

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 7569 of 2011

1. Anoop Mishra S/O M.P. Mishra, aged about 26 years, R/O Kapil Nagar Sarkanda, Bilaspur, Dist. Bilaspur CG.

---- Petitioner

Versus

1. State Of Chhattisgarh, through the Secretary, Department of Higher Education, D.K.S. Bhawan, Raipur CG.
2. The Commissioner Directorate Higher Education Raipur CG
3. The Additional Director Higher Education Department Directorate Raipur CG

---- Respondents

For Petitioner	Shri Prateek Sharma, Advocate
For Respondent/State	Shri Bhaskar Payasi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

02/07/2015

1. Petitioner has preferred this writ petition seeking direction to the respondents to provide him joining on the post of Lab Technician pursuant to the appointment order dated 14.06.2010.

2. The pertinent facts, necessary for appreciating the issue brought before this Court, are that the Directorate of Higher Education advertised for recruitment of 82 vacancies of Lab Technicians, amongst other posts, in the month of February 2009. The petitioner participated in the said selection process and was placed in the waiting list. Since candidates finding place in the merit list did not join, the waiting list was operated and the petitioner, who was at Serial No.4 in the waiting list, was also issued the appointment letter on 14.06.2010, however, the said appointment order never reached the petitioner.
3. When the petitioner became aware about his appointment, he moved an application before the Public Relation Officer, Post Master General, Head Post Office, Bilaspur as to whether the said post office received any communication sent to him by the Commissioner, Higher Education Department, Chhattisgarh. The petitioner also moved a representation before the Commissioner, Higher Education on 21.04.2011 and requested for appointment on the post. The petitioner moved another application before the Joint Director, Higher Education under the Right to Information Act, 2005 (for short 'the RTI Act') seeking information about the medium through which the appointment order was sent to the petitioner. When required information was not supplied to him, the petitioner

moved an application before the Chief Information Commissioner on 14.06.2011. He also moved a representation before the Commissioner, Higher Education on 11-11-2011 seeking appointment as well as an enquiry on the issue. As late as on 05.08.2011, the petitioner was supplied a copy of the appointment order dated 14.06.2010, in which his name appears at Serial No.4.

4. Shri Sharma, learned counsel appearing for the petitioner, would submit that it is unimaginable that a person who is appointed to a post would keep quiet and would not join on the post. When confronted with the objection regarding delay and laches, Shri Sharma would submit that the sooner the petitioner became aware about issuance of appointment order from the waiting list, he started chasing the authorities by moving representations and applications under the RTI Act, however, the concerned authority did not oblige the petitioner for which he had to move before the Chief Information Commissioner and it is only at this stage the petitioner was served with the copy of the appointment order, therefore, in the circumstances, the petition does not suffer from delay and laches.
5. Having heard learned counsel for the parties, this Court is of the considered opinion that this petition filed before this Court in the month of December, 2011 does not suffer from delay and laches

because copy of the appointment order was served on the petitioner in the month of August 2011 and prior to that the petitioner has been approaching the authorities by moving representations and applications under the RTI Act. A petition to be dismissed on the ground of delay and laches, the conduct of the petitioner has to be examined as to whether he is keeping quiet on the issue and arose out of slumber after long lapse of time without making any effort during the period. Even otherwise, the petitioner has approached the Court within few months of becoming aware that the waiting list has been acted upon.

6. Reverting back to the merits of the case, it is to be seen that the petitioner was in the waiting list, however, he is not claiming appointment on the strength that the waiting list should be acted upon. The respondents themselves issued letter of appointment in favour of 14 persons, who were in the waiting list, out of which, the petitioner was placed at Serial No.4 in the appointment order.
7. In the return filed by the State, it is admitted that the appointment order was sent to the concerned candidate by ordinary post. Annexure R-4 is the copy of the dispatch register.
8. It is strange that the said dispatch register has not mentioned name of each of the candidate to whom copy of the appointment order has been sent. It only mentions that 18 copies have been sent to

the candidates by ordinary post.

9. In a case like this, when the matter concerns employment to a post under the Government, it is of utmost importance to the concerned individuals as the question of bread of butter is involved. The State is not expected to issue appointment orders and dispatch it by ordinary post. Permitting such method of sending the appointment orders would encourage foul play and mischief because in a given case the concerned officer may not send the envelope to the post office so that the person next in the waiting list gets appointment upon failure of a particular individual to join on the post. The authority should not take the matter like this in a casual manner. Before sending the appointment letters to the concerned individuals, the same should also be published in the reputed newspapers having wide circulation in the area, giving sufficient time to the candidates for joining.
10. There is one more important aspect of the matter emerging from the return. Annexure – R/2 is one such application preferred by a candidate who received the order of appointment from the main list on 7-6-2010, therefore, he could not join within time and moved an application on 11-6-2010 for allowing him to join. The Principal Secretary, Higher Education put a note on the representation itself directing the Deputy Director, Higher Education to allow the said

candidate to join by extending the joining time up to 22-6-2010. He also directed that the last person in the waiting list of Other Backward Class (OBC) category may not be issued the appointment order because the present case is of postal delay. The Joint Director, thereafter permitted the said candidate namely; Sunil Kumar Yadav to join by 22-6-2010. Thus, it clearly appears that the joining time mentioned in the appointment order was not mandatory and the appointing authority was allowing more time to the candidates depending upon the facts and circumstances of the case like postal delay in receiving the apportionment order.

11. The nature of power and jurisdiction under Article 226 of the Constitution of India conferred on the High Court has been explained by the Supreme Court in **Dwarka Nath v. Income-tax Officer, Special Circle, D. Ward, Kanpur and another**¹ as under :

“4.....This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the

said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself.....”

(Emphasis supplied)

12. Yet again in **Gujarat Steel Tubes Ltd. and others v. Gujarat Steel Tubes Mazdoor Sabha and others**², the Supreme Court held thus :

“73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court’s province and the remedy is appropriate to the judicial

process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes .not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine."

(Emphasis supplied)

13. In a recent judgment rendered in **Eastern Coalfields Limited and others v. Bajrangi Rabidas**³, the Supreme Court held thus :

"19.....It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised "to reach injustice wherever it is found". In Sangram Singh v. Election Tribunal, it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The

jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity.....”

Emphasis added

14. While exercising the jurisdiction under Article 226 of the Constitution of India endeavour should be made to do complete justice to the parties. (**M.P. Special Police Establishment v. State of M.P. and Others**⁴).
15. After placing reliance on various decisions of the Supreme Court, this Court in **Dashrath Gupta (HUF) & others v. State of Chhattisgarh and Others**⁵, at para 9, held thus :

9. The common thread flowing from the above referred judgments of the Supreme Court with regard to the nature of power and jurisdiction under Article 226 is to the effect that the High Court's power is equitable and discretionary. The High Court is required to exercise the jurisdiction to reach injustice wherever it is found. There are no limits to the power, the same should not be exercised unless substantial injustice has ensued or is likely to ensue and further that the Court can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. It also follows that the wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process and that the High Court should not fail to intervene when a grave error has crept in and injustice or arbitrariness has ushered.

⁴ (2004) 8 SCC 788

⁵ Writ Petition (C) No.1761 of 2013 (decided on 30-1-2015)

16. Articles 14 & 16 of the Constitution of India provide for equality of opportunity in the matters concerning public employment. The rigour of the said principles of equality does not stop to have its effect when a person is granted opportunity to compete, but the same runs through the entire process i.e. from the stage of issuance of advertisement till the appointment letters are issued and the candidate is permitted to join. Equality is envisaged at all stages. Any arbitrary action or conduct of the employer or the recruiting agency to deny the benefits of recruitment process by not properly issuing and serving the appointment order to a candidate would equally amount to infringement of Articles 14 & 16. If it is not held so, a suitable person would be provided opportunity, but denied appointment.
17. It is well settled proposition of law that the writ Court has to protect a citizen from being deprived of public office to which he has a right.
18. The Supreme Court in **Renu and Others v. District and Sessions Judge, Tis Hazari Courts, Delhi and Another**⁶, has held thus :
- “15.....In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and

to protect a citizen from being deprived of
public office to which he has a right.....”

19. In view of the above, this Court is of the considered opinion that the petition deserves to be and is hereby allowed. The respondents are directed to issue appropriate posting order in favour of the petitioner within a period of four weeks from the date of receipt of certified copy of this order and allow him to join on the post of Lab Technician.

20. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri