

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
W.P. (S) No.4556 of 2015

Devendra Kumar Upadhyay S/o Shri Rewaram Upadhyay Age about 55 years, P.S. Mungeli Working as Assistant Revenue Inspector, Kalimai Ward Mungeli, Distt.Mungeli (CG)

---Petitioner

Versus

1. State of Chhattisgarh Through-Secretary, Urban Administration and Development Department, Naya Raipur, Mantralay Raipur (CG)
2. Joint Director, Urban Administration Department, Subhash Stadium Moti Bag, Raipur (CG)
3. Chief Municipal Officer, Nagar Panchayat Pandariya, Distt.-Kabirdham (CG)

---Respondents

For Petitioner	:	Mr.K.P.S. Gandhi, Advocate
For Respondents No.1 &2	:	Mr. Varun Sharma, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/12/2015

1. In the writ petition filed by the petitioner being WP(S) No.1385/2013 this Court directed the respondent No.3 to consider the cases of eligible persons including the petitioner for the promotion to the post of Assistant Revenue Sub-Inspector in accordance with the Rules of 1968.

2. The respondent No.3 in its communication dated 15.1.2015 has clearly held that post of Assistant revenue Inspector is not available, therefore, the petitioner's case cannot be considered for promotion and order has been passed on 27.11.2014 by the respondent No.2.

3. It is well settled that if post is not available, no direction can be given for consideration for higher promotional post. The respondent No.3 has

informed the respondent No.2 for non-availability of promotional post.

4. In the matter of **State of Jharkhand v. Bhadey Munda and another**¹, it has been held by Their Lordships of the Supreme Court that if there is no vacant post for the promotion of an employee, promotion cannot be made. Paragraph 16 of the report states as under:-

'16. The third issue also need not detain us for long and must be decided in favour of the State of Jharkhand. It is trite that a vacancy can be filled up only if it exists. If there is no vacant post for the appointment of a direct recruit or for the promotion of an employee, a promotion or recruitment cannot be made. This was pithily stated in *Madan Lal v. State of J&K*² and also quite recently in *Debabrata Dash v. Jitendra Prasad Das*³ in the following words: (*Debabrata Dash Case*, SCC p. 668, para 31)

"31..... Thus, in the absence of any vacancy in the Senior Branch Cadre of Superior Judicial Service to be filled up by promotion, no appointment to the Senior Branch of service by way of promotion can be made. It is an fundamental as this."

5. Applying the law laid-down by Their Lordship of the Supreme Court, I do not find any jurisdictional error. The writ petition being devoid of merit is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

1 (2014) 10 SCC 398

2 (1995) 3 SCC 486

3 (2013) 3 SCC 658