

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 3531 OF 2011

1. Bhagirathi Mahilange, age 32 years, S/o Shri Sukhnandan Mahilange R/o Willbinani, Post Pachpedi ,Tah. Masturi, District Bilaspur, Chhattisgarh.
2. Ashok Kumar Saytode, age 32 years S/o Shri Chandulal Saytode, R/o Gram & Post Jara, Thana Kharora, Tah. Palari, District Raipur, Chhattisgarh.
3. Thanuram Naurange age 40 years, S/o Shri Bishatram Naurange R/o Gram & Post Jara, Thana Kharora, Tah. Palari, District Raipur, Chhattisgarh.

...Petitioner(s)

Versus

1. State of Chhattisgarh, Department of Higher Education, DKS Bhawan, Raipur, Chhattisgarh.
2. Director, Medical Education, DKS Bhawan, Raipur, Chhattisgarh.
3. Govt. Dental Medical College, Rajbandha Maidan, Raipur, Chhattisgarh.

... Respondent(s)

For Petitioners	:	Shri Sudip Johri, Advocate.
For State	:	Shri Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment

Reserved on 16.03.2020

Delivered on 26.05.2020

1. The present writ petition has been filed seeking for issuance of a writ in the nature of mandamus commanding the respondents to grant appointment to the petitioners and also to grant them monetary relief for the loss that they have sustained for being kept out of employment for a long period.
2. The brief facts relevant for adjudication of the present writ petition is that, the respondents vide Annexure P/1 issued an advertisement on 14.07.2008 for filling up of various posts at the Govt. Dental College of the State Government. The issue involved in the present writ petition pertains to the post of Sweeper in the pay scale of Rs.2550-3200/-. The total number of posts advertised for the post of Sweeper was 20. In the advertisement itself it was specifically mentioned that the entire 20 posts

was for the Scheduled Caste category. The minimum eligibility criteria was having passed 5th Board Examination. Written examination for the said advertised post was held on 14th August, 2008. Three petitioners herein participated in the said examination and were successful in clearing the written examination and in the overall merit the three petitioners stood 17th, 19th and 22nd in the ranking respectively.

3. The main grievance of the petitioners is that inspite of fact that the petitioners were meritorious and two of the petitioners i.e. petitioners No.1&2 came within top 20, yet they were not considered for appointment. The contention of the petitioners is that, there is no justification or reasons assigned by the respondents for not considering the case of the petitioners for appointment. It was the further grievance of the petitioners that there was also no waiting list prepared which could have generated some right in favour of the petitioners for being considered against those posts where the selected candidates have not given their joining.
4. The petitioners further referred to Annexure P/8 which is an information obtained under the Right to Information Act whereby list of top 30 persons who appeared in the examination for appointment to the post of Sweeper was provided and therein also the name of the petitioners appeared at rank numbers 17th, 19th and 22nd. Referring to the same document, the counsel for the petitioners submitted that as per the respondents themselves they have filled up only 16 posts from 20 vacant posts and 4 posts stood filled up by contractual appointees. This again, as per the counsel for the petitioners, is illegal for the reason that once when 20 posts were advertised, the respondents ought to have filled up all 20 posts and should have appointed 20 posts after discontinuing the services of the contractual appointees. The petitioners thus prayed for issuance of an

appropriate direction commanding the respondents to provide appointment to the petitioners against unfilled 4 posts where the petitioners would have also been accommodated.

5. The State counsel, on the other hand, opposing the petition submits that merely because the petitioners have been successful in the written examination and their name appears at serial Nos. 17th, 19th and 22nd by itself would not create any indefeasible right for appointment to the petitioners. According to the State counsel, it is well within the prerogative and domain of the State Govt. or the respondents to decide how many posts should be filled, though advertisement may be for a larger number of posts. That, if at a later stage if the respondents does not want to fill up the entire posts, they can do it and the petitioners as such do not have any indefeasible right in their favour.
6. The further contention of the State was that the petitioners even otherwise do not have a claim over the said appointment for the reason that none of the candidates who have been appointed are candidates who have secured less marks than the petitioners. Therefore, the petitioners cannot have any grievance. The further contention of the State was that, what cannot be lost sight of is the fact that though total number of vacancy advertised was for 20 posts. That, there was also usual reservation that were to be made in the said 20 posts and of this 20 posts, 6 posts would go to female candidates and 1 post would go to the physically handicapped category. If the aforesaid 6 and 1 posts are deducted for women and physically handicapped category respectively. Thus, the total number of meritorious candidates to be appointed would become 13. Since the merit of the petitioners stood at serial numbers 17th, 19th and 22nd, they cannot claim themselves as a matter of right for being

appointed. In view of the same, the State counsel prays for dismissal of the writ petition.

- 7.** Having heard the contentions put forth on either side and on perusal of records, what is really to be appreciated is the fact that the total number of post advertised was 20. Of the said 20 posts, if the posts reserved for women and physically handicapped is deducted, then the total number of posts remaining to be filled up would become 13. If we look into the merit list which has been enclosed by the petitioners themselves in the writ petition we would find that in the top 20 there were only two female candidates i.e. the candidates whose name is reflected at serial number 2 and 11. Thus, there were 4 more female candidates who were to be filled up and of 20 if 4 female candidates were to be included then the male candidates whose name appears at serial number 17 to 20 automatically gets eliminated from the selection process and with the inclusion of physically handicapped candidate, another seat from the merit would get reduced.
- 8.** Given the said facts as given by the State counsel, non consideration of the petitioners cannot be said to be bad in law, arbitrary or illegal in any manner.
- 9.** Now the question as to in the event if the person appointed have not joined, what would be the effect?
- 10.** What has to be borne in mind is that there was no waiting list prepared by the respondents which could be filled up on non joining of the selected candidates at the first instance. Since there is no waiting list prepared, the petitioners as such cannot have, as a matter of right, claim for appointment.

- 11.** As regards the judgment of Supreme Court in case of Dinesh Kumar Kashyap & Ors. Vs. South East Central Railway & Ors.(Civil Appeal No.11364 of 2018) which has been cited and relied upon by the petitioner is concerned, the said judgment on its facts may not be applicable for the reason, that writ petition was in respect of those candidates who fell in the category of extra 20 percent candidates who would fall in the list to be prepared as per the existing instructions prevailing in the department, whereas, in the instant case, there was no such instructions, guidelines or rules which provide for preparing of waiting list. In the absence of which, the petitioners cannot claim appointment as a matter of right.
- 12.** What further has to be realized is that, the merit list in the instant case was prepared in the year, 2008. The writ petition was filed in the year, 2011 and hence by efflux of time the validity of that select list had got itself lapsed and for this reason also the petitioners do not have an existing right as on date.
- 13.** Given the aforesaid facts and circumstances of the case, this court does not find any merit in the petition and the writ petition therefore deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge