

**(2012) 08 CHH CK 0054**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition S No. 6333 of 2010**

Smt Mithlesh Sahu

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

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**Date of Decision :** 27-08-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2012) 08 CHH CK 0054

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Manoj Paranjpe, for the Appellant; Y.S. Thakur D.A.G. for the State No. 1 to 4 and Shri Rakesh Thakur Advocate for the Respondent No. 5, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Hon"ble Shri Satish K Agnihotri, J.

Writ Petition Under Article 226 of The Constitution of India

1. By this petition, the petitioner seeks quashing of the appointment order dated 08th April, 2010 issued by the respondent No. 3 in favour of the respondent No. 5 and further, to reconsider the case of the petitioner for appointment on the post of ECG Technician in Chhattisgarh Institute of Medical Sciences, Bilaspur (for short `the CIMS`) without specifying as to whether the petitioner seeks appointment in Medical College or in the Hospital as both the appointments were governed separately. The facts, in brief, are that the Dean, CIMS issued an advertisement on 09th September, 2008 inviting applications for several posts including 01 post of ECG technician under the unreserved category for appointment in the Medical College. Clause 3 of the selection process, inter alia, provided that the candidates having experience in the Medical College would be granted one mark for each year, upto maximum, five marks. One day before the said date, i.e. on 08th September, 2008, the Medical Superintendent, CIMS, had

also issued an advertisement 03 post of ECG Technician, for appointment in the Hospital, 02 posts under the unreserved category and 01 post under the scheduled tribe category, having the same terms, conditions and qualifications. Subsequently, by amended advertisement (Annexure P/3) published on 26th September, 2008, the Dean, CIMS Bilaspur, amended the original advertisement dated 09.09.2008, and clarified that the award of one mark for experience of one year and maximum five marks, means that the marks would be awarded to the employees working in CIMS on contract/daily wages basis on the respective post on which he was working.

2. The petitioner made application for selection and appointment on the post of ECG Technician pursuant to both the advertisements, one issued by the Medical College and one by the Hospital. Since there was only one post of ECG Technician in Medical College, the petitioner could not be selected in the merit list (Annexure P/11). In the said merit list, the respondent No. 5 was selected being at serial No. 1, and in the merit list prepared for the Hospital (Annexure R/5-2), the petitioner was at serial No. 7. The respondent No. 5 was at serial No. 1 of the said merit list and Kamlesh Chandrakar and Bharti Chandrakar were at serial No. 2 and 3, respectively. The merit list in respect of Medical College was published on 23.03.2010 and in case of Hospital, the same was published almost at the same time. In the merit list of Medical College, one Kamlesh Kumar Chandrakar was at serial No. 2 and Maitri Vishwakarma was at serial No.3. The petitioner was at serial No. 4. Kamlesh Kumar Chandrakar was also in the unreserved category and he was above the petitioner, in the merit list. It is worth mentioning that Kamlesh Kumar Chandrakar, though he was in the unreserved category, has not been impleaded as party respondent, in this petition.

3. Shri Paranjpe, learned counsel appearing for the petitioner would submit that in the meeting dated 16th July, 2008 (Annexure P/19) of Committee of the CIMS, presided over by the Departmental Minister, it was decided to award five marks to all the candidates who were working in CIMS only. Thus, granting marks for experience to the candidates who had worked in other medical college, is contrary to the resolution as well as the amended notification published on 26th September, 2008 (Annexure P/3). Thus, the appointment of the respondent No. 5 be quashed and the petitioner, being the employee of CIMS, be considered for grant of marks under the experience and thereafter, the respondents authorities be directed to appoint the petitioner on the post of ECG Technician.

4. On the other hand, Shri Y.S.Thakur, learned counsel appearing for the State/ respondent No. 1 to 4 would submit that two separate advertisements were issued for selection and appointment on the post of ECG Technician, one by the Medical College and one by the Hospital, as is evident from two advertisements (Annexure P/2 colly). There was no condition to grant marks for the experience to the employees working in CIMS only. Even granting marks on account of experience, maximum upto 5 marks to the employees working in CIMS alone, as the same would be unconstitutional and illegal. Shri Thakur would further submit

that there is no bias, irregularity in the selection process and the merit list has been prepared strictly in accordance with the rules, separately for Medical College and the Hospital as is clear from Annexure P/11 and Annexure R/5-2. This petition has no merit and the same deserves to be dismissed.

5. Shri Rakesh Thakur, learned counsel appearing for the respondent No. 5 would submit that the interpretation of the petitioner is contrary to the clear provision of the advertisement as well as the amended advertisement which was made applicable only to the advertisement issued for appointment in the Medical College by the Dean, CIMS. So far as appointment in Hospital is concerned, there was no amendment. Even if the resolution has been passed, though it was never passed, would not be available to the petitioner in support of his case.

6. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. It is indisputable that two separate advertisements were published in the newspapers on different dates, one was published in Dainik Bhaskar for appointment in the Medical College, issued by the Dean, CIMS and the other, in Nav Bharat, for appointment in the Hospital, by the Medical Superintendent, CIMS. The amended advertisement dated 26th September, 2008 clearly provides that the amendment was only for the Medical College, and not for others as the first para of the amended advertisement reads as under:

(Vernacular matter deleted)

8. The Medical Superintendent, CIMS had also issued amended advertisement dated 08th September, 2008 (Annexure R/5-1) wherein some changes were made in the qualification, but not in the clause which provides for grant of marks on the basis of working in Medical College. Thus, the contention of the petitioner that the respondent No. 5 was not eligible to be appointed as she had experience of working in Dr. Bhimrao Ambedkar Memorial Hospital, Raipur, is misplaced.

9. The resolution of the meeting held on 16th July, 2008 also does not provide for grant of experience to the persons who were working in CIMS alone. The resolution provides for grant of additional five marks to the candidates who had worked on contract basis in CIMS. The relevant clause reads as under:

(Vernacular matter deleted)

10. It is well settled that once the process of selection has started pursuant to the advertisement, no clarification/modification in the terms and conditions of the advertisement can be added or incorporated, except in cases where statutory rule provides for certain terms, conditions, qualification and experience, which could not be placed in the advertisement issued earlier. This is not a case of the petitioner that there was any statutory provision which was left out and that was amended subsequently. The select committee had also decided to ignore the subsequent amendment.

11. In *Madan Mohan Sharma & Another v. State of Rajasthan & Others*<sup>1</sup>, the Supreme Court held as under:

11....Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.

12. As per the circular which was obtaining at the time when the advertisement was issued dated 24-7- 1995, the criteria for selection to the post of teacher Grade III was Secondary Examination though this was changed during the pendency of the advertisement. Subsequent amendment of the Rules which was prospective cannot be made retrospective so as to make the selection on the basis of the Rules which were subsequently amended. If this was to be done, then the only course open was to recall Advertisement No. 1 of 1996 and to issue fresh advertisement according to the Rules which had come into force. Secondly, this was not done and erroneously the authorities made the amended Rules applicable and proceeded with the selection which resulted into litigation and ultimately Radhey Shyam Sharma succeeded in that litigation and it was held that the selection should be made as per Secondary Examination marks, the criteria which was prevalent at the time when the advertisement was issued.

12. In view of the above and for the reasons stated hereinabove, this petition being bereft of merit, is dismissed. No order as to costs.