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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6075 of 2024

1 - Yogeshwar Chandram S/o Rambhajan Chandram Aged About 34 Years R/o Village Chhote Gantuli, Tahsil Sarangarh, District Sarangarh-Bilaigarh, C.G. --- **Petitioner(s)**

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar Naya Raipur, District Raipur, C.G.
 2 - Director Directorate Department Of Health, Indrawati Bhawan, Atal Nagar Naya Raipur, District Raipur, C.G.
 3 - Chief Medical And Health Officer Raigarh, District Raigarh, C.G. --- **Respondents**

WPS No. 6160 of 2024

1 - Premraj Vishal S/o Rajkumar Vishal Aged About 33 Years R/o Village Chikhali, Tahsil Pithora, District Mahasamund Chhattisgarh --- **Petitioner(s)**

Versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur District Raipur Chhattisgarh

2 - Director Directorate Department Of Health Indrawati Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh

3 - Chief Medical And Health Officer Raigarh District Raigarh Chhattisgarh

... Respondents

(Cause title taken from Case Information System)

For Petitioners	:	Mr. T.K. Jha & Mr. Tapan Kumar Chandra, Advocates.
For State	:	Mr. Vivek Sharma, Addl. A.G. & Mr. S.S.Choubey, P.L.

Hon'ble Shri Justice Amitendra Kishore Prasad

Order on Board

07.03.2025

1. This bunch of writ petitions involves identical issues, therefore, in order to decide the same, they are being clubbed together, heard together and are being decided by this common order.
2. In both the writ petitions, almost same reliefs have been claimed by the petitioners. For the sake of brevity, the reliefs sought by the petitioners in WPS No.6075/2024 (Yogeshwar Chandram vs. Statse of Chhattisgarh & Others) has been taken into consideration which are quoted hereinbelow:-

"10.1 That, this Hon'ble Court may kindly be

pleased to allow the petition and set aside the impugned notification dated 04.09.2024 (Annexure-P/6) and direct the respondent to allow the petitioner to participate in selection process.

10.2 That, this Hon'ble Court may kindly be pleased to grant any other relief/relief's in favour of the petitioner, which the Hon'ble Court deemed fit & just in the facts and circumstances of the case, including awarding of the costs to the petitioner.”

3. Brief facts of the case are that Chief Medical & Health Officer Raigarh (Respondent No. 3) issued an advertisement inviting online applications for various post including the post of Pharmacist Grade- II, Dresser Grade- I, & II, RHO (Male) and RHO (Female) and Dark Room Assistant by 10.06.2022. In the said advertisement, in para 12, it is specifically mentioned that how the marks have to be given as per Education qualification and Experience and Experience During the Covid-19 Period. The applications were invited from the qualified persons from 20.06.2022 to 11.07.2022 in online mode. The petitioners had applied for the post of Pharmacist Grade- II on 09.07.2022. On 04.05.2023, the respondent No. 3 issued corrigendum for Amended Advertisement and stated in para (C) that the experience mark, included Covid-19 bonus marks is not more than 15 marks. Thereafter, on 23.07.2024, the respondent No. 3 issued a notification and list of candidates who have applied for

the various post. In the list published on 23.07.2024 by the respondent No. 3, the petitioners were given 15 marks for work experience but they were not given 10 marks for Covid-19 bonus marks and in this regard, the petitioners moved an application on 28.07.2024 for giving them the bonus marks. Thereafter, on 04.09.2024 respondent No. 3 issued notification about the claim moved by the petitioners and other candidates. In this list the claim of the petitioners was not considered and his claim was rejected and stated that "पूर्व में ही 15 अंक प्रदान किया गया है।". The rejection of candidature of the petitioners is arbitrary and illegal, hence these petitions.

4. Mr. T.K. Jha & Mr. Tapan Kumar Chandra, learned counsel for the petitioners submit that as per para 12 of the advertisement, it is clearly stated that 15 marks are for the work experience and 10 bonus marks are for Covid-19, but petitioners were not given Covid-19 bonus marks. It is stated that the rejection of candidature of the petitioners on the ground that was not mentioned in the advertisement amounts to change of rule during the selection process which has been held to be bad in law. It is also stated that in some of the Districts (like Kanker, Narayanpur, Bijapur and Kondagaon), the work experience marks and Covid-19 bonus marks were given separately, therefore, the action of respondent authorities is illegal. It is further submitted that the respondent authorities have failed to appreciate the experience

certificate filed by the petitioners which is proof of their experience and the petitioners have also made representation against rejection of their candidature, which has also not been considered by the respondent authorities. It is also submitted that the subsequent amended corrigendum dated 04.05.2023 was issued according to which only 15 marks have been awarded for experience as well as for rendering service during Covid-19, as such, the impugned corrigendum dated 04.05.2023 is per se illegal and requires to be quashed. Accordingly, the present petitions deserve to be allowed.

5. On the other hand, Mr. Vivek Sharma, Addl. A.G. & Mr. S.S. Choubey, P.L. opposes the submission made by learned counsel for the petitioners and submit that inadvertently 15+10 marks have been directed for experience and for rendering service during Covid 19 which cannot be granted because it will exceed the total 100 marks and, as such, corrigendum dated 04.05.2023 has rightly been issued by the State Government. They submit that once the petitioners have been participated in the selection proceeding, they cannot challenge the same. The petitions are not at all liable to be allowed and the decision of the State Government cannot be interfered with, as prima facie, in earlier advertisement in correctly marks have been assigned which exceeds 100 marks, as such, the petition is liable to be dismissed in threshold.

6. Learned State counsel further places reliance in the matter of

Bhim Bali Yadav & Others vs. High Court of Chhattisgarh &

Another passed by this Court in **WPS No.1496/2022** decided on 07.02.2025 and submits that the Hon'ble Division Bench of this Court has dealt with the same issue and the relevant paras are quoted hereinbelow:-

“10. Since the petitioners consciously participated in the selection process, they cannot be allowed to turn around and question the method of selection and its outcome. It is the trite law that by having taken part in the process of selection with full knowledge that the recruitment was being made under the Rules, the candidates had waived their right to question the advertisement or the methodology adopted by the employer for making selection. (See: Union of India and Others v S. Vinod Kumar and Others”).

11. The Rules, 2017 have been framed in which the provision of written and skill test were introduced for sole purpose of selecting suitable candidates so that the work of Registry may run smoothly and efficiently. Even the amendments in the Rules have been carried out time to time looking to the requirement. No plausible ground has been made by the petitioners to struck down the amended criteria for promotion carried out in the Rules, 2017 and in the entire petition no ground has been made out or raised to the effect that the amendment is ultra vires to any of the provisions of the Constitution of India.

12. The statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for

holding a particular post. It is only the authority concerned which can take ultimate decision therefor. This Court while exercising the jurisdiction under Article 226 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.

13. *The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The Court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive rewriting of the advertisement/notification. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement/notification and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement/notification or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement/notification contrary to the plain language of the same.*

14. *It is noteworthy to mention here that prescription of educational qualification for a post is the sole*

prerogative of the employer and merely because a candidate is not having that qualification for the said post and he/she is finding difficult to appear in the selection process for the particular post for want of desired educational qualification, the educational qualification so prescribed in the relevant rules cannot be struck down unless it is manifestly arbitrary or discriminatory or violative to the provisions of the Constitution of India. The petitioners have failed to demonstrate that the impugned notice and the Rules are either violative of the provisions of the Constitution of India or violative of Article 14/16 of the Constitution of India or it suffers from manifest arbitrariness and it has not been shown to be discriminatory.”

7. I have heard learned counsel for parties and perused the documents appended with both the writ petitions.
8. The Hon'ble Supreme Court in the matter of **Union of India & Others vs. S. Vinod Kumar & Others** reported in **(2007) 8 SCC 100** has dealt with likewise issue and the relevant paras are quoted hereinbelow:-

“9. The fact that the posts of Gangmen were required to be filled up by persons being physically strong and healthy is not denied or disputed. That would not, however, mean that the Railway Administration could not have fixed the other criteria therefor. As indicated hereinbefore, even the educational qualification was prescribed. The mode and manner of selection, as noticed hereinbefore, was laid down in the aforementioned

notification dated 09.05.1998. It was also laid down that the candidates concerned would not only must procure the requisite educational qualification but must also pass the written test followed by an interview as also the physical test.

10. *It may be true that the cut-off marks at 71 had been fixed for unreserved candidates on the basis that marks obtained by the last candidate, i.e. 240th candidate, calculated at 50% of the 480 candidates, but concededly 56 marks were fixed for Other Backward Classes candidates and 20 marks were fixed for Scheduled Caste and Scheduled Tribe candidates. Only because the cut-off marks at 71 had been fixed on the basis of the aforementioned criteria, the same by itself, in our opinion, would not mean that no cut-off mark had been fixed. The fact that the Railway Administration intended to fix the cut-off mark for the purpose of filling up the vacancies in respect of the general category as also reserved category candidates is evident from the fact that different cut-off marks were fixed for different categories of candidates. We are, therefore, unable to accept the submission of the learned counsel that the cut-off marks fixed was wholly arbitrary so as to offend the principles of equality enshrined under [Article 14](#) of the Constitution of India. The power of the employer to fix the cut-off marks is neither denied nor disputed. If the cut-off mark was fixed on a rational basis, no exception thereto can be taken.*

11. *Respondents herein had approached the Tribunal in the year 2000. The Tribunal directed the appellants to consider this case of lowering of the*

cut-off marks. An inference, therefore, can be drawn from the aforementioned fact that the main prayer of the respondents was that the cut-off marks should be lowered. Appellants admittedly did not agree to the said proposal. The action of the appellants impugned before the Tribunal must, therefore, be considered from the view point as to whether it had the requisite jurisdiction to do so. The Tribunal upheld the contention of the appellant. Once it is held that the appellants had the requisite jurisdiction to fix the cut-off marks, the necessary corollary thereof would be that it could not be directed to lower the same. It is trite that it is for the employer or the expert body to determine the cut-off marks. The court while exercising its power of judicial review would not ordinarily intermeddle therewith. The jurisdiction of the court, in this behalf, is limited. The cut-off marks fixed will depend upon the importance of the subject for the post in question.....

13. *Even assuming that the appellants should have filled up the unfilled vacancies meant for the reserved category candidates by the general candidates, but then for the said purpose, the general candidates were required to fulfill the eligibility clause including the cut-off marks fixed therefor. Respondents admittedly did not do so. The High Court, in our opinion, committed a serious error in directing the appellants to lower the cut-off marks. The cut-off mark 20 was fixed for the Scheduled Caste and Schedule Tribe candidates. The same was not meant to be applied to the general category candidates. The jurisdiction of the*

appellants to fix different cut-off marks for different category of candidates has never been questioned and in that view of the matter only because the Railway Board had issued a circular as far back as in the year 1976 to fill up the vacancies by unreserved candidates in the event the reserved category of candidates was not available therefor, in our opinion, the same would not mean that irrespective of the qualification and performance of general category candidates they were entitled to be appointed.

14. *It is now a well-settled principle of law that even wait-listed candidates have no legal right to be appointed.....*

15. *It was for the appellant to decide as to whether the posts were to be de-reserved or carried forwarded.....*

16. *In any view of the matter, the respondents appeared in a competitive examination. The posts advertised were public posts. They did not have any vested right for appointment. It is well-known that even selected candidates do not have legal right in this behalf...*

17. *In [Pitta Naveen Kumar and Others v. Raja Narasaiah Zangiti and Others](#) (2006) 10 SCC 261], this Court observed :*

"The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of [Article 16](#) of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual

candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise".

18. *It is also well-settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same....."*

9. From perusal of the record, admittedly it appears that in the advertisement dated 10.06.2022, certain directions have been issued for considering the 10-15 marks for experience and 10 marks for rendering services during Covid-19 period, however total marks which has to be awarded is only 100 marks and, as such, it exceeds the total consideration of marks and the said fact was brought into the knowledge of the concerned authorities i.e. CHMO, Raigarh and thereafter, the corrigendum letter dated 04.05.2023 has been issued, which cannot be said to be faulted with.

10. Considering the facts and circumstances of the case and further considering the law laid down by the Hon'ble Supreme Court in the matter of **Union of India (supra)**, I do not consider present to be fit cases to interfere under Article 226 of the Constitution of India.

11. Accordingly, the present petitions, being devoid of merits

are liable to be and are hereby **dismissed**.

No order as to cost(s).

Sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha