

(2016) 02 CHH CK 0022
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 293 of 2016

Vireshwar Prasad Mire

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 226, Article 234, Article 309

Citation : (2016) 02 CHH CK 0022

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Mateen Siddiqui, Advocate, for the Appellant; Y.S. Thakur, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein has filed this writ petition seeking a writ, commanding the Public Service Commission to implement circular dated 17.12.2015 to the advertisement dated 16.12.2015 issued for selection for the post of Civil Judge (Entry Level).

2. The Chhattisgarh Public Service Commission has issued advertisement dated 16.12.2015 inviting applications from eligible candidates (Law graduates from recognized University) for selection and appointment to the post of Civil Judge (Entry Level).

3. Case of the petitioner is that State Government by its circular dated 17.12.2015 has taken a policy decision that in direct recruitment of the State Services, permanent residents of the Chhattisgarh shall be given one time age relaxation of five years for the year-2016. It is further case of the petitioner that the petitioner being a permanent resident of the State of Chhattisgarh is entitled for further age relaxation of five years for the post of Civil Judge (Entry Level) which has been advertized on 16.12.2015. Therefore, appropriate writ be issued

to the Public Service Commission to grant maximum age relaxation to the petitioner up to the age of 45 years.

4. Mr. Mateen Siddiqui, learned counsel appearing for the petitioner, would submit that petitioner being a Schedule Caste category candidate and being the permanent resident of Chhattisgarh is entitled for maximum age relaxation up to 45 years and additionally, petitioner is also entitled for relaxation in maximum age limit for the number of years he has served as Shiksha Karmi, as per circular of the State Government, and as the petitioner has served for 3 years as Shiksha Karmi, therefore he is entitled for 3 years age relaxation in maximum age limit. He would further submit that due to arbitrary non-implementation of mandatory provision/circular, legitimate right of the petitioner has been taken away by the respondent, and the petitioner is unable to submit his application for the post of Civil Judge (Entry Level) which has resulted in violation of his right guaranteed under Articles 14 and 16 of the Constitution of India.

5. I have heard learned counsel for the petitioner on the question of admission and given thoughtful consideration to the submissions made herein above and also gone through the record with utmost circumspection.

6. In exercise of powers conferred by Article 234 read with the proviso to Article 309 of the Constitution of India, to regulate the Recruitment and Service Condition of Members of Lower Judicial Service, the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (hereinafter called as "Rules of 2006") have been framed. Admittedly and undisputedly, the subject recruitment for the post of Civil Judge (Entry Level) is governed by Rules of 2006. Sub-rule (1)(b) of Rule-7 provides for minimum and maximum age of the candidate applying for the post of Civil Judge (Entry Level) and also the relaxation available in the upper age limit, which states as under:-

"7. Eligibility.- (1) No person shall be eligible for appointment to posts in category (a) of sub-rule (1) of Rule 3 unless, he or she:-

(a)

(b) has completed the age of 21 years and has not completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited:

Provided that upper age limit shall be relaxable upto a maximum limit of 5 years for candidates belonging to Scheduled Caste, Scheduled Tribe or Other Backward Classes:

Provided further that the upper age limit shall be relaxable upto a maximum limit of 10 years in case of women candidates belonging to each category namely Scheduled Caste, Scheduled Tribe or Other Backward Classes and General:

Provided further that the upper age limit for Government servant whether permanent or temporary, shall be relaxable upto further 3 years in addition to

the relaxations available as above.

1 Provided further that where a candidate who was eligible in age to apply for appointment in any calendar year in which vacancies were notified as per Rule 5-A and if for some reason recruitment proceeding could not be initiated, such candidate shall be eligible in age to appear in the following recruitment proceedings."

A careful reading of the above-stated rule would clearly show that a candidate shall not be eligible for appointment for the post of Civil Judge (Entry Level) unless he has completed age of 21 years and has not completed the age of 35 years on the 1st day of January of the next following year in which applications for appointment are invited subject to relaxation of age in favour of ST/SC/OBC/ Women/Government Servant as per proviso appended with the rule.

7. The executive instruction/circular relied upon by the petitioner has been issued by State Government on 17.12.2015 whereas, the Rules of 2006 came into force on 7th April, 2006 and even the subject advertisement has been issued on 16.12.2015 and there is no stipulation with regard to age relaxation as claimed by the petitioner in the Rules of 2006 and in absence of stipulation in the Rules of 2006 framed in exercise of proviso to Article 309 of the Constitution of India, the subject recruitment/including relaxation in age has to be granted as per Rules of 2006 and the statutory rule's having the primacy and operating in field, the executive instruction issued on 17.12.2015 granting age relaxation to the residents of Chhattisgarh is inconsequential and insignificant.

8. It is settled law that once statutory rule's have been made, the appointment shall be only in accordance with the rule s. In the matter of J & K Public Service Commission and others v. Dr. Narinder Mohan and others , (1994) 2 SCC 630, Their Lordships of the Supreme Court have held as under:-

"7. ...It is settled law that once statutory rule's have been made, the appointment shall be only in accordance with the rule s. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law...."

9. It is equally well settled principle of law that the rule's prevailing at the time of notification for inviting applications for recruitment would be applicable for selection of candidates. In a decision reported in the matter of Marripati Nagaraja and others v. Government of Andhra Pradesh and others , (2007) 11 SCC 522, it has been held by Their Lordships of the Supreme Court as under:-

"14. It is now a well-settled principle of law that the rule's which would be applicable for selecting the candidates would be the one which were prevailing at the time of the notification. It is also equally well settled that the State may, subject to constitutional limitations, amend the rule with retrospective effect...."

10. In an extremely recent judgment in the matter of Prakash Chand Meena and others v. State of Rajasthan and Others , (2015) 8 SCC 484 similar proposition

has been struck by the Supreme Court by authoritatively holding as under:-

"...In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by the learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement and as per Rules existing when the recruitment process began...."

11. Pointing out distinction between conditions of recruitment and the condition of service, it has been held by the Supreme Court in the matter of Syed Khalid Rizvi v. Union of India and others , 1993 Supp (3) SCC 575 that eligibility to the recruitment is conditions of recruitment and not conditions of service. Relaxation cannot be made to the conditions of eligibility. Paragraph 33 of the report states as under:-

"The condition precedent, therefore, is that there should be an appointment to the service in accordance with rule's and by operation of the rule, undue hardship has been caused,.... It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to rule s. The former cannot be relaxed."

12. Thus, on the basis of above-stated analysis, this Court is of the considered opinion that subject recruitment to the post of Civil Judge (Entry Level) is governed by Rules of 2006 and any candidate applying for the said post has to be eligible in terms of age as per rule's applicable and any relaxation in age granted by State Government by way of executive instruction i.e. Annexures P-5 and P-6 (relaxation in age limit for the permanent resident of Chhattisgarh) would not be applicable to the subject recruitment for the post of Civil Judge (Entry Level) and therefore the contention raised by learned counsel for the petitioner deserves to be rejected.

13. There is an additional reason for not entertaining the instant writ petition. The petitioner is claiming to be the eligible candidate for the post of Civil Judge (Entry Level) for which the essential educational qualification is that candidate must have degree of law from the recognized University. Therefore, the petitioner has to plead and establish that he has requisite eligibility qualification of law graduation in order to be eligible candidate to seek age relaxation by maintaining this writ petition. A careful perusal of the petition would show that petitioner has not even pleaded in his petition that he holds degree of law i.e. essential educational qualification to apply for the post of Civil Judge (Entry Level), as such, petitioner not being an eligible candidate for the post of Civil Judge (Entry Level) is not an aggrieved person and therefore, is not entitled to maintain this writ petition. [See Dr. Umakant Saran v. State of Bihar and others , (1973) 1 SCC 485 - paragraphs 10 and 15]

14. As a fallout and consequence of the above-stated discussion, the writ petition deserves to be and is accordingly dismissed in limine without notice to the other side with no cost(s).

1-inserted vide notification No. 7120/D-2517/XXI-B/CG/07 dated 14.08.2007