

(2009) 11 CHH CK 0007

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 3809 of 2007, 3202, 3203, 3204, 3841 and 4294 of 2008

Richa Mishra

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 309

Citation : (2010) 1 CGLJ 437

Hon'ble Judges : Satish K. Agnihotn, J

Bench : Division Bench

Advocate : Ranbir Singh Marhas and Prateek Sharma, for the Appellant; Yashwant Singh Tahkur, Dy. A.G. for State, B.D. Guru, for Public Service Commission and Vinay Pandey, for Selected Candidates, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotn, J.—Since W.P.(S) No. 3809 of 2007 and W.P.(S) Nos. 3202, 3203, 3204, 3841 & 4294 of 2008 involve the same question of law and, as such, they are being disposed of by this common order.

2. By these writ petitions, the Petitioners seek to quash the select/merit list dated 17th May, 2007 issued by the Chhattisgarh Public Service Commission (for short "the PSC") on the ground that it is violative of the Chhattisgarh Police Executive (Gazetted) Services Recruitment and Promotion Rules, 2005 (for short "the Rules, 2005") and further a direction to the Respondent authorities to issue a fresh select/merit list in accordance with the Rules, 2005 for the post of Deputy Superintendent of Police (for short "Dy. SP ") with all consequential benefits.

3. The facts, in nutshell, as projected by the Petitioners, are that the Respondent/ the PSC issued an advertisement on 27th August, 2005 (Annexure-P/3 in W.P. (S) No. 3809/2007) for selection of various civil services and police services posts though State Services Examination - 2005 (for short "the Examination - 2005 ") as per State Services Examination Rules, 2003 (for short "the Rules,

2003"). However, for the post of Dy.SP the provisions of the Chhattisgarh Police Executive (Gazetted) Services Recruitment and Promotion Rules, 2000 (for short "the Rules, 2000") were made applicable in the Examination 2005 in spite of the fact that the Rules, 2005 came into force w.e.f. 28th June, 2005 i.e. much prior to the issuance of advertisement-in-dispute dated 27th August, 2005.

4. Under the Rules, 2000 for appointment on the post of Dy.SP, HQ, Training, JNPA, PTC, PTS, Security, Lines etc.), Area Superintendent and Assistant Commandant, the minimum age limit was 20 years and the maximum age limit was 25 years whereas under the existing Rules, 2005, the minimum age limit is 21 years and the maximum age limit is 28 years. For the age purpose, in the advertisement dated 27th August, 2005 the cut off date was fixed as 1st January. 2006.

5. According to the Petitioners, in pursuance of the advertisement they made applications, participated in the selection process and successfully selected, but at the time of issuance of select/merit list their names have not been considered for their appointment on the post of Dy.SP on the ground of over-age i.e. more than 25 years, because as per the advertisement and as per the Rules, 2000. the Petitioners have attained the age of more than 25 years.

6. According to the Petitioner in W.P. (S) No. 3809 of 2007, even she has not been given the benefit of age relaxation for appointment on the post of Dy.SP in spite of the fact that she is working in the Excise Department of State of Chhattisgarh, wherein she is entitled to age relaxation for 8 years. Thus, these writ petitions.

7. Shri Marhas and Shri Sharma, learned Counsel appearing for the Petitioners, would submit that the select/merit list dated 17th May, 2007 issued by the PSC is illegal, arbitrary and contrary to the Rules, 2005. As per the Rules, 2005 the maximum age limit for the post of Dy.SP is 28 years whereas the Petitioners are below 28 years of age as on 1st January, 2006. Learned Counsel would further submit that the Petitioners cannot suffer for the mistake of the Respondent authorities in applying the Rules, 2000 in place of the existing Rules, 2005 for the post of Dy. SP in Examination 2005.

8. On the other hand, Shri Thakur, learned Dy. Advocate General appearing for the State, would submit that the first requisition was sent by the Home Department to the PSC on 27th September, 2004 (Annexure ? R1/4 in W.P. (S) No. 3 809 of 2007) and in which it was clearly mentioned to follow the Rules, 2000. Even in the second revised requisition dated 22nd March, 2005 (Annexure ? R1/5 in W.P. (S) No. 3809 of 2007) it was also mentioned to follow the Rules, 2000. Thereafter, only the Rules, 2005 came into existence i.e. w.e.f. 28th June, 2005. Only in the third requisition dated 18th April, 2006 (Annexure? R1/6 in W.P. (S) No. 3809 of 2007) it has been mentioned to follow the Rules, 2005, however, before the said requisitions the advertisement has been published on 27th August, 2005.

9. So far as the contention of the Petitioner in W.P. (S) No. 3809 of 2007 with regard to non-grant of age relaxation benefit is concerned, Shri Thakur, learned Dy. Advocate General appearing for the State, would submit that the Petitioner-Richa Mishra came into Government service on 24th January, 2006 whereas the advertisement for the post of Dy.SP was issued on 27th August, 2005 and the cut off date for age relaxation was 1st January, 2006, therefore, the Petitioner cannot derive any benefit from her being employed in the Government department.

10. Shri Guru, learned Counsel appearing for the PSC, would submit that the PSC acted only in accordance with the requisition made by the Home Department and in the said requisitions it has been clearly instructed the PSC to proceed in accordance with the Rules, 2000 and on the basis of said instructions the advertisement dated 27th August, 2005 has been issued. After issuance of the select/merit list, appointment orders were issued and so many candidates have joined in their respective place of posting and they are undergoing treatment at Police Academy. Without joining the necessary persons as parties, the writ petitions deserve to be dismissed on account of non-joinder of necessary parties. If the select list is quashed, it may affect the entire selection process and may cause heavy loss to the public exchequer. Learned Counsel would further submit that during the examination process the Petitioners have not at all given their preference for the post of Dy.SP and without giving preference they cannot claim that they should be selected for the post of Dy.SP. The Petitioners have appeared in the selection process on the basis of criteria laid down in the advertisement dated 27th August, 2005 and, as such, after having appeared and participated in the selection process without raising any objection, the Petitioners cannot challenge the same at a subsequent stage.

11. Shri Pandey, learned Counsel appearing for the Selected candidates, would submit that if the merit is re-shuffled and selected candidates are offered post other than the post of Dy.SP then it would be a double jeopardy. Presently they are holding the post of class II and after re-shuffling if they are offered class III post it would be detrimental, without any fault on their part; hence the rights of the selected candidates may be protected. The Petitioners without impleading all the selected candidates as necessary party-Respondents filed these writ petition, therefore, the same may be dismissal for want of necessary parties.

12. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

13. In W.P. (S) No. 3809 of 2007 filed by Richa Mishra, who claims relaxation in age, the Respondent No. 3, a selected candidate was impleaded as a party/Respondent and he was represented through counsel through out. During the course of hearing on 23rd March, 2009 this Court passed the following order:

Prims facie it appeal's that the entire selection process for appointment on the post of Deputy Superintendent of Police is de hors the existing Rules i.e. the

Rules, 2005, as such violative of the constitutional scheme of employment, as enshrined in Articles 14 and 16 of the Constitution of India.

In view of the foregoing, the State Government is directed to issue notice within a period of one week and intimate all the selected candidates, indicating that their selection is under challenge in W.P. (S) No. 3 809/2007 Richa Mishra v. State of Chhattisgarh and Ors. W.P. (S) No. 3065/2008 Ahilya Mishra v. State of Chhattisgarh and Ors. W.P. (S) No. 3202/2008 Sumitpal Singh Saluja v. State of Chhattisgarh and Ors. W.P. (S) No. 3203/2008 Sandeep Agrawal v. State of Chhattisgarh and Ors. W.P. (S) No. 3204/2008 Mona Dubey v. State of Chhattisgarh and Ors. W.P. (S) No. 3841/2008 Devendra Kumar Chaudhary v. State of Chhattisgarh and Ors. W.P. (S) No. 4294/2008 Mukesh Prasad Kushvaha v. State of Chhattisgarh and Ors. W.P. (S) No. 4384/2008 Vikas Goswami v. State of Chhattisgarh and Ors. W.P. (S) No. 4385/2008 Devcharan Patel v. State of Chhattisgarh and Ors. and W.P. (S) No. 4334/2008 Vishwas Rao Muskey v. State of Chhattisgarh and Ors. It may further be clarified that if they wish to make a representation or want to file response, they may do so within a period of two weeks.

14. After publication of notice and intimation by the State Government some of the successful Dy.SP.s appeared through their counsel and filed their return, as is evident from the order sheet dated 29 April, 2009. One successful candidate filed an application 11th May, 2009 for impleading him as a necessary party. Thereafter, 17 more selected candidates for the post of Dy.SP, pursuant to the impugned advertisement, filed reply on 21st June, 2009 stating that if the select list is disturbed they would suffer irreparably loss, as they were not allowed to appear in the subsequent examination. Thus, it cannot be held that the successful candidates, who are likely to be affected, are not represented in the matter.

15. The impugned advertisement No. 04/2005 dated 27th August, 2005 was published informing that the last date of filing of application form was 30th September, 2005 and the preliminary examination was to be held on 6th November, 2005 and inviting applications for various civil posts, including Dy.SP, District Commandant Nagar Sena, Home (Police) Department. In case of Dy.SP, it was provided that pursuant to memo dated 23rd April, 2003 of the General Administration Department and memo dated 3rd June, 2003 of the Home Department, State of Chhattisgarh for appointment on the post of Dy.SP, the minimum age limit was 20 years and the maximum age limit was 25 years. It was further provided that the age limit has been prescribed in accordance with the Rules, 2000.

16. There is no quarrel over the proposition of law that normal rule is that the vacancy prior to the new Rules would be governed by the old Rules and not by the new Rules See pr.30 Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, , However, in the present case Rules, 2005 was made in exercise of powers conferred by the proviso to Article 309 of the Constitution of

India, in supersession of the previous rules in the subject and, as such, after 28th June 2005, Rules, 2000 were not in existence, as the same was superseded by the Rules, 2005. The impugned advertisement was issued on 27th August, 2005. Thus, the relevant date for vacancy was the date of publication of the impugned advertisement dated 27th August, 2005.

17. After the Rules, 2005 came into force w.e.f. 28th June, 2005, the applicability of the Rules, 2000 in the impugned advertisement dated 27th August, 2005 was illegal and unconstitutional. In Schedule III to the Rules, 2005 for appointment on the post of Dy.SP, Hqrs., Training, Police Academy, PTC, PTS, Security, Line etc.), Area Supdt, and Asstt. Commandant, the minimum age limit prescribed is 21 years and the maximum age limit is 28 years. Educational qualification under both the Rules is same. It is evident that the impugned advertisement was published under the service rules of the post for which the selection was made for appointment. There is no issue in respect of appointment on other civil services and, as such, there is no discussion about other service conditions. In case of appointment on the post of Dy.SP, it is established that as per the Rules, 2005, the minimum age limit prescribed is 21 years and the maximum age limit is 28 years.

18. The first requisition was sent by the Home Department to the PSC on 27th September, 2004 and second requisition was sent on 22nd March, 2005 specifying the relevant Rules i.e. the Rules, 2000, whereby requisition was sent for appointment for 26 Dy.SP.s. In the subsequent requisition dated 18th April, 2006 it has been mentioned to follow the Rules, 2005, whereas the impugned advertisement was issued on 27th August, 2005 and, as such, the third requisition has no relevance. Thus, it is established that the entire selection process for appointment on the post of Dy.SP was done on the basis of old Rules i.e. the Rules, 2000, which was superseded/repealed on 28th June, 2005.

19. In *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , the Supreme Court observed as under:

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee....

Thus, the appointment of the successful candidates on the post of Dy.SP would not confer any right on them.

20. It is well established principle of law that recruitment process, as is well known, must be commensurate with the statute or the statutory rule operating in

the field. See pr. 10 Union of India (UOI) and Others Vs. B. Valluvan and Others, .

21. In the present petitions, it is apparent that the impugned advertisement was issued on 27th August, 2005 supressing the Rules, 2005 which was came into force prior to the issuance of the impugned advertisement and, as such, the appointments made on the post of Dy.SP, in accordance with the non-existent Rules, 2000, is illegal and unconstitutional.

22. The Supreme Court in State of M.P. and Others Vs. Lalit Kumar Verma, observed as under:

12. The question which, thus, arises for consideration, would be is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is "State" within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas they may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

23. Further in Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, , the Supreme Court observed as under:

34. It is not a case where appointment was irregular. If an appointment is irregular the same can be regularized. The Court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal it is nonest in the eye of the law, which renders the appointment to be a nullity.

24. In Rajasthan Public Service Commission (supra), also the Supreme Court observed that recruitment to a post must be made strictly in terms of the Rules operating in the field. It is not a case where appointment was irregular.

25. In Dhananjay Malik and Ors. v. State of Uttaranchal and Ors. AIR 2008 SCW 2158 , relied on by the learned Counsel appearing for the PSC, the Supreme Court relying on Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , observed that if the Petitioners participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules.

26. In the cases on hand, there is no question of other interpretation of Rules or amendment of the Rules during the process of appointment, but the selection was made on the basis of non-existent Rules, 2000, which stood superseded/ repealed by the Rules, 2005 on 28th June, 2005. Thus, the ratio laid down by the Supreme Court in Dhananjay Malik (supra) and Madan Lal (supra), may not be applicable to the facts of the present petitions.

27. In the present cases, the application forms made by the Petitioners were

accepted by the PSC where admittedly they were within the age limit, if the Rules, 2005 are made applicable. Indisputably, in the Rules, 2000 the maximum age limit was 25 years, but the same was not in existence on the date of issuance of the impugned advertisement. Thus, the Petitioners might be under the impression that since the Rules, 2005 were in existence at that point of time and under the Rules, 2005 the maximum age limit was 28 years and all of them were within the age limit of 28 years, while making application for selection and appointment, thereon. On being successful in the preliminary examination, the Petitioners participated in the written examination as well as in the interview. Thus, this is not a case where the Petitioners appeared in the selection process knowing fully well that the selection process was made in non-existing Rules. Thus, they ought to have been considered for appointment on the post of Dy.SP also keeping in view their merit in the selection process.

28. W.P. (S) No. 3809 of 2007 was filed by the Petitioner on 29th June, 2007 and notice was issued by this Court on 4th July, 2007. The authorities, during pendency of the writ petition issued the appointment orders. Even, in W.R (S) No. 3202 of 2008 this Court passed an order dated 26th June, 2008 as under:

Having regard to the facts of the case, it is directed that all the appointments on the post of Deputy Superintendent of Police shall be subject to the final outcome of the proceedings pending in this writ petition.

29. So far as W.P. (S) No. 3 809 of 2007 is concerned, wherein the Petitioner claimed the age relaxation on the basis of the fact that she was in Government job. Admittedly, the Petitioner entered into the Government job pursuant to the appointment order dated 24th January, 2006 i.e. after the cut off date i.e. 1st January, 2006. Thus, she may not be entitled to the benefit of age relaxation. Even otherwise, she has not completed the basic requirement of six months service before the cut off date as provided in the Rules, 2005. Therefore, she was rightly not granted the benefit of age relaxation on account of being a Government servant.

30. It was combined civil service examination for appointment including on the post of Dy.SP. The Petitioners participated in the preliminary examination and on being successful in the preliminary examination they were permitted to participate in the main examination as well as in the interview, though the impugned advertisement was on the basis of non-existing Rules. Since the Rules, 2005 were in existence that would be applicable in case of all candidates. The entire list may not be cancelled at this stage, however, the selection list for appointment on the post of Dy.SP may be prepared afresh on the basis of merit. If the Petitioners are found successful in the merit list on the basis of their option, for appointment on the post of Dy.SP, they shall be granted appointment, in accordance with law.

31. In view of foregoing and for the reasons stated hereinabove:

The relief claimed by the Petitioner in W.P. (S) No. 3 809 of 2007 Richa Mishra v.

State of Chhattisgarh and Ors. with regard to benefit of age relaxation on the ground of Government job is rejected, as she entered into the Government job on 24th January, 2006 i.e. after the cut off date.

The select/merit list dated 17th May, 2007 issued by the PSC for appointment on the post of Dy.SP is quashed and the PSC is directed to prepare a fresh selection list for appointment on the post of Dy.SP on the basis of merit treating the Petitioners to be within age, if they were within the maximum age limit of 28 years on the cut off date under the Rules, 2005. If the Petitioners are found successful in the merit list)for appointment on the post of Dy.SP they shall be granted appointment, in accordance with law.

32. In the result, the writ petitions are allowed to the extent indicated above. No order as to costs.