

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 346 of 2020**

(Arising out of order dated 17/08/2020 passed in Writ Petition (S) No.3059 of 2020 by the learned Single Judge)

1. Ghanshyam, S/o Mr Ram Prasad Aged About 25 Years R/o Village Changeri, Post Parasi, District Gaurela Pendra, Marwahi Chhattisgarh.
2. Brijmohan Singh, S/o Shri Kushal Singh, Aged About 24 Years R/o Village Bacharwar, Post Bacharwar, Tehsil Pendra, District Bilaspur Chhattisgarh.
3. Kamesh Kumar Rahangdale (Kamlesh Kumar Rahangdale is wrongly mentioned in impugned order) S/o Shri Haridayal Rahangdale, Aged About 24 Years, R/o Chilphi Ghati, Police Line Chilphi Ghati District Kabirdham Chhattisgarh.
4. Rohit Kumar Yadav, S/o Shri Satish Kumar Yadav, Aged About 24 Years R/o Village Lakhram, Post Lakhram, District Bilaspur Chhattisgarh.
5. Preeti Sahu, D/o Mr. Ramu Ram Sahu, Aged About 25 Years R/o Ward No. 3, Bemetara District - Bemetara Chhattisgarh.
6. Kalyani Tandon, D/o Shri Nanakram Tandon, Aged About 24 Years R/o Bajarpara, Bdedharaur Lohandiguja, District Bastar Chhattisgarh.
7. Harendraa Kumar, S/o Mr. Sanjay Kumar, Aged About 24 Years R/o Village Buchipara, Post Chhata, District - Mungeli Chhattisgarh.
8. Suresh Kumar Arik, S/o Mr. Gangadhar Arik, Aged About 25 Years R/o Village Pandripani, Post Bhitghara, District Jashpur Chhattisgarh.
9. Manisha, D/o Shri Itwari, Aged About 26 Years R/o Village Koyalakari Kala District Kabirdham Chhattisgarh.
10. Himanshi Pandey, D/o Shri Uma Shankar Pandey Aged About 25 Years R/o Village Kenda, Post Kenda Block Kota, District Bilaspur Chhattisgarh.
11. Kamini, D/o Mr. Patiram, Aged About 24 Years R/o Ward No. 03, Village Khiriya, Post Office Khiriya District Dhamtari Chhattisgarh.
12. Swati Sahu, D/o Mr. Bala Ram Sahu, Aged About 24 Years R/o Ward No. 52, Bimbleshwari District Durg Chhattisgarh.
13. Nitesh Raj, S/o Mr. Ramnath Baghel, Aged About 24 Years R/o Village Motimpur, Post Office Kanteli, Block Mungeli, District Mungeli Chhattisgarh.
14. Shubhi Singh D/o Mr Chandrika Prasad Singh Aged About 25 Years R/o Anukulsadan, Near Bus Stand Manendragarh, District Korea Chhattisgarh.
15. Durgeshwari, D/o Dhan Singh, Aged About 24 Years R/o Balgimod, Ward 57 Surakachhar, District Korba Chhattisgarh.
16. Shradhanjali Panda D/o Shri Simanchala Panda Aged About 23 Years R/o Rajiv Nagar, Near Jindal Steel And Power Limited, Mandir Hasaud, District Raipur Chhattisgarh.

17. Ranjeet Singh Shyam S/o Mr. Bhupat Singh Shyam Aged About 23 Years R/o Village - Ghinavehi, Post Office Karahni Block Marwahi, District Gaurela Pendra, Marwahi Chhattisgarh.
18. Hemant Kumar S/o Shri Ramkrishna Sahu Aged About 24 Years R/o Village Nardha, Post Dhaurabhata, Block Magarlod, District Dhamtari Chhattisgarh.
19. Lavkush Salame, S/o Shri Shriram Salame, Aged About 29 Years R/o Village Masul, Post Ghotia, Tehsil Manpur, District Rajnandgaon Chhattisgarh.
20. Vivek Kumar Yadav S/o Shri Matukdhari Yadav Aged About 25 Years R/o Village Ganeshpur, Post Silphili District Surajpur Chhattisgarh.
21. Danish Ahmad Siddiqui S/o Mohammed Ali Siddiqui Aged About 24 Years R/o Q. No. H-22, P.W.D. Colony South Chakradhar Nagar, District Raigarh Chhattisgarh.
22. Prashant Singh S/o Shri Bhuvan Pal Singh Aged About 24 Years R/o Village Telsara, Post Office Bankimongra, Block Katghora, District Korba Chhattisgarh.
23. Ankur Kumar Rathore S/o Shri Chudamani Rathore Aged About 24 Years R/o Rajiv Nagar, Thurekala, Kharsia, District Raigarh Chhattisgarh.
24. Vibha Sahu, S/o Shri Kamal Narayan Sahu, Aged About 23 Years R/o 4/30, Chandan Awas, Near Smriti Wan, Rajkishore Nagar, Bilaspur Chhattisgarh.
25. Jagriti, D/o Shri Shanti Lal Aged About 23 Years R/o Laxmi Niwas, Behind Government Hr. Secondary School, Deotikhurd, Bilaspur Chhattisgarh.
26. Omprakash Sahu S/o Mr. Shiv Kumar Sahu Aged About 24 Years R/o Ward No. 15, Mungeli Road Nawagarh, District Bemetara Chhattisgarh.
27. Umang Verma S/o Shri Manharan Lal Verma Aged About 25 Years R/o Village Kasdol, Post Office Kasdol, Block Kasdol, District Baloda Bazar Chhattisgarh.
28. Sarita, D/o Shri Punjam Singh, Aged About 23 Years R/o Village Anchidongri, Tehsil Lormi, District - Mungeli Chhattisgarh.
29. Megha Kashyap D/o Shri Hemant Kashyap Aged About 23 Years R/o Vrindavan Colony, Jagdalpur, Bastar, District Bastar Chhattisgarh.
30. Nandkishore Janghel S/o Shri Radhakishan Janghel, Aged About 24 Years R/o H. No. 03, Village Thandhar, Post Gandai, District Rajnandgaon Chhattisgarh.
31. Abya Goyal, D/o Mr. Ashok Goyal, Aged About 24 Years R/o Pathalgaon, Post And Block Pathalgaon, District Jashpur Chhattisgarh.
32. Aditya Shukla, S/o Dr. Neeraj Shukla, Aged About 24 Years R/o Avanti Vihar, Sector - 2, S27, Raipur Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Agriculture, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh.

2. Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar Road, Raipur Chhattisgarh.

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For Appellants : Shri Ishan Verma, Advocate
 For Respondent/State : Shri Chandresh Shrivastava, Dy. Advocate General
 For Respondent/CGPSC : Shri Ashish Shrivastava, Advocate

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

Judgement on Board

Parth Prateem Sahu, Judge

24/11/2020

1. Challenge in this appeal is to the order dated 17/08/2020 passed by learned Single Judge in Writ Petition (S) No.3059 of 2020 dismissing the writ petition filed by the appellants wherein the appellants have sought for quashment of advertisement dated 10/06/2020 and in alternative, to consider the candidature of the writ petitioners for appointment subject to their clearing final semester examination of Post Graduation.
2. Respondent No.2 issued an advertisement on 10/06/2020 for appointment on the post of Assistant Direction (Agriculture), Agriculture Department. The last date for submission of application form by the interested candidates has been provided as 14/07/2020 till 11.59 PM. In the advertisement, important note has been mentioned wherein cut-off date for holding essential minimum qualification has been mentioned as on last date for submission of application. The appellants have aggrieved with the said clause, filed Writ Petition (S) No.3059 of 2020 with following reliefs :

10.1 That the Hon'ble Court may kindly be pleased to quash the advertisement dated 10.06.2020 (Annexure-P/1) issued by the

CGPSC for the post of Assistant Director of Agriculture.

OR

10.2 To kindly direct the respondents to extend the last date of submission of application form or in an alternative allow the final year/final semester students of M.Sc. (Agriculture) to participate in the selection process for selection/appointment on the post of Assistant Director of (Agriculture) & consider the candidature of the petitioners for appointment (subject to their clearing final semester exams of PG).

10.3 Any other interim relief deemed fit and just by this Hon'ble Court may also be granted in the interest of justice."

3. The aforementioned writ petition came up for hearing before the learned Single Judge on 17/08/2020 and learned Single Judge after hearing both the sides, dismissed the writ petition vide impugned order.
4. Shri Ishan Verma, learned counsel for the appellants/writ petitioners submits that appellants are students and they were prosecuting M.Sc. final semester course on the date of issuance of advertisement. Due to COVID-19 pandemic, examination of final semester of M.SC. i.e. second semester of second year could not be held within the schedule time i.e. in the month of April, therefore, appellants were not possessed of masters degree on the last date of submission of application form as prescribed in advertisement Annexure P/2 hence they became ineligible to submit application and deprived of their rights of participation. He further submits that learned Single Judge has not taken into consideration the peculiar

circumstances and situation of COVID-19 pandemic and dismissed the writ petition. It is contended that not holding of final examination of last semester of M.Sc. is not due to fault of appellants but for the reasons as stated above, hence, the date for acquiring minimum eligibility qualification could have been extended by respondent No.2. It is further contended that till date, examination in furtherance of advertisement dated 10/06/2020 is not conducted and appellants have acquired qualification as prescribed in the advertisement, therefore, respondent No.2 be directed to accept the application forms of the appellants/writ petitioners.

5. Per contra, Shri Chandresh Shrivastava, learned counsel representing the State/respondent No.1 submits that as per the documents placed along with writ petition, appellants have deposited their semester fees for second semester of second year in the month of January; the period of semester is of six months and as per the case of appellants themselves, they were not eligible to submit the application form for their recruitment on the advertised post as they were not holding the minimum essential qualification on the last date prescribed for submission of application form. Merely issuing an advertisement in the month of June cannot give any right to the appellants to participate in recruitment proceedings. Fixing of cut-off date is within the domain of the employer. There is no malafide on the part of the respondent-State in fixing the cut-off date for holding the minimum education qualification/eligibility criteria.
6. Shri Ashish Shrivastava, learned counsel representing the CGPSC/respondent No.2 submits that respondent No.2 is an agency of the State Government to conduct the examination for recruitment of the

employees based on the Rules framed by the State. He further submits that for acquiring the minimum qualification with regard to age, cut-off date has been prescribed in the advertisement. For holding the minimum qualification of Post Graduation Second Division, the cut-off date has been fixed to be the last date of submission of application form. Appellants on the last date of submission of application form were pursuing their studies of last semester of M.Sc., as such, they were not having Post Graduation Degree with them and only because of it, they cannot claim as a matter of right that cut-off date to be extended and they may be permitted to appear in the examination.

7. We have heard learned counsel for the respective parties and also perused the relevant documents.
8. The grievance raised by the appellants in this case is only with regard to fixing of cut-off date for holding essential qualification as mentioned in the advertisement issued by respondent No.2 for appointment on the post of Assistant Director (Agriculture).
9. The power to fix the cut-off date or age limit is always with the authority who controls the selection process. If for any reason, some of the persons like appellants have been deprived to participate in the selection process on account of fixing of cut-off date, that by itself will not make the action of respondent/employer arbitrary. The appellants have filed writ petition, as observed by learned Single Judge in its order, was after last date of submission of application forms as per advertisement. Here is not a case canvassed by the appellants that after advertisement, appellants will never get a chance to participate in the selection process on the post of

Assistant Director (Agriculture) or they have lost all their chances to get Government employment. Whenever cut-off date is prescribed for having the minimum eligibility criteria in any of the proceedings like appointment etc. then there will be always some persons their who will be other side and deprived of filing an application or participation. Merely because the appellants could have become eligible after few months of last date of submission of application form as prescribed in the advertisement issued by respondent No.2, no benefit can be extended or extending the last date of submission of application forms.

10. The Hon'ble Supreme Court in case of **Dr. Ami Lal Bhat v. State of Rajasthan and Others** reported in **(1997) 6 SCC 614** while considering the issue with regard to fixing of cut-off date for prescribing minimum or maximum age has held thus :

“5.In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable.....”

- 11.** In case of **State of Bihar and Others v. Ramjee Prasad and Others** reported in **(1990) 3 SCC 368**, Hon'ble Supreme Court while considering the cut-off date fixed for required experience has held thus :

“8. In the present case as pointed out earlier the past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for receipt of applications as January 31, January 1988. Those who had completed the required experience of three years by that date were, therefore, eligible to apply for the posts in question. The respondents and some of the intervenors who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the

reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g., the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It is not the case of any one that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational. We are, therefore, of the opinion that the High Court was clearly in error in striking down the Government's action of fixing the last date for receipt of applications as January 31, 1988 as arbitrary."

12. In case of **Council of Scientific and Industrial Research and Others v. Ramesh Chandra Agrawal and Other** reported in **(2009) 3 SCC 35** Hon'ble Supreme Court while considering the scheme for absorption of researchers working their laboratories and had fixed the cut-off date for acquiring the qualification of 15 years continuous research on 2nd May 1997 has held thus :

"29. "State" is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2.5.1997 was the date fixed as the cut-off date in terms of the scheme. The reason assigned therefor was that this was the date when this Court directed

the appellants to consider framing of a regularization scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr. Patwalia, by choosing 2.5.1997 as the cut-off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary.

30. The High Court, however, proceeded on the basis that the cut-off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut-off date."

13. In case of **Ramrao and Others v. All India Backward Class Bank Employees Welfare Association And Others** reported in (2004) 2 SCC 76 Hon'ble Supreme Court has considered the issue of fixing of cut-off date and held thus :

“31. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In *University Grants Commission v. Sadhana Chaudhary*, (1996) 10 SCC 536, it has been observed : (SCC p. 546, para 21)

"21It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: *Union of India v. Parameswaran Match Works*, (1975) 1 SCC 305, SCC at 310 : SCR at p. 579 and *Sushma Sharma (Dr) v. State of Rajasthan*, (1985) Supp SCC 45, SCC at 66 : SCR at p. 269.)"

32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employee seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would

suffer only because he comes within the wrong side of the cut-off date but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.”

- 14.** In case of **Hirandra Kumar v. High Court of Judicature at Allahabad and Another** reported in **(2019) SCC Online SC 254** Hon'ble Supreme Court while considering the claim of the petitioner therein who has challenged the cut-off date fixed for the age in qualification after considering its earlier decision on the issue for fixing of cut-off date has held thus :

“30.....We are adverting to this aspect only to emphasise that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A Court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the Rules.”

- 15.** If in the light of aforementioned law declared by Hon'ble Supreme Court, facts of instant case are taken into consideration, it would reveal that appellants have only raised a ground that they are final year students whose last semester started from January 2020, but due to COVID 19 Pandemic situations, their results could not be declared of the last semester till 14/7/2020 i.e. last date of submission of application form, hence, they could not acquire Post Graduation Degree with them and only

on that ground, they have sought for quashment of advertisement for appointment of Assistant Director (Agriculture) issued by respondent No.2. This unfavourable situation to the appellants itself will not be a ground to hold that fixation of cut-off date by respondent No.2 is unreasonable or lead to conclusion of violation of Article 14 of the Constitution of India. Writ under Article 226 of the Constitution of India can only be issued if the petitioner could able to show that their rights have been infringed or the action of the respondent authority is *per se* illegal or contrary to any law. Appellants failed to demonstrate any of the above ground.

- 16.** For the foregoing reasons, we do not find any merit in this appeal. It is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge