

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 27-04-2016****Judgment delivered on 16-08-2016****WPS No. 5549 of 2014**

1. Santosh Kumar Agrawal, S/o Shri Ghanshyam Agrawal, aged about 37 years, R/o Behind Luckey Bharat Garage, Pandri, Raipur, PS Civil Lines, District Raipur (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Food And Civil Supplies, Mahanadi Bhawan, Mantralaya, New Raipur, Dist Raipur, Cg
2. The Secretary, Food And Civil Supplies, Govt. Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, New Raipur, Dist Raipur, Cg
3. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman, Hitwad parisar, Avanti Vihar Colony, Head Office, Raipur, Dist Raipur, Cg
4. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd, Hitwad Parisar, Avanti Vihar Colony, Head Office, Raipur, Dist Raipur, Cg
5. Deputy Director Food Department, Raipur, Dist Raipur, Cg

---- Respondent**And****WPS No. 1256 Of 2014**

1. Neha Sahu D/o Shri T.R. Sahu Aged About 24 Years C/o Qtr. No. 6-A, Street No. 2, Sector 8, Bhilai, PS Kotwali, Distt Durg, Cg

---- Petitioner**Vs**

1. Chhattisgarh State Civil Supplies Corp. Ltd. Through Its Chairman, Hitwad Parisar, Avanti Vihar Colony, H.Q.Raipur, Distt Raipur, Cg.

2. The Managing Director, Chhattisgarh State Civil Supplies Corporation Ltd, Hitwad Parisar, Avanti Vihar Colony, H.Q.Raipur, Distt Raipur, Cg
3. The District Manager, Chhattisgarh State Civil Supplies Corporation Ltd. District Office Bemetara, Durg Road, Po Bemertara, Distt Bemetara, Cg

---- Respondent

And

WPS No. 1257 Of 2014

1. Mamta Dhruw D/o Shri V.R.Dhruw Aged About 29 Years R/o Near Bamleshwari Temple, Krishna Nagar, Dagania, P.S D.D.Nagar, District Raipur, C G 492001

---- Petitioner

Vs

1. Chhattisgarh State Civil Supplies Corporation . Ltd. Through Its Chairman, Hitwad Parisar, Avanti Vihar Colony, H.Q.Raipur, District Raipur, C G
2. The Managing Director, Chhattisgarh State Civil Supplies Corporation Ltd, Hitwad Parisar, Avanti Vihar Colony, H.Q. Raipur, District Raipur, C G
3. The District Manager, Chhattisgarh State Civil Supplies Corporation Ltd. Housing Board Colony, Near Apex Rice Mill, District Baloda Bazar- Bhatapra C G

---- Respondent

And

WPS No. 1258 Of 2014

1. Rupesh Dhruve S/o Shri P.L.Dhruve, Aged About 27 Years R/o Block No. 3-A, Street 27, Sector 4, Bhilai Nagar, PS Bhatti, Distt Durg, Cg, PIN 490001

---- Petitioner

Vs

1. Chhattisgarh State Civil Supplies Corp. Ltd. & Through Its Chairman, Hitwad Parisar, Avanti Vihar Colony, H.Q. Raipur, Distt Raipur, Cg

2. The Managing Director, Chhattisgarh State Civil Supplies Corporation Ltd, Hitwad Parisar, Avanti Vihar Colony, H.Q. Raipur, Distt Raipur, Cg
3. The District Manager, Chhattisgarh State Civil Supplies Corporation Ltd, 48, Vijay Ward, District Office, Jagdalpur, Distt Jagdalpur, Cg

---- Respondent

And

WPS No. 1259 Of 2014

1. Abhinay Shukla S/o Shri C.B. Shukla Aged About 29 Years R/o Near Family Planning Office, Seepat Road, Sarkanda, PS Sarkanda, Distt Bilaspur, Cg 495001

---- Petitioner

Vs

1. Chhattisgarh State Civil Supplies Corp. Ltd. Through Its Chairman, Hitwad Bhawan, Avanti Vihar Colony, H.Q. Raipur, Distt Raipur, Cg
2. The Managing Director, Chhattisgarh State Civil Supplies Corporation Ltd, Hitwad Parisar, Avanti Vihar Colony, H.Q. Raipur, Distt Raipur, Cg
3. The District Manager, Chhattisgarh State Civil Supplies Corporation Ltd., Sarangarh Road, Near Kabir Chowk, PO Raigarh, Head Post Office, Raipur, CG

---- Respondent

And

WPS No. 5550 Of 2014

1. Sameer Tirkey S/o Shri P.S.Tirkey Aged About 27 Years R/o C-99 Rama Life City Bilaspur PS Sakri Dist. Bilaspur Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies Mahanadi Bhawan Mantralaya New Raipur Cg Cg
2. The Secretary Food And Civil Supplies Govt. Of Chhattisgarh Mahanadi Bhawan, Mantralaya, Raipur Cg

3. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman Hitwad Parisar, Avanti Vihar Colony, Head Office Raipur Cg
4. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
5. Deputy Director Food Department Raipur Cg

---- Respondent

And

WPS No. 5551 Of 2014

1. Akash Rahi S/o Girdhari Lal Rathi Aged About 33 Years R/o S-69 Sector-2, Avanti Vihar Raipur PS Telibandha Dist. Raipur Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies Mahanadi Bhawna Mantralaya New Raipur Cg
2. The Secretary Food And Civil Supplies Govt. Of Chhattisgarh Mahanadi Bhawan, Mantralaya, New Raipur Cg
3. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman Hitwad Parisar, Avanti Vihar Colony, Head Office Raipur, District Raipur, CG
4. The Managing Director, Chhattisgarh State Civil Supplies Corporation Ltd, Hitwad Parisar Avanti Vihar Colony, Head Office Raipur, District Raipur, Cg
5. Deputy Director (Food Department) Raipur, Cg

---- Respondent

And

WPS No. 5552 Of 2014

1. Vinod Budhicha S/o Shri Lachchhu Budhicha Aged About 29 Years R/o Near Ram Talkies Ward No. 10, Mahasamund Ps. & Dist. Mahasamund Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies Mahanadi Bhaan Mantralaya New Raipur Cg Cg
2. The Secretary Food And Civil Supplies Govt. Of Chhattisgarh Mahanadi Bhawan Raipur Cg
3. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman Hitwad Parisar, Avanti Vihar Colony, Head Office Raipur Cg
4. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
5. Deputy Director Food Department Raipur Cg

---- Respondent

And

WPS No. 5555 Of 2014

1. Nitin Dewan S/o Shri Deepak Dewan Aged About 29 Years R/o Kranti Nagar Bilaspur PS Tarbahar Dist. Bilaspur Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies Mahanadi Bhawan Mantralaya New Raipur Cg Cg
2. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman Hitwad Parisar, Avanti Vihar Colony, Head Office Raipur Cg
3. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
4. The General Manager Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
5. The Deputy Director(Food) Mantralaya New Raipur Cg

---- Respondent

And

WPS No. 5556 Of 2014

1. Anita Soni D/o Shri R.S.Soni Aged About 25 Years Resident Of C/o Ramkishan Gupta, Juna Bilaspur, Police Station City Kotwali, District - Bilaspur, C G

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies, Mahanadi Bhawan, Mantralaya, New Raipur C G
2. Chhattisgarh State Civil Supplies Corporation Limited. Through The Chairman, Hitwad Parisar, Avanti Vihar Colony, Head Office, Raipur, District Raipur C. G.
3. The Managing Director, Chhattisgarh State Civil Supplies Corporation Limited, Hitwad Parisar Avanti Vihar Colony, Head Office , Raipur, District Raipur C. G.
4. The General Manager, Chhattisgarh State Civil Supplies Corporation Limited, Hitwad Parisar Avanti Vihar Colony, Head Office , Raipur, District Raipur C. G.
5. The Deputy Director(Food), Mantralaya, New Raipur C G

---- Respondent

And

WPS No. 5568 Of 2014

1. Ms. Alka Shukla D/o Shri S.K.Sukla Aged About 27 Years R/o E-406 Kailas Vihar C.S.E.B. Colony Darri (West) Korba PS Darri Dist. Korba Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies Mahanadi Bhawna Mantralaya New Raipur Cg Cg
2. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman Hitwad Parisar, Avanti Vihar Colony, Head Office Raipur Cg
3. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
4. The General Manager Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg

5. The Deputy Director(Food) Mantralaya New Raipur Cg

---- Respondent

And

WPS No. 5569 Of 2014

1. Pramod Jangde S/o Shri S.P. Jangde Aged About 29 Years R/o New Rishda Bhadra Para Badgarh Chowk Balco Nagar Korba PS Balco Nagar Dist. Korba Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies Mahanadi Bhawan Mantralaya New Raipur Cg Cg
2. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman Hitwad Parisar, Avanti Vihar Colony, Head Office Raipur Cg
3. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
4. The General Manager Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
5. The Deputy Director(Food) Mantralaya New Raipur Cg

---- Respondent

And

WPS No. 5575 Of 2014

1. Deepika Sinha D/o Shri K.N.Sinha Aged About 25 Years R/o Sanjay Nagar Sandha Road Kurud Ps. Kurud Dist. Dhamtari Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Food And Civil Supplies Mahanadi Bhawan Mantralaya New Raipur Cg
2. Chhattisgarh State Civil Supplies Corporation Ltd Through The Chairman Hitwad Parisar, Avanti Vihar Colony, Head Office Raipur Cg

3. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
4. The General Manager Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Office Raipur Cg
5. The Deputy Director(Food) Mantralaya New Raipur Cg

---- Respondent

And

WPS No. 5628 Of 2014

1. Manoj Minj S/o Shri D.P.Minj Aged About 33 Years R/o Jamchuwa, Po Kunjara, Ps Duldula, Distt Jashpur, Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through the Secretary, Food And Civil Supplies, Mahanadi Bhawan, Mantralaya, New Raipur, Dist Raipur, Cg
2. The Secretary Food And Civil Supplies, Govt. Of C.G., Mahanadi Bhawan, Mantralaya, New Raipur, Dist Raipur, Cg
3. Chhattisgarh State Civil Supplies Corporation Ltd, Through The Chairman, Hitwad Parisar, Avanti Vihar Colony, Head Office, Raipur, Dist Raipur, Cg
4. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd, Hitwad Parisar, Avanti Vihar Colony, Head Office, Raipur, Dist Raipur, Cg
5. Deputy Director (Food Department)_, Raipur, Dist Raipur, Cg

---- Respondent

And

WPS No. 5845 Of 2014

1. Panchram Patel S/o D.R. Patel Aged About 50 Years Working As Senior Assistant in Chhattisgarh State Civil Supplies Corporation Ltd Head Quarter Raipur & R/o Harshit Nagar Kota PS Amanaka Raipur Cg
2. Indraman Singh S/o B.R.Matiyara Aged About 53 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies

Corporation Ltd Dist. Office Dhamtari & R/o Plot No. 04, Poorvanchal Nagar, Tikrapara PS Tikrapara Dist. Raipur Cg

3. Robin Hendry Francis S/o Shri J.P.L Francis Aged About 53 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Dist. Office Naandgaon & R/o Tulsipur Ward No. 16, Near Railway Line Ps. Basantpur City Rajnandgaon Cg
4. Surendra Kumar Chandrakar S/o Shyamlal Chandrakar Aged About 52 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Dist. Office Raipur & R/o Ward No. 65 Chandrashekhar Nagar Ps. Purani Basti Raipur Cg
5. Tarun Kumar Yadu S/o Late Shri T R Yadu Aged About 48 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd. Dist. Office Raipur & R/o MIG (S) 176, Phase-I, PS Kabir Nagar Dist. Raipur Cg

---- Petitioner

Vs

1. Chhattisgarh State Civil Supplies Corporation Ltd. Through Its Chairman Hitwad Parisar, Avanti Vihar Coloney Head Quarter Raipur Cg, PIN 492006
2. Board Of Directors Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Quarter Raipur, Cg, PIN 492006
3. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Quarter Raipur Cg, PIN 492006
4. General Manager Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Quarter, Raipur Cg, PIN 492006

---- Respondent

And

WPS No. 5846 Of 2014

1. Hakam Singh Choudhary S/o Shri Lal Singh Choudhary Aged About 59 Years, Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd District Office Baloda Bazar & R/o C-18, Vrindavan Coloney Tilda Nevra PS Nevra, Raipur Cg

2. Krishna Kumar Uikey S/o Shri Roshan Lal Uikey Aged About 48 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Dist. Office Kanker, District Kanker and R/o Singar Bhat(Khuntapara) Kanker, Distt. Kanker, Cg
3. Jyoti Lal Dadsena S/o Shri Ramsahay Dadsena, S/o Shri J. P. L. Francis, aged About 53 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Dist. Office Raigarh and R/o Kotra Road Near Railway Bangla Gali Raigarh PS Civil Lines Dist. Raigarh Cg
4. Rajeshwar Singh Rathore S/o Shri Badri Singh Rathore Aged About 52 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Distt. Office Janjgir CG and R/o D-14, Archana Vihar Nehru Nagar Bilaspur PS Civil Lines Bilaspur Cg
5. Anantram Sahu S/o Late Phulsai Sahu Aged About 53 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Dist. Office Baloda Bazar Cg and R/o Vill. Naya Kharvey Post & Tah. Kasdol Ps. Kasdol Dist. Baloda Bazar Cg
6. Rajendra Kumar Yadu S/o Shri Abhay Ram Sahu Aged About 55 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Distt. Office Raipur R/o Ward No. 44, Shikshak Coloney Daganiya Ps. D.D. Nagar Raipur Cg
7. Thanu Ram Anant S/o Dukalu Ram Anant Aged About 55 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Head Quarter Raipur R/o M-15, Dubey Colony Raipur PS Mova Raipur Cg
8. Khushilal Verma S/o Late Shri G.P. Verma Aged About 55 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Distt. Office Mungeli Cg and R/o Ambedkar Ward Shikshak Nagar Mungeli PS. & Dist. Mungeli Cg
9. Pradeep Kumar Khampariya S/o Late Awadh Kishore Khampariya Aged About 47 Years Working As Senior Assistant In Chhattisgarh State Civil Supplies Corporation Ltd Distt. Office Janjgir R/o Through Shri Ashok Kumar Ashawan House No. 340 Ward No. 21 Opposite Church Kera Road Janjgir PS. Janjgir Dist. Janjgir-Champa Cg

----- Petitioner

Vs

1. Chhattisgarh State Civil Supplies Corporation Ltd. Through Its Chairman Hitwad Parisar, Avanti Vihar Colony Head Quarter Raipur Cg 492006

2. Board Of Directors Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Quarter Raipur Cg, PIN 492006
3. The Managing Director Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Quarter Raipur Cg, PIN 492006
4. General Manager Chhattisgarh State Civil Supplies Corporation Ltd Hitwad Parisar Avanti Vihar Colony Head Quarter, Raipur Cg, PIN 492006

---- Respondent

And

WPS No.6247 Of 2014

1. Amar Das Bhaskar S/o Shri Paras Ram Bhaskar Aged About 47 Years Working As Senior Assistant At Chhattisgarh State Civil Supplies Corporation Ltd, Distt Office, Mungeli, CG R/o Tulsi Chhaya, Satnam Nagar, Ameri, Bilaspur, Dist Bilaspur, Cg
2. Smt. Prem Lata Mishra W/o Shri Harnaryan Mishra Aged About 50 Years Working As Senior Assistant, At Chhattisgarh State Civil Supplies Corporation Ltd, District Office Korba, CG R/o M-999, Adarsh Nagar, Chunchuniya Colony, Kusmunda, Korba, District Korba, C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Food, Civil Supply And Consumer Protection, Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist Raipur, Cg
2. Chhattisgarh State Civil Supplies Corporation Ltd Through Managing Director, H.Q. Hitvad Parisar, Avanti Vihar, Raipur, Dist Raipur, Cg
3. The Managing Director H.Q. Hitvad Parisar, Avanti Vihar, Raipur, Dist Raipur, Cg
4. Shri M.N.Prasadrao The General Manager, At Chhattisgarh State Civil Supplies Corporation Ltd, H.Q. Hitavad Parisar, Avanti Vihar, Raipur, Dist Raipur, Cg
5. Shri Rajiv Kumar Jaiswal Joint Director/ Enquiry Officer, Civil Supply And Consumer Protection Directorate, Naya Raipur, Dist Raipur, Cg

---- Respondents

For Petitioners	Shri Sunil Pillai, Ms. Sharmila Singhai, Shri Prateek Sharma, Shri Sandeep Dubey & Shri P.R. Patankar, Advocates
For petitioner in WPS No.6247/2014 & Intervener	Shri R.K. Kesharwani, Advocate
For Respondent/State	Shri P.K. Bhadur, Govt. Advocate
For Respondent/ Corporation	Shri V.R. Tiwari, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. The present batch of 17 writ petitions are concerning direct appointment or promotion to the post of Assistant Manager in the establishment of the Chhattisgarh State Civil Supplies Corporation Limited. Since the facts involved and the relevant rules being common in all the petitions, they are disposed of by this common order, however, for the convenience in disposal, they are divided into 3 groups, viz;-

A) First group of 10 petitions bearing WPS Nos.5549, 5550, 5551, 5552, 5555, 5556, 5568, 5569, 5575 & 5628 of 2014 have been preferred by the direct recruits on the post of Assistant Manager vide orders dated 19.11.2012 & 24.07.2013. They are challenging the order dated 09.10.2014, whereby their appointments have been cancelled as also the fresh advertisement dated 10.10.2014 for direct recruitment (henceforth 'A' group petitions').

B) Second group of 4 petitions bearing WPS Nos.1256,

1257, 1258 & 1259 of 2014 have been preferred by the direct recruitees on the post of Assistant Manager vide order dated 19.11.2012. They are challenging the order dated 22/24.02.2014, whereby they have been discharged from service for unsatisfactory service during the probation period. The petitioners also pray for setting aside the first part of condition No.14 of the appointment order dated 19.11.2012 being illegal (henceforth 'B' group petitions').

- C) Third group of 3 petitions bearing WPS Nos.5845, 5846 & 6247 of 2014 have been preferred by the petitioners, who are working as Senior Assistants. While seeking quashment of the advertisement dated 10.10.2014, they are also seeking direction to the respondents to convene the meeting of Departmental Promotion Committee (henceforth 'the DPC') for promoting them on the post of Assistant Manager. In addition to that in WPS No.6247 of 2014, the petitioners seek a relief to initiate disciplinary enquiry proceedings against the respondent No.4 therein for illegal and irregular recruitment process and to take disciplinary measure against respondent No.5 for preparing the contrary enquiry report (henceforth 'C' group petitions').

2. Facts of the case, briefly stated, are that there are 35 sanctioned posts of Assistant Manager in the establishment of the

respondent Chhattisgarh State Civil Supplies Corporation Limited (henceforth 'the Corporation'). On 30.07.2012, the Corporation issued an advertisement for recruitment on 15 posts of Assistant Manager. Out of which 6 posts were Unreserved, 2 of them for Women Candidates; 2 posts were reserved for Other Backward Class; 2 posts were reserved for Scheduled Caste; and 5 posts were reserved for Scheduled Tribe. The advertisement stipulated that the appointment shall be made on the basis of merit after short listing the eligible candidates in the ratio of 1 : 10. The petitioners duly applied for the post and were subjected to a computer test held on 26.10.2012 for which memo was issued on 16.10.2012. List of successful candidates in the computer test was issued on 03.11.2012 and thereafter, they were called for interview on 08.11.2012 and the final select list was issued on 19.11.2012 followed by the order of appointment. Some of the petitioners were already working as Assistant Manager on contract basis, therefore, before submitting joining, they submitted resignation, which was allowed by the Corporation.

3. When the petitioners have already joined on the post and were continuously working, a complaint was filed by one V. K. Das of Raipur before the State Government alleging illegal appointment on 14 posts of Assistant Manager. On 31.10.2013, the State Government directed for an enquiry to be conducted by the Joint Director, Food and Civil Supplies, who conducted the enquiry and submitted the report on 21.01.2014.

4. The enquiry officer found that the combined merit list has not been prepared on the basis of minimum educational qualification, experience and performance in interview. Similarly, the Unreserved Category has been mentioned as Unreserved (Male). If combined merit list would have been prepared, the candidates at S.No.1 & 2 of the Women category would have found place in the Unreserved Category and similarly the candidate No.1 of the Scheduled Caste category would have found place in Unreserved Category. All these would result in change of the entire list, therefore, it is recommended that the combined merit list, category wise merit list and horizontal category wise merit list be separately prepared and thereafter the selection process be completed.
5. Pursuant to the above enquiry report, the State Government issued a communication to the Corporation on 28.02.2014 directing the Corporation to take steps for cancellation of the appointment instead of directing preparation of fresh list as recommended by the enquiry officer. It was mentioned in the State Government's communication that 34 posts of Assistant Manager are sanctioned in the Corporation, however, the posts are to be filled up by promotion but direct recruitment has been made; there were defects in the advertisement and the applications were not properly scrutinized nor combined merit list was prepared, which has resulted in loss to the candidates belonging to the Scheduled Caste/Scheduled Tribe Category, which is a serious lapse. It was also mentioned that the

Managing Director has discharged four probationers for unsatisfactory services, which proves that the appointments were irregular.

6. The Corporation, thereafter, convened a meeting of the Board of Directors (henceforth 'the BoD'), wherein agenda 35.016 was considered as any other matter with the permission of the Chairman and thereafter the decision was taken to cancel the appointments in view of directions received from the State Government.
7. Santosh Kumar Agrawal (petitioner in WPS No.5549/2014) and 4 others rushed to this Court by preferring WPS No.2307/2014 assailing the State Government's direction dated 28.02.2014, whereby the State had directed the Corporation to cancel the appointments. The said writ petition was disposed of by this Court by order dated 07.05.2014 after recording the submission of the counsel for the Corporation that the final decision shall only be taken after affording proper opportunity of hearing to the petitioners, therefore, there is no need for issuing any direction with further observation that liberty is reserved in favour of the petitioners to take recourse to remedy as may be available to them under the law, in case, eventuality so arises in the matter. The petitioners were, thereafter, issued show cause notice on 28.05.2014, to which reply was submitted by the petitioners, the reply filed by Santosh Kumar Agrawal being part of Annexure-P-10 to WPS No.5549/2014. The Corporation, thereafter, passed

the impugned order cancelling the appointments on the ground that norms for reservation have not been followed.

'A' Group Petitions :

8. It is argued on behalf of the petitioners that under Rule 7 (ii) (b), proviso read with 7 (iii), the appointing authority was competent to decide as to whether the posts available against promotion quota is required to be filled by direct recruitment and such conscious decision having been taken by the BoD on 05.09.2012, there is no violation of quota rule. Referring to the State Government's circular dated 09.04.2012 (Annexure-P-14 to WPS No.5555/2014), it is further argued that the State Government has issued instructions for following the reservation roster, which has duly been followed in the present case, therefore, the finding that the reservation norms have not been followed is wholly contrary to record. It is also argued that the enquiry officer has not found that the quota rule has been violated neither any such reference is made in the impugned order, therefore, 'A' group writ petitions deserve to be allowed. Learned counsel would next argue that the principles of natural justice have not been followed because the petitioners were not provided any opportunity of hearing during enquiry or before the order passed by the State Government directing cancellation of appointment.
9. Per contra, learned counsel appearing for the State would support the direction issued by the State Government. He would further submit that the enquiry was neither motivated nor in

mala fide exercise of power, therefore, since show cause notices have been issued before cancellation of appointment and the reservation norms have not been followed, the appointments have rightly been cancelled.

10. Learned counsel appearing for the Corporation would refer to the meeting of BoD held on 09.04.2012 and the agenda for the 37th meeting of the BoD to submit that the Corporation has passed the impugned order on the basis of State Government's direction.
11. The subject appointment is governed under the provisions of the rules relating to the Recruitment and Promotion Rules of Employees of the Chhattisgarh State Civil Supplies Corporation Limited (henceforth 'the Rules') framed by the Corporation. The complete rules is available in the record of WPS No.5845 of 2014. Rule 7 makes provision for method of recruitment; whereas Rule 8 speaks about appointment to the service; Rule 11 provides for selection committee's/appointing authority's and Rule 12 provides for direct recruitment by selection/competitive examination.
12. Rules 7, 8, 11 & 12 are reproduced hereunder for ready reference :

(7) Method of Recruitment :-

(i) Recruitment to the Service, after the commencement of these Rules, shall be by any of the following methods, viz:

(a) by direct recruitment by selection or competitive examination;

(b) by promotion of members of the Service;

(c) By obtaining services of the officers/officials of the State/Central Government Services/ State Government Undertakings/Central Government Undertakings/Apex Co-operative Federations/ Schedules Banks on deputations or by re-appointment of retired officers/officials;

as specified in Schedule II.

(ii) (a) The number of persons recruited, taken on deputation, re-appointed or promoted under Clauses (a), (b) & (c) of Sub-rule (i) of Rule 7 shall not at any time exceed the number of posts shown in Schedule II. Subject to approval of staffing pattern from Govt.

(b) Vacancies shall be filled in by rotation according to the number of posts fixed for direct recruits of persons to be taken on deputation or re-appointment and promotees of deputations or re-appointment and the other three vacancies shall be filled in by promotees and soon;

Provided that if suitable persons are not available for promotion, the remaining posts against promotion quote, shall be filled in by direct recruitment or deputation or re-appointment.

(iii) Subject to the provisions of these Rules, the method/methods of recruitment to be adopted for the of filling any particular vacancy/vacancies in the as may required to be filled in during any particular period of recruitment and the number of persons to be recruited by each method, shall be determined on each occasion by the Appointing Authority.

(iv) Notwithstanding anything contained in sub-rule(i) if in the opinion of the appointing authority the exigencies of the Service so require, the Appointing & Authority may, after obtaining the approval of the Board, adopt such method of recruitment to the Service, other than those specified in the said Sub-rule.

(v) Absorption of persons coming on deputation will be done according to the rules framed by the Governments of concerning Organizations for the purpose.

8. Appointment to the Service :-

All appointments to the service after the commencement of these rules, shall be made by the appointing authority and no such appointment shall be made except after selection by one of the Method of recruitment as specified in Rule 7.

11. Selection Committee's/Appointing Authority's-

Appointing Authority as to the eligibility or otherwise of the candidate for selection shall be final.

12. Direction Recruitment by Selection/Competitive Examination:-

(i) Selection for recruitment to the Service shall be held in such manner and at such intervals as the Appointing Authority may from time to time determine.

(ii) Procedure for competitive examinations, if any, for selection on any post, shall be as decided by the Appointing Authority from time to time.

(iii) Final selection of the candidates shows in column I of Schedule III for the Service shall be made by interviewing them by the Selection Committee specified in Co. 4 of Schedule III.

(iv) Out of the available vacancies for direct recruitment, such number of posts in such percentage shall be reserved for candidates who are members of Scheduled Castes and Scheduled Tribes respectively, as may be specified by the Government from time to time.

(v) If sufficient number of candidates belonging to the Scheduled Castes and Scheduled Tribes having requisite qualifications are not available for filling any of the vacancies reserved for them, the remaining vacancies shall be filled or kept reserved according to the rules framed by the Government from time to time for this purpose.

(vi) In filling the vacancies so reserved, candidates who are members of Scheduled Castes and Scheduled Tribes shall be considered for appointment in the order in which their names appear in the list referred to in Rule 13 irrespective of their relative rank as compared with other candidates.

13. Bare perusal of the Rules would indicate that under Rule 7 (ii) (b) enables the appointing authority to make appointment by direct

recruitment or deputation or re-appointment even against the post earmarked for promotion, if suitable persons are not available for promotion. Rule 7 (iii) further enables that the method of recruitment to be adopted for the filling up any particular vacancy/vacancies in any particular period of recruitment and the number of persons to be recruited by each method shall be determined on each occasion by the appointing authority. Rule 7 (iv) provides for adoption of any other method of recruitment than those specified in the Rules, if in the opinion of the appointing authority, the exigencies of the service so require, however, for this the appointing authority is required to obtain approval of the Board.

14. It is further apparent from Rule 12 (iii) of the Rules that the final selection of the candidates shown in column 2 (*sic* 1) of Scheduled III for the service shall be made by interviewing them by the Selection Committee specified in column 5 (*sic* 4) of Scheduled III. Reference to column 1 & 4 appear to be typing mistake because column 1 of Scheduled III speaks about S.No. and column 4 of Schedule III speaks about name of service to which promotion is to be made, whereas column 5 provides the name of members of the Selection Committee, wherein the Managing Director is mentioned as Chairman of the Selection Committee.
15. A conjoint reading would clearly discern that for direct appointment on the post of Assistant Manager, the Managing

Director being the Chairman of the Selection Committee is the appointing authority, particularly in view of the fact that the word 'appointing authority' is not defined in the Rules. It is further apparent from Rule 7 (i) read with Schedule III that 35 sanctioned posts of Assistant Manager in the establishment of the Corporation are to be filled up by promotion. No post has been earmarked for being filled up by direct recruitment.

16. Though the Rules enable the appointing authority to decide as to whether exigencies of the service so require to fill up the post meant for promotion quota to be filled by direct recruitment, it is required to be seen as to whether any such decision was taken by the appointing authority before issuance of the advertisement dated 30.07.2012 and whether such decision satisfies the requirement under the Rules.
17. The original record has been produced by the respondents where from it would appear that 35 posts of Assistant Manager have been sanctioned out of which 30 were included in the staffing pattern by letter of the State Government dated 09.05.2005 and 4 posts were created on 19.10.2011. One post of Assistant Manager (Commercial) was subsequently created. Under Rule 7 (i) read with Rule 7 (ii) the posts are to be filled up by promotion. The file does not contain any such note sheet or resolution prior to 30.07.2012, when the advertisement was issued, wherein the decision was taken by the appointing authority that since suitable candidates are not available in the feeder cadre or for any other

germane reasons, the posts of Assistant Manager is required to be filled up by direct recruitment.

18. After issuance of advertisement on 30.07.2012, a note sheet was written by the General Manager on 04.09.2012 for obtaining sanction of the recruitment process. The note sheet was presented before the Managing Director, who noted on the file that if direct recruitment is made on the post of Assistant Manager, it will improve the quality of the officers at the district level and since on previous occasions also direct recruitments have been conducted for filling up the post of Assistant Manager, the recruitment and the process is required to be approved by the BoD by circulation. The note sheet was approved by the Chairman and the Secretary, Department of Food and Civil Supplies on 07.09.2012 and 14.09.2012 respectively. The recruitment process was, thereafter, monitored by the Managing Director at all the stages of recruitment including the approval of final select list, however, the fact remains that the decision appears to be post facto and not before 30.07.2012 i.e. before issuance of the advertisement.
19. The focal question for consideration is - whether the post facto decision would serve the requirement under the Rules and if yes whether the other conditions provided under the Rules have been satisfied in that post facto sanction ?

20. A similar issue was raised before the Supreme Court in **Union of India and Others v. Vinod Kumar and Others**¹. Para 4 of the judgment squarely deals with the issue brought before this Court, therefore, the whole para 4 is reproduced hereunder :

4. The only short question is whether the deviation from rule of granting promotion of 50% of the quota giving 2 years' additional benefit to the Upper Division Clerks is valid in law? Sub-section (7)(a) of Section 5-D of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides method of recruitment as under:

"5-D. (7)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government."

Under the proviso, where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters enumerated above it is mandatory that it should obtain prior approval of the Central Government. Admittedly, prior approval was not obtained. On the other hand, *ex post facto* approval was obtained but in the teeth of the language of the proviso *ex post facto* approval is not an

1 (1996) 10 SCC 78

approval in the eye of law. Under these circumstances, the Tribunal had rightly held that the approval was not valid in law and the matter was kept at large and directed the appellant to issue notification afresh for recruitment in accordance with rules. We do not find any illegality in the order.

21. The Rule which was dealt with by the Supreme Court expressly provided for obtaining of prior approval before making a departure to fill up the post by any other source than the source for which it is earmarked. In the rules with which the present petition is concerned, there is no such requirement of prior approval, therefore, the post facto sanction may serve the purpose, however, there is one more difficulty for the petitioners inasmuch as the subject rules enables the appointing authority to deviate from the quota rule only if suitable persons are not available for promotion, the remaining posts against the promotion quota shall be filled by direct recruitment or deputation or re-appointment. The rule clearly mandates that before taking decision to fill up the post of Assistant Manager required to be filled up by promotion, by way of direct recruitment, there has to be a satisfaction that suitable persons are not available for promotion. The language further mandates that initially the appointing authority is required to consider the available vacancies for filling up the same by promotion and the persons found suitable will be appointed by promotion and thereafter, the remaining posts against the promotion quota shall be filled up by way of direct recruitment or deputation or re-appointment.

22. In the case at hand, no initial effort was made to consider the cases for promotion of the employees on the post of Assistant Manager. If this Court can say so, no effort at all has been made to consider any of the person from the feeder cadre to assess their suitability for promotion.
23. It is settled proposition of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.
24. The Supreme Court in **Meera Sahni v. Lieutenant Governor of Delhi and Others**², held thus :

35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala wherein it was held as under: (SCC pp. 432-33, paras 31-32)

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under: (IA pp. 381-82)

‘where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.’

32. This rule has since been approved by this Court in Rao Shiv

2 (2008) 9 SCC 177

Bahadur Singh v. State of Vindh Pradesh and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

25. In view of the above, since rules provides for a prior assessment and satisfaction that suitable persons are not available in the feeder cadre, before proceeding to fill up the post by direct appointment and no such satisfaction having been arrived at, as mandated in the rules, the entire exercise is vitiated being contrary to rules.

'B' & 'C' Group Petitions :

26. In 'B' group petitions the petitioners have been discharged from service during the probation period on the ground of unsatisfactory service. The order passed against each one of them is not stigmatic.
27. The question as to when termination of a probationer would be treated as termination simplicitor or it would amount to punishment requiring an enquiry wherein the probationer has to be given opportunity of hearing is no longer *res integra*.
28. The issue as to when non-confirmation of a probationer would amount to stigma has been considered by the Supreme Court in **Krishnadevaraya Education Trust and Another v. L.A.**

Balakrishna³. In the said case a committee was constituted for assessing the suitability of a probationer for continuing in the service and the said committee came to the conclusion that the job proficiency of the employee was not up to the mark and that would be a valid reason for terminating the services and the said reason cannot be cited and relied upon by contending that the termination order was passed by way of punishment.

29. In **Krishnadevaraya Education Trust** (supra), the Supreme Court held thus :

5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the

3 (2001) 9 SCC 319

services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

7. In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not up to the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment.”

30. In **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Another**⁴, the following has been held by the Supreme Court :

29.....Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.”

31. In **Rajesh Kumar Srivastava v. State of Jharkhand and Others**⁵, the Supreme Court examined challenge to the termination of the services of employee, who was a Probationer Munsif. After examining the record placed before it, the Supreme

4 (2002) 1 SCC 520

5 (2011) 4 SCC 447

Court held that the competent authority had terminated the services of the employee because his work was not satisfactory and such decision cannot be termed as stigmatic or punitive.

32. In **State Bank of India and Others v. Palak Modi and Another**⁶, the Supreme Court held thus :

“25. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.”

33. 'B' group petitions have, therefore, no substance on both the grounds namely; petitioners of 'B' group petitions were also appointed in the same process under which the petitioners of 'A' group petitions were appointed and the 'A' group petitions have been dismissed; and secondly; even otherwise they being probationers they have no right to hold the post and their discharge from service is not stigmatic.
34. In so far as petitioners of 'C' group petitions are concerned, they have prayed for consideration of their cases for promotion on the

⁶ (2013) 3 SCC 607

post of Assistant Manager as also for quashment of the advertisement.

35. Since this Court has held that the post reserved for promotion can be filled up by direct recruitment only after assessing the suitability of the persons available in the feeder cadre, 'C' group petitions are disposed of with an observation that the respondent Corporation shall first consider as to whether suitable persons are available in the feeder cadre. Such number of persons who are found suitable may be dealt with in accordance with the rules and the remaining posts can be filled up by way of direct recruitment depending upon exigencies of the administration.

36. In the result, 'A' & 'B' group petitions are liable to be and are hereby dismissed and 'C' group petitions are disposed of with the observations as stated *supra*.

37. There shall be no order as to costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri