

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 344 of 2016**

Khuman Singh Kashyap, Aged about 49 years, S/o Shri Mehater Singh Kashyap,
Chief Clerk Cum Accountant at Nagar Panchayat Gandaee, District
Rajnandgaon, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through its Secretary, Town Administration & Development, DKS Bhavan, Mantralaya, District Raipur, Chhattisgarh at present Mahanadi Bhavan, New Mantralaya, Village Rakhi, New Raipur, District Raipur, Chhattisgarh.
2. Commissioner, Secretarial, Town Administrative & Development Department, Raipur District Raipur, Chhattisgarh.
3. Nagar Panchayat, Gandaee, Through Chief Municipal Officer, Gandaee, District Rajnandgaon, Chhattisgarh.
4. Chairman, District Selection Committee & Joint Director, Town Administration and Development, Raipur Division, Raipur, Chhattisgarh.
5. Rakha Lal Sudhakar, age about 47 years, S/o Shri Tek Singh Sudhakar, R/o Nagar Panchayat Gandaee, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellant : Shri Yogesh Pandey, Advocate.
For Respondent/State : Shri Arun Sao, Deputy Advocate General.
For Respondent No. 3 : Shri Pragalb Sharma, Advocate.
For Respondent No. 5 : Shri Sourabh Sharma, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****14/12/2016**

1. The appeal is admitted for hearing. With the consent of learned counsel for the parties, the case is being heard and disposed of finally.

2. This appeal is directed against the judgment dated 30.03.2016 passed by the learned Single Judge in Writ Petition (S) No. 296 of 2011 whereby the petition filed by Rekha Lal Sudhakar (Respondent No. 5 herein) was allowed and the promotion of the present Appellant to the post of Head Clerk-cum-Accountant was set aside.

3. The undisputed facts are that the Respondent No. 5 was initially appointed as Safai Daroga (Sanitary Inspector) in Nagar Panchayat, Gandai on 17.12.1986. He was promoted as Lower Division Clerk/Assistant Grade III w.e.f. 01.10.1993. He was promoted as Assistant Grade II on 16.12.2005. The Appellant, on the other hand joined as Lower Division Clerk on daily wages and was regularised as such on 02.06.1995 i.e. after the Respondent No. 5. On 30.11.2005, the present Appellant and the Respondent No. 5 were considered for promotion to the post of Upper Division Clerk/Assistant Grade II and the Respondent No. 5 was promoted. It is not disputed that Respondent No. 5 is senior to the present Appellant.

4. On 06.10.2010, a meeting of the Departmental Selection Committee was held to consider filling up the post of Head Clerk-cum-Accountant in the Municipal Council, Gandai. Only the name of present Appellant was considered and he was promoted. The Respondent No. 5 thereafter filed a writ petition praying that he being senior to the present Appellant should have been considered for filling up the post of Head Clerk-cum-Accountant and therefore, he has challenged the promotion of the present Appellant to the said post.

5. The learned Single Judge, relying upon the judgment rendered in Nirmal Kumar Mishra v. State of Madhya Pradesh {(1990) II MPWN 95} held that the post of Head Clerk-cum-Accountant was a higher post to be filled up from Assistant Grade II and therefore, allowed the writ petition and set aside the promotion of the present Appellant. Aggrieved by the said order of the learned Single Judge, the Appellant has filed the present appeal.

6. The main dispute in this case was whether the post of Head Clerk-cum-Accountant is a post equal to Assistant Grade II or higher post.

7. On 08.08.2016, we had passed the following orders:

"The State is directed to clarify its stand as to whether the post of Clerk-cum-Accountant and the post of Assistant Grade-II are the posts which carry a same pay scale? The State shall also clarify as to whether the post of Assistant Grade II is in feeder cadre for promotion to the post of Clerk-cum-Accountant or not?

Reliance has been placed on the Circular of the State Government issued in the year 2003.

Affidavit be filed by the State with regard to above clarifications within six weeks."

8. The State has filed reply and alongwith reply, it has filed the administrative setup. As per the State, the post of Head Clerk-cum-Accountant is in the same scale of pay and grade as the post of Assistant Grade II/Upper Division Clerk. Therefore, both the posts are equivalent posts. It appears that this fact was not brought to the notice of the learned Single Judge when he decided the matter and he remained under the impression that like in Madhya Pradesh, the post of Head Clerk-cum-Accountant is a higher post. In fact, the set up in the State of Chhattisgarh has changed in the meantime and as per the existing set up, the post of Assistant Grade II is equal to the post of Head Clerk-cum-Accountant which is in the same scale of pay. In fact, both these posts are in the feeder cadre to fill in the post of Chief Municipal Officer. Therefore, we have no hesitation in holding that the learned Single Judge misdirected himself in allowing the writ petition. The order dated 30.03.2016 passed in Writ Petition (S) No. 296 of 2011 is set aside and the writ petition filed by Respondent No. 5 is dismissed.

9. However, it is stated that both Assistant Grade II and Head Clerk-cum-Accountant fall in the feeder category for promotion to the post of Chief Municipal Officer. As and when the post of Chief Municipal Officer falls vacant, the case of

the Respondent No. 5 shall be considered in accordance with the rules. In case the Appellant is also eligible, he may also be considered for promotion.

10. The appeal is allowed in the aforesaid terms.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE