accordingly. We however make it clear that the dismissal of these writ petitions will not bar the way of the petitioners, if any petitioner is eligible to get the benefit of Rule 22 of the Rules as noted above.”

6. We are of the view that nothing is left out to be considered herein. This writ petition stands dismissed in terms of the said verdict in WP(C) No. 3595/2019 and connected cases.

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

Sd/-
(Parth Prateem Sahu)
Judge