

(2012) 07 CHH CK 0055

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 2969 of 2010

Suraj Prasad Gupta

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : (2012) 4 CGBCLJ 152 : (2013) 1 MPHT 1 : (2012) 3 MPJR 77

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Anup Mazumdar and Mr. Om P. Sahu, for the Appellant; Y.S. Thakur, Dy. A.G. with Mr. P.K. Bhaduri, Panel Lawyer for State and Mr. P.P. Sahu, Advocate Zila Panchayat, Durg, for the Respondent

Final Decision : Allowed

Judgement

S.K. Agnihotri, J.—Heard learned counsel appearing for the parties. The batch of petitions viz. WP (S) Nos. 2969, 3065, 3068 & 4208 of 2010, involve common facts and common question of law and, as such, they are being considered and decided by this common order. For the purpose of disposal, the facts in W.P. (S) No. 3065 of 2010 are set out herein.

2. By these petitions, the petitioners seek a direction to the respondents to grant the benefit of age relaxation to the petitioners for appointment on the post of Shiksha Karmi on the basis of circular dated 30-11-1989, issued by the, then, State of Madhya Pradesh, Directorate of Public Health & Family Welfare.

3. The indisputable facts, in brief, as projected by the petitioners, for disposal of these petitions, are that the respondent authorities issued advertisement for appointment on the posts of Shiksha Karmi Grade-I, II & III. In response to the said advertisement, the petitioners applied for selection to the said post. According to the petitioners, in the earlier examination process, the age relaxation of two years was granted to the green card holders i.e. who have undergone family planning operation.

4. The spouses of the petitioners had undergone family planning operation and, as such, they are entitled to get the benefit of age relaxation of two years, as has been granted to the green card holders. However, after completing the selection process, the petitioners were not selected on the ground of being over-age by not considering the age relaxation to the petitioners, on the ground of the fact that they were entitled to two years age relaxation, as aforesaid. Being aggrieved, the petitioners raised their objections before the respondent authorities, but the same does not fructify. In the meantime, the counseling has been conducted and the persons who have secured less marks than the petitioners were selected. Even the petitioners submitted several representations before the higher authorities of the State, but they have also not considered the case of the petitioners. Thus, these petitions.

5. Shri Majumdar & Shri O.P. Sahu, learned counsel appearing for the respective petitioners, would submit that the petitioners are entitled to the benefit of age relaxation on the ground that their spouses had undergone the family planning sterilization operation. In fact, the petitioners are entitled to the benefit, as provided in the circular dated 30-1-1989, as the said circular has neither been altered, amended nor rescinded.

6. On the other hand, Shri Thakur, learned Dy. Advocate General appearing with Shri P.K. Bhaduri, Panel Lawyer for the State would submit that the green card facility is not available in the State of Chhattisgarh.

7. Shri Sahu, learned Counsel appearing for the Zila Panchayat, Durg supported the arguments advanced by the learned counsel appearing for the State.

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

9. The State Government, by circular dated 31-10-2002, issued by the General Administration Department of the State of Chhattisgarh, clearly stated that all the circulars issued prior to 31-10-2000 by the undivided State of Madhya Pradesh would be applicable in the State of Chhattisgarh until the same is cancelled or amended by the State Government.

10. The communication dated 18-8-2011 is of no assistance, as this is a simple letter of Under Secretary, Department of Health & Family Welfare, Government of Chhattisgarh to the General Administration Department wherein it is stated that green card scheme would not be applicable in the State of Chhattisgarh. Therefore, it cannot be held that this communications is either a circular or modification of the circular dated 31-10-2000 issued by the General Administration Department wherein it was clearly stated that all the circulars including the circular dated 30-11-1989 issued prior to 31-10-2000 by the State of Madhya Pradesh would be applicable in the State of Chhattisgarh, as held by this Court in Dr. (Major) Thakur Ajit Singh & Others v. State of Chhattisgarh & Others, W.P. (C) No. 7222 of 2009 (decided on 27.9.2010).

11. Indisputably, the spouses of the petitioners herein have undergone the sterilization operation for which the petitioners are entitled to the green card. Since the petitioners may not have the green card holders, however, they cannot be deprived of the benefits, which flow from the circular dated 30-11-1989.

12. This Court in Dr. (Major) Thakur Ajit Singh (supra) observed as under:

7. The State Government by circular dated 31st October, 2002, issued by the General Administration Department of the State of Chhattisgarh, clearly stated that all the circulars issued prior to 31.10.2000 by the undivided State of Madhya Pradesh would be applicable in the State of Chhattisgarh until the same is cancelled or amended by the State Government. No document has been produced by the State Government to indicate that the circular dated 31.11.1989 has even been cancelled by the State of Chhattisgarh. The State Government, vide letter dated 29.2.2008 (Annexure-R/1) addressed to the Joint Director, Medical Education, reiterated the same stand as issued by circular dated 31.10.2002.

13. The circular dated 30-11-1989 (Annexure-P/5) reads as under:

14. In the circular dated 30-11-1989, it is clearly provided that if a woman has performed sterilization operation after two children, she would be given the green card. The fact that the wives of the petitioners have undergone sterilization operation after two children is not in dispute. Thus, even if the green card was not given, which she was entitled to, the petitioners are equally entitled to the reliefs as provided under the aforesaid circular. Out of several reliefs, one is two years age relaxation, preference in reservation and 5% concession in interview. The petitioners are claiming age relaxation on account of the above-stated facts, which they are entitled to.

15. In view of the above-stated facts and circumstances of the case, if the petitioners, after granting two years age relaxation, come within the prescribed age limit; the petitioners are to be allowed for participation in the selection process for appointment, thereon, in accordance with law and on its own merits. As an upshot, the writ petitions are allowed to the extent indicated above, leaving the parties to bear their own costs.