
(2018) 07 CHH CK 0306
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 6425 Of 2008

Kamal Narayan Rajak

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Citation : (2018) 07 CHH CK 0306

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : RS Baghel, Ashutosh Pandey, Pawan Shrivastava

Final Decision : Allowed

Judgement

P. Sam Koshy, J

1. The challenge in the present writ petition is to the action on the part of the respondents in putting the name of petitioner in the list of ineligible candidates from the recruitment process which was processed to fill up of the post of Shiksha Karmi Grade III (Arts).

2. The contention of the petitioner is that he has participated in the recruitment process for the post of Shiksha Karmi, Grade II, the advertisement for which was published on 14.01.2008. The petitioner belongs to Other Backward Category (in short, OBC) and he has also in his possession Green Card on account of his wife having undergone the family planning operation.

3. The contention of the petitioner is that the service condition of the petitioner are governed under rules which have been framed by the State i.e. Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 2007. So far as relaxation to the post of Shiksha Karmi is concerned, the age relaxation which have been provided by the State Govt. from time to time is also applicable so far as relaxation to the post of Shiksha Karmies are concerned. As per circular of the State Govt. the reserved category would be entitled for the age relaxation

of plus five years than the normal age prescribed. In addition to this, the green card holder also has been given additional benefit of two years so far as age relaxation is concerned.

4. The maximum sealing under the recruitment is that after clubbing of all the relaxation, the upper age limit should not cross more than 45 years as is evident from Annexure P/12 which is a circular of the State dated 02.06.2008. According to the petitioner, if he had been granted benefit of age relaxation of the category to which he belongs to i.e. OBC plus benefit of age relaxation on account of having green card, he would become eligible for being considered. At this juncture, counsel for the petitioner referred to Annexure P/9 which is a document showing list of ineligible candidates and serial No.8 is the name of the petitioner which shows that his candidature was refused only on the ground of his being over aged. Thus prayed for an appropriate direction in this regard to the respondents for considering his case and for removing his name from the list of ineligible candidates and at the same time grant appointment to the petitioner on the post of Shiksha Karmi Grade III.

5. Though the writ petition is of the year, 2008, till date the State has not filed its reply. The respondent No.3-Janpad Panchayat, Khairagarh has filed its reply and only ground raised is that of over age of the petitioner. The contention of respondent No.3 also is that they have already issued a letter to the respondent/State on 26.07.2008 seeking guidelines as to whether dual relaxation to the petitioner i.e. OBC category as also benefit of green card holder is permissible or not, to which there is no response till date.

6. Having heard the contentions on either side and on perusal of records, it would be relevant at this juncture to refer to the recent decision of this High Court in case of Raj Kumar Tiwari & Ors. Vs. State of Chhattisgarh & Ors., 2014 (4)CGLJ16 wherein in paragraphs 4 & 5 it has been held as under :

"4. In the matter of Dr. (Major) Thakur Ajit Singh and Others Vs. State of Chhattisgarh and Others decided on 27.09.2010 this court has held that a person having undergone sterilization operation or a green card holder is entitled for all the benefits under the circular dated 30.11.1989. It has been stated at the bar that this judgment has been affirmed by Division Bench of this Court.

5. For the foregoing, this court is of the opinion that the petitioner was entitled for age relaxation upto two years in the maximum age limit. Accordingly, the respondents No.2&3 are directed to reprocess the petitioner's candidature after giving him age relaxation upto two years and thereafter if the petitioner is fully qualified and eligible and any person who is less meritorious than the petitioner has been offered appointment on the post of Shiksha Karmi Grade-I, the petitioner's case shall also be considered for appointment. The needful shall be done within a period of two months from the date of production of certified copy of this order before the competent authority."

7. In the instant case also there is no denial from any of the respondents so far

as the petitioner not been granted a green card holder. Neither is there any dispute so far as the petitioner not belonging to the reserved category of OBC community. So far as circular of the State dated 02.06.2008 is concerned, it clearly stipulates that upper age limit after all relaxations are taking into consideration is fixed at 45 years. If on the date when the case of the petitioner was considered for appointment, the petitioner was 41 years plus few months old. Then, if the petitioner would had been granted the relaxation of his being green card holder of plus two years, he would be eligible of participating in the recruitment process up to the age 42 years. There is no dispute that on the date of his being considered, he was less than 42 years.

8. Given the said factual matrix of the case and also taking note of the judgment of this court in Raj Kumar (Supra) which itself has been based on the earlier judgment of this court in case of Dr. (Major) Thakur Ajit Singh & Ors. Vs. State of Chhattisgarh, decided in the year, 2010, this court is of the opinion that declaring the petitioner to be ineligible candidate on the ground of over age is bad in law. The same deserves to be and is hereby set aside. It is ordered that the petitioner, for all practical purposes, has to be treated as eligible candidate and the respondents shall take necessary steps to ensure that the petitioner is granted an order of appointment, in case if he fulfills all other eligibility criteria and merits, within a period of 90 days from today.