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**(2011) 11 JH CK 0085**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 5640 of 2011**

Jagnnath Prasad Gupta

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

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**Date of Decision : 08-11-2011**

**Acts Referred:**

**Citation : (2011) 11 JH CK 0085**

**Hon'ble Judges : Dhirubhai Naranbhai Patel, J**

**Bench : Single Bench**

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## **Judgement**

D.N. Patel

1. Counsel for the petitioner submitted that the petitioner has applied for Class IV post in pursuance of a public advertisement, which is dated 25th July, 2009 at Annexure-3 to the memo of the present petition.

2. It is further submitted by the counsel for the petitioner that as the petitioner belongs to other backward class as per certificate at Annexure-1 to the memo of the present petition, the required age is 37 years as per clause-6 of the aforesaid public advertisement. Moreover, the petitioner is physically handicapped candidate having 50% disability and a certificate thereof is at Annexure-2 to the memo of the petition and as per Annexure-6 policy decision, age relaxation of five years is to be given to the physically handicapped persons.

3. Moreover, it is further submitted by the counsel for the petitioner that there ought to have been maximum 3% reservation of the physically handicapped persons under The Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and without considering these aspects of the matter, the order has been passed by the respondents at Annexure-5 that the petitioner is overage and therefore, the case of the present petitioner has been rejected and therefore, let this remark for the petitioner at Annexure-5 may be quashed and set aside and the matter may be remanded for afresh consideration by respondent no. 2 in accordance with law, within stipulated time

as given by this Court.

4. I have heard counsel for the respondents, who has submitted that the petitioner is overage candidate for Class IV post. His date of birth is 10th August, 1967 and therefore, he is more than 37 years and therefore, his candidature is rejected because of his overage and therefore, no illegality has been committed by the respondents in rejecting the case of the present petitioner, looking to the public advertisement at Annexure-3 to the memo of the present petition.

5. Having heard counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside the order at Annexure-5 to the memo of this writ petition so far as it affects the present petitioner, mainly for the following facts and reasons:

(i) The petitioner has applied for Class IV post in pursuance of public advertisement at Annexure-3, which is dated 25th July, 2009. As per this public advertisement, if the petitioner belongs to other backward class, maximum age permissible is 37 years as on the date of publication of the public advertisement.

(ii) It appears that the petitioner belongs to other backward class as per Annexure-1 certificate and therefore, as per public advertisement, the petitioner's maximum age permissible is 37 years as on the date of public advertisement.

(iii) From his certificate at Annexure-2 to the memo of the petition, it further appears that the petitioner is physically handicapped person. The certificate has been given by the Civil Surgeoncum Chief Medical Officer, Palamau dated 17th May, 2003 that he is physically handicapped person having 50% disability and as per Annexure-6 policy decision, age relaxation of five years is to be given to the physically handicapped persons. Thus, if the petitioner's date of birth is 10th August, 1967 and if 37 years plus 5 years is permissible age, then it cannot be said that the petitioner is overage candidate. This aspect of the matter has not been properly appreciated by the respondents-authorities.

(iv) Moreover, the date of public advertisement is dated 25th July, 2009 and therefore, if 37 years is subtracted from 25th July, 2009, it comes to 25th July, 1972. Further subtracting 5 years (after age relaxation for handicapped candidates), the cut off date comes to 25th July, 1967 whereas, the date of birth of the present petitioner is 10th August, 1967. Thus, the present petitioner is not an overage candidate as per Annexure-3 to be read with Annexure-6 policy decision taken by the respondents.

6. As a cumulative effect of the aforesaid facts and reasons, I hereby, quash and set aside Annexure-5 to the extent to which it applies to the present petitioner. Petitioner's application shall be treated within time and he is not an overage candidate. Keeping in mind this decision, I hereby, direct respondent no. 2 to take afresh decision for the selection of the present petitioner in accordance with law, rules, regulations, policies and enforceable Government orders, applicable to

the petitioner within a period of four weeks from the date of receipt of a copy of an order of this Court and if the decision is taken in favour of the petitioner, the benefits of the said decision will be extended upon the petitioner within further period of two weeks, after the decision is taken.

7. This writ petition is disposed of in view of the aforesaid directions and observations.