

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.2592 of 2010

Mochan Prasad Kashyap, Assistant Engineer, Office of the Engineer-in-Chief, Public Works Department, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Public Works Department, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Chhattisgarh Public Service Commission, through Secretary, Chhattisgarh Public Service Commission, Shanker Nagar Road, Raipur (C.G.)
3. Engineer in Chief, Public Works Department, Sirpur Bhawan, Raipur (C.G.)

---- Respondents

For Petitioner: Dr. N.K. Shukla, Senior Advocate with Mr. Shailendra Shukla and Ms. Rashika Soni, Advocates.

For Respondents No.1 and 3 / State: -
Mr. Avinash Singh, Panel Lawyer.

For Respondent No.2: -
Mr. Aman Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/07/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner was selected on the post of Assistant Engineer by the Chhattisgarh Public Service Commission and thereafter, he was appointed by the Chief Engineer, Public Works Department (PWD) by order dated 29-12-2008 and thereafter, he was issued show cause notice on 19-5-2010 for cancellation of his appointment and finding his reply not satisfactory, his services have been terminated holding that on the date of issuance of advertisement i.e. on 1-1-2007, he was

required to be aged about 38 years, whereas, on that date, his age was 39 years 5 months 26 days, as such, he is not eligible for the post of Assistant Engineer.

3. Reply has been filed opposing the writ petition holding that the petitioner was over aged on the date of issuance of advertisement and therefore he has rightly been terminated after hearing him.
4. Dr. N.K. Shukla, learned Senior Counsel appearing for the petitioner, would submit that show cause notice was issued to the petitioner on 19-5-2010, but it remained an empty formality, as the State Government did not advert to the reply filed by the petitioner in which the petitioner has clearly held that he is a member of Other Backward Classes (OBC) and entitled for age relaxation and also he was a departmental candidate and therefore he is entitled for age relaxation of five years. Non-consideration of reply filed by the petitioner has caused serious prejudice to him, as vide order Annexure P-20, his services have been terminated without considering the age relaxation holding him to be over aged on the date of advertisement dated 3-1-2007 / 1-1-2007.
5. Mr. Avinash Singh, learned Panel Lawyer appearing for the State / respondents No.1 and 3, would support the impugned order dated 28-5-2010 (Annexure P-20).
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. It is not in dispute that on the date of advertisement dated 3-1-2007 / 1-1-2007, the candidate appearing for the post of Assistant Engineer is not to be more than 38 years of age, but the petitioner was

admittedly, aged about 39 years 5 months 26 days as on that date, however, he was selected by the PSC and appointed by the Chief Engineer, PWD on 29-12-2008. When notice was issued to the petitioner on 19-5-2010, he filed reply Annexure P-19 clearly stating that he is a departmental candidate working in the Public Works Department and appeared in the examination after taking permission and being a member of OBC and being departmental candidate, he was entitled for age relaxation of 5 years and that is the reason why he has been permitted to appear in the examination, but that has not been considered by the State Government and directly, he was terminated.

8. A careful perusal would show that though the petitioner was issued notice to show cause which he replied clearly indicating that he is entitled for age relaxation for the post of Assistant Engineer being OBC candidate and being departmental candidate, that has not been considered and by which the notice dated 19-5-2010 has resulted into an empty formality of terminating the petitioner from the post of Assistant Engineer which he was holding pursuant to his selection and appointment. The State Government ought to have adverted to the age relaxation which the petitioner has claimed on two grounds, firstly, being OBC candidate and secondly, being departmental candidate as he was already working on the post of Sub Engineer, which the State Government has failed to consider and passed the impugned order of termination which cannot be sustained. Accordingly, the order dated 28-5-2010 (Annexure P-20) is set aside and the matter is remitted to the State Government to consider afresh as to whether the petitioner is entitled for age relaxation on two grounds being departmental candidate and being member of OBC and thereafter, pass a speaking

and reasoned order within two months from the date of receipt of a copy of this order. The petitioner is at liberty to file additional submission before the State Government within three weeks from today.

9. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma