

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2640 of 2013**

Devendra Kumar Shukla, S/o Shri Ramesh Kumar Shukla, aged about 37 years, R/o Nutan Colony, Pendra, PO & PS: Pendra, District: Bilaspur, Chhattisgarh

-----Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur Chhattisgarh
2. Director, Health and Family Welfare Department, Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur Chhattisgarh
3. Joint Director, Health Services, Bilaspur Division, Bilaspur, Chhattisgarh

----- Respondents

And**Writ Petition (S) No.2642 of 2013**

Rajesh Kumar Tamboli, S/o Shri Ramfal Tamboli, Aged about 35 years, R/o Opp. Govt.School, Chantidih, Bilaspur, PO & PS : Sarkanda, Bilaspur, District: Bilaspur, Chhattisgarh

-----Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur Chhattisgarh
2. Director, Health and Family Welfare Department, Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur Chhattisgarh
3. Joint Director, Health Services, Bilaspur Division, Bilaspur, Chhattisgarh

----- Respondents

For Petitioners: Mr.Harshmander Rastogi, Advocate

For Respondents: Mr.Sunil Otvani, Additional Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06.10.2021

1. Since common question of law and fact are involved in these two writ petitions, they were clubbed & heard together and being disposed of by this common order.
2. By way these writ petitions, the petitioners seek writ of

mandamus directing the respondents to consider the case of the petitioners for the post of Lab Technician holding that they are eligible for the said post as per Chhattisgarh Public Health and Family Welfare Department Non-Ministerial (Related to the Directorate of Health Services) Class-III Service Recruitment Rules, 1989 (hereinafter called as 'Rules of 1989').

3. Mr. Harshmander Rastogi, learned counsel for the petitioners, would submit that essential qualifications prescribed for the post of Lab Technician as per advertisement are that the candidate must have passed Higher Secondary (10+2) examination in Science, Chemistry and Physics (Biology, Chemistry and Physics) and he must have one year training or diploma course in Pathology Laboratory Technology or Diploma in Medical Pathology, whereas the Rules of 1989 have been amended on 5.9.1997 and new Rule requires that the candidate must have passed 10+2 examination in Science discipline and as such, the advertisement dated 25.5.2012 (Annexure P-1) is contrary to the Rules of 1989. He would further submit that since the petitioners have passed 10+2 examination in Science discipline, therefore, they ought to have allowed to participate in interview and ought to have selected and granted appointment on the said post.

4. On the other hand, Mr. Sunil Otwani, learned Additional Advocate General for the respondents/State, would submit that the petitioners were not qualified as per

advertisement notice (Annexure P-1) and they did not pass 10+2 examination in Science, Chemistry and Physics (Biology, Chemistry & Physics), therefore, they were not allowed to participate in interview being not eligible as per advertisement issued. Therefore, their candidatures have rightly been rejected, as such, the writ petitions deserve to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. Recruitment notice issued vide Annexure P-1 dated 25.5.2012 clearly states that for the post of Lab Technician, the essential qualifications prescribed are that the candidate must have passed 10+2 examination in Science, Chemistry and Physics (Biology, Chemistry and Biology) and he must have one year training or Diploma course in Pathology Laboratory Technology or Diploma in Medical Pathology and waiting list was made operative for a period of one year. Admittedly and undisputedly, both the petitioners have passed 10+2 examination with subjects Physics, Chemistry and Mathematics, but not in Biology, Chemistry and Physics as required under the recruitment notice, therefore, they were held ineligible for the said post.
7. True it is that the Rules of 1989 undisputedly provides the essential qualifications for the post of Lab Technician that the candidate must have passed 10+2 in Science discipline, but advertisement dated 25.5.2012 (Annexure

P-1) provides for passing of 12th examination in Biology, Chemistry and Physics. Though to some extent, the advertisement is in violation of the Rules of 1989, but the petitioners did not call in question the advertisement right in time. The recruitment notice was issued on 25.5.2012 and validity of select list was one year and the petitioners have filed these writ petitions on 26.8.2013 i.e. after a period of one year from the date of issuance of advertisement for the said post and allowed the advertisement to be completed particularly they ought to have questioned the advertisement immediately after its publication as they were ineligible for the post of Lab Technician on that date, but they decided not to question the said advertisement and allowed the recruitment process to be completed and even they participated in it partially, the relief claimed in these writ petitions to consider their case for the said post being eligible. Once the advertisement prescribed the essential educational qualifications, they must fulfill those qualifications so prescribed, unless the same is challenged by the petitioners in duly constituted petition, which they failed to challenge. The petitioners did not have essential qualifications for the post of Lab Technician as per advertisement, therefore, their candidatures have rightly been rejected holding that they are not eligible for the post of Lab Technician.

8. I do not find any merit in these writ petitions, it deserve

to be and are hereby dismissed leaving the parties to bear their own cost(s).

9. At this stage, learned counsel for the petitioners would submit that liberty be granted to file fresh writ petitions.

10. Recruitment in question was made on 25.5.2012 and at this stage, recruitment has already been completed. Liberty can not be granted to the petitioners at this stage. Accordingly, liberty as prayed for is rejected.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-