



2026:CGHC:17803

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1383 of 2021

1 - Ramesh Kumar Banjare S/o Nand Kumar Banjare, Aged About 26 Years R/o Narra, Post Barhi, Tahsil And District Balod (Chhattisgarh), District : Balod, Chhattisgarh

... Petitioner

versus

1 - State Of Chhattisgarh Through Secretary, Geology And Mining Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh

2 - Director, Directorate, Geology And Mining Department, Indrawati Bhawan, Nawa Raipur, Atal Nagar, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh

3 - Ku. Prerana Sen, D/o Niranjan Singh Sen, R/o C/o Anupam Jofer, Near New Bus Stand, Kankalin Para, Kanker (Chhattisgarh), District : Kanker, Chhattisgarh

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For Petitioner	:	Mr. C. Jayant K. Rao, Advocate
For State	:	Mr. Vinay Pandey, Dy. A.G.
For respondent No.3	:	Mr. Raza Ali, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

20.04.2026

1. The petitioner has filed this petition seeking following relief (s) :

“10.1. That, this Hon'ble Court may kindly be pleased to set-aside the order dated 10.08.2018 (Annexure P/1) in respect to respondent No. 3 and also set-aside the objection letter dated 16.07.2018 (Annexure P/6).

10.2. That, this Hon'ble Court may kindly be pleased to consider the petitioner for the post of Assistant Chemist.

10.3. That, this Hon'ble Court may kindly be

pleased to grant any other relief as it may deems fit and appropriate.

10.4. Cost of the petition.”

2. The facts in brief are that an advertisement for the post of Assistant Chemist was published on 30.06.2017. The required eligibility criteria was a Post-Graduate Degree in Organic Chemistry or Analytical Chemistry. Preference would be given to the candidates who possess B.Sc. Degree with Geology subject. There were total 3 posts. The petitioner, respondent No.3 and other eligible candidates applied for the said post. The petitioner possesses M.Sc. Degree in Organic Science and B.Sc. Degree with Geology subject. Respondent No.3 possesses M.Sc. Degree in Analytical Chemistry but she did not have B.Sc. Degree with Geology subject. A merit list was prepared pursuant to marks obtained by the candidates in Post-Graduation. Name of the petitioner appears at Serial No.10 as he secured 75.88 marks, whereas, name of respondent No.3 was at Serial No.2 and she secured 82.40 marks. The objections were invited by the Selection Committee on 25.04.2018 and the petitioner raised specific objection with regard to consideration of candidature of respondent No.3 as she was not possessing B.Sc. Degree with Geology subject. The objection of the petitioner was rejected vide order dated 16.07.2018 and said document is a part of return filed by the State. An offer of appointment was issued in favour of respondent No.3 as she was a meritorious candidate and her name appeared at Serial No.2 in the merit list. At present, she is working on the post of Assistant Chemist under respondent No.2. The petitioner

has challenged the appointment of respondent No.3 and further, decision taken by the Selection Committee on his objection dated 16.07.2018.

3. Mr. Rao, learned counsel appearing for the petitioner would submit that in the advertisement as well as in the Recruitment Rules, it is prescribed that weightage would be given to the candidate who possesses B.Sc. Degree with Geology subject. He would further submit that the petitioner is a Graduate with Geology subject but he has not been given preference by the Selection Committee and such action of respondent No.2 is bad in law. He would contend that respondent No.3 is a Post-Graduate in Analytical Chemistry and she did not possess B.Sc. Degree with Geology Subject, therefore, respondents No.1 & 2 should have extended weightage to the petitioner over respondent No.3 while considering his candidature. In support of his contentions, he has placed reliance upon the judgment passed in the matter of **Krishna Rai (Dead) Through Legal Representatives and others Vs. Banaras Hindu University through Registrar and Others**, reported in **2022(8) SCC 713**. He would pray to allow this petition.
4. On the other hand, Mr. Vinay Pandey, learned Deputy Advocate General appearing for the State would oppose the submissions. He would submit that the petitioner approached this Court after 2 ½ years from the date of issuance of order of appointment in favour of respondent No.3 and the delay part has not been explained properly by the petitioner. He would further submit that the objection raised by the petitioner was rejected on the ground

that if two candidates secure equal position in recruitment, in such a situation, weightage would be extended to the candidate who possesses B.Sc. Degree with Geology subject and the approach of respondent authorities is proper.

5. Mr. Raza Ali, Advocate appearing for respondent No.3 would submit that respondent No.3 was meritorious to the petitioner and this fact is evident from the merit list prepared by the Selection Committee. He would further submit that where two candidates secure equal position, in such a situation, the question of weightage arises. It is also contended by Mr. Ali that respondent No.3 possesses essential qualification for the post of Assistant Chemist, therefore, her name was considered. He would refer to the judgments passed by the Hon'ble Supreme Court in the matter of **Maharashtra Public Service Commission Vs. Sandeep Shriram Warade and others**, reported in **2019(6) SCC 362** and in the matter of **State of U.P. and another Vs. Om Prakash and others**, reported in **2006(6) SCC 474**.
6. Heard the learned counsel appearing for the parties and perused the documents placed on record.
7. Admittedly, the required qualification for the post of Assistant Chemist was a Post-Graduate Degree in Organic Chemistry or Analytical Chemistry. The preference was to be given to the Graduate Candidate with Geology subject. The petitioner has passed Msc. in Organic Science and B.Sc. Degree with Geology subject whereas, respondent No.3 has passed M.Sc. in Analytical Chemistry but she does not have B.Sc. Degree with Geology subject. A merit list was

prepared taking into consideration the marks obtained by the candidates in Post-Graduation and same is part of return which shows that the petitioner secured 75.88 marks whereas respondent No.3 secured 82.40 marks and thus, respondent No.3 was meritorious to the petitioner.

8. With regard to preferential right, this issue has been considered by the Hon'ble Supreme Court in the matter of **Sandeep Shriram Warade(supra)**, wherein, it is held that "preference" mentioned in the advertisement cannot be interpreted to mean that merely because a candidate may have had the requisite experience of testing in a research and development laboratory he/she possessed the essential eligibility and had a preferential right to be considered for appointment. Relevant para 13 is reproduced herein below :

"13.The preference clause in Clause 4.7 only means that if a candidate with the required degree qualification and practical experience in the manufacturing and testing of drugs for stipulated period of years has an additional desirable attribute of a research experience in a research laboratory, other things being equal, preference could be given to such a candidate. The term "preference" mentioned in the advertisement cannot be interpreted to mean that merely because a candidate may have had the requisite experience of testing in a research and development laboratory he/she possessed the essential eligibility and had a preferential right to be considered for appointment. "

9. In the matter of **Om Prakash (supra)**, the Hon'ble Supreme Court held that the word preference would mean that a candidate must possess required minimum educational qualification to compete with other candidates. It is further clarified that when the claims of all candidates who are eligible and who possess the requisite educational qualification are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may

be taken as a tilting factor. The relevant para 19 is reproduced herein below :

“19. In the instant case, the requisite academic qualification for the post of Medical Officer of Homeopathy as prescribed in the advertisement was a recognized degree in Homeopathy or a recognized diploma in Homeopathy. A proviso has been added that preference will be given to degree holders. This would mean that a recognized diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word preference would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-à-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability.”

10. In the matter of **Krishna Rai(supra)** cited by learned counsel for the petitioner, it is held that the Selection criteria cannot be laid down by the Selection Board/Selection Committee unless specifically authorized.

Para 31 is reproduced herein below :

“31. On the contrary, what we find is that, in the case of **Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, 1995(6) SCC 1**, it has been held that the suitability criteria is to be laid down by the rule making authority and that the selection criteria cannot be laid down by the Selection Board/Selection Committee unless specifically authorized. In the present case, firstly, there was no authorization to the Board of Examiners to lay down the selection criteria and further there was clear violation of the suitability criteria laid down by the rule making authority. Paragraph nos. 31, 32, 33, 34, 35 and 36 of the said judgment are reproduced hereunder:

“31. Now, power to make rules regulating the conditions of service of persons appointed on Govt. Posts is available to the Governor of the State under the Proviso to Article 309 and it was in exercise of this power that the present rules were made. If the statutory Rules, in a given case, have not been made, either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government under Article 73 and the State Government under Article 162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. (See: Sant Ram Sharma V. State of Rajasthan).

32. In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which

suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homoeopathic Medical Officers, as the basis for determining their suitability.

33. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the rules made under Article 309. It is basically the function of the Rule making authority to provide the basis for selection. this Court in *State of Andhra Pradesh and Anr. v. V. Sadanandam and Ors* observed as under: (SCC pp. 583-84, para 17):

“We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to either zone being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment of the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive.” (Emphasis supplied).

34. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In *P.K. Ramachandra Iyer and Ors. v. Union of India and Ors.* (SCC pp. 180 81 para 44) , it was observed :

“44.....By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm”.

35. Similarly, in *Umesh Chandra Shukla Etc. v. Union of India and Ors.* it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in *Durgacharan Misra v. State of Orissa and Ors* and the limitation of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the vivavoce test.

36. It may be pointed out that rule making function under Article 309 is legislative and not executive as was laid down by this Court in *B.S. Yadav and Ors. v. State of Haryana and Ors.* For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection

as it would amount to legislating a rule of selection.”

11. In the present case, criteria for selection was laid down in advertisement and said criteria was never changed or modified by the Selection Committee rather it was properly applied in the given facts and circumstances of the case. Thus, the facts of cited case are distinguishable from facts of case in hand.

12. The Hon'ble Supreme Court in the matter of **Sandeep Shriram Warade (supra) and Om Prakash (supra)** clearly held that when one or more of candidates are found equally positioned, then only the additional qualification may be taken as a tilting factor.

13. In the present case, respondent No.3 had essential qualification; she was a meritorious and therefore, there was no question to provide preference to the petitioner. The decision taken by the respondent authorities appears to be proper.

14. In the result, this petition fails and is hereby **dismissed**.

Sd/-

(Rakesh Mohan Pandey)
Judge

Rekha