

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**WPS No. 4282 of 2012**

Lakhan Lal Dubey S/o Lt. Shri Puran Prasad Dubey, Aged About 41 Years, R/o. 27 Kholi, Vikas Nagar, Bilaspur, C.G.

---- **Petitioner**

**Versus**

1. State of Chhattisgarh Through Secretary Health and Family Welfare Department, DKS Bhawan, Mantralaya, Raipur C.G.
2. Joint Director Health Services, Bilaspur -Division Regional Health and Family Welfare Training Centre, Sipat Road, Sarkanda Bilaspur C.G.
3. Chief Medical and Health Officer Bilaspur, District : Bilaspur, Chhattisgarh.
4. Block Medical Officer Community Health Centre, Bilha, Distt. Bilaspur C.G.

--- **Respondent**

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| For Petitioner | : Shri Harsh Mander Rastogi, Advocate on behalf of Shri Sandeep Singh, Advocate. |
| For State      | : Shri Vimlesh Bajpai, GA.                                                       |

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**Hon'ble Shri Justice Parth Prateem Sahu**  
**Order on Board**

**14/09/2021**

Heard.

1. Aggrieved by non-appointment on the post of 'Radiographer' in pursuance of advertisement dated 18.05.2012, petitioner approached this Court by this instant writ petition seeking for following relief :-

“10.1 To kindly direct the Respondent No.2/Joint Director Health Services, Bilaspur -Division, Bilaspur, (CG) to give additional 10 marks according to Rule -21 of the advertisement dated 18.05.12 to the petitioner. Copy of which is annexed as Annexure P-1.

10.2. To kindly direct the Respondent No.2/Joint Director to consider the case of the petitioner on the post of 'Radiographer' after adding such additional marks.

10.3 To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner.”

2. Learned counsel for the petitioner submits that petitioner was appointed on substantive post of 'Vehicle Driver' at Community Health Centre, Bilha, Distt Bilaspur. He underwent Para Medical Course from Pt. Jawahar Lal Nehru, Medical College, Raipur. Petitioner was ordered to operate X-ray

machine as Radiographer from 29.01.2004. Petitioner worked as 'X-ray Technician' from the year 2004 till 2012. Respondent No.2 issued an advertisement on 18.05.12 for appointment of 'Eye Assistant, Radiographer & Staff Nurse'. Pursuant to advertisement, after seeking permission from the Competent Authority, petitioner submitted his application form for the post of Radiographer. Upon completion of recruitment proceeding, petitioner could not find his name in select list of Radiographer, hence, he made representation to respondent No.2 on 03.09.12 which remained un-decided. Petitioner possesses all the requisite qualification as prescribed in the advertisement (Annexure P/1). He also possessed certificate of Para Medical Course of X-ray Technician. Under Clause 21 of advertisement, it is mentioned that candidates, who are working on contract prior to issuance of advertisement, shall be provided two additional marks of experience for each completed year, maximum upto 10 marks. Petitioner being an employee of Health Department and discharging duties of 'X-ray Technician' since 2004 continuously is entitled for 10 additional marks in view of Clause 22 of the advertisement, but the same is not awarded to him. It is further contended that in advertisement there is no mention that candidate claiming additional marks should hold permanent post. Petitioner should have been granted additional 10 marks and after adding 10 marks in total marks obtained by petitioner, his candidature ought to have been considered for the post of Radiographer.

3. Learned State Counsel submits that petitioner is not entitled for 10 additional marks of experience as mentioned under Clause 21, because petitioner was appointed on the post of 'Driver'. He further submits that petitioner has not submitted merit list cum-select list in support of his

pleadings. Last selected candidate in un-reserved category is Onkar Prasad Sahu who secured 73.6% marks. Petitioner secured 55.2% marks. Even if 10 additional marks as argued is added to marks obtained by petitioner then also total percentage of petitioner would only be 65.2%, which is less than marks secured by last (candidate) appointed under un-reserved category. He further submits that respondents have taken very specific plea in Para No.3 of their reply filed on 02.02.2013 about securing 55.2% of marks by petitioner, which was not controverted. Hence, he is not entitled for any relief as claimed by him.

4. Heard learned counsel for the parties and perused record.
5. Undisputably, substantive post of the petitioner, as pleaded in writ petition was of Driver. Clause 21 of the advertisement providing two additional marks for each completed year of service is for contract employees. As regards submissions made by learned counsel for respondents that even after award of 10 marks, as claimed by petitioner, total of marks secured by him would not be more than the marks secured by last selected candidate, the facts mentioned in reply filed by the State that even after award of 10 marks to petitioner, he will not come in merit list, above last selected candidate is not controverted by filing rejoinder to reply filed by State. Hence, it is considered to be admitted position. In view of undisputed facts that even if the petitioner's claim is accepted that he is entitle for 10 additional marks, he will not secure more marks than that of last selected candidate, I do not find any merit in this writ petition.
6. For the foregoing reasons, writ petition being devoid of substance is liable to be and is hereby dismissed.

**Sd/-**  
**(Parth Prateem Sahu)**  
 Judge