

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 19/07/2017****Judgment Delivered on : 01/08/2017****Writ Petition (S) No. 4012 of 2010**

1. Sant Lal Sahu S/o Shri Hindaram Sahu, Aged About 58 Years Upper Division Teacher, Pre- Middle School, Mahrum, District Rajnandgaon (Chhattisgarh)
2. Ramkumar Choubey Aged About 58 Years S/o Heeralal Choubey, Headmaster, Primary School, Thakurtola, Block & Distt. Rajnandgaon (Chhattisgarh)

---- Petitioners**Versus**

1. State of Chhattisgarh Through The Secretary, Department of School Education, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer Rajnandgaon, Distt.-Rajnandgaon (Chhattisgarh)
3. Bhushan Wadekar S/o Shri Paganiya aged about 42 years, Resident of Gherughan Block Chhuria, District Rajnandgaon, Chhattisgarh.
4. Anand Kumar Khandelwal S/o Lahnu Ram Khandelwal, aged about 41 years, R/o Chando, Block Chhuria, District Rajnandgaon, Chhattisgarh.
5. P.K.Sahu S/o Shri J.C.Sahu, aged about 40 years, R/o Tekahara, Block Chhuria, District Rajnandgaon, Chhattisgarh.

---- Respondents**And****Writ Petition (S) No. 4581 of 2010**

1. Dhelu Ram Verma S/o Abhay Ram Verma, Aged About 56 Years Upper Division Teacher, Middle School Bijali Nagar, Bhilai- 3, Distt. Durg (Chhattisgarh).
2. P.L. Verma Aged About 58 Years S/o Ramu Ram Verma, Upper Division Teacher Middle School Bijali Nagar, Bhilai-3, Distt.-Durg (Chhattisgarh).
3. Vishwanath Sahu Aged About 48 Years S/o Kisun Lal Sahu, Upper Division Teacher Middle School Sirsakala, Bhilai-3, Distt.-Durg (Chhattisgarh).

4. Sukhchain Sinha Aged About 52 Years S/o Ramadhar Sinha, Upper Division Teacher, Middle School Risali, Bhilai, Distt.-Durg (Chhattisgarh)

---- **Petitioners**

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer Durg, Distt.-Durg (Chhattisgarh)

---- **Respondents**

And

Writ Petition (S) No. 4686 of 2010

1. Yogendranath Pandey S/o Shri Vikramaditya Pandey, Aged About 43 Years Upper Division Teacher Pre- Middle School, State General Secretary, Chhattisgarh Shikshak Sangh, Near Garur Bhawan, Katora Talab, Raipur, (Chhattisgarh)
2. Sharad Sharma S/o Shri Ramakant Sharma, Aged About 50 Years Headmaster, Primary School, Divisional Secretary, C.G. Shikshak Sangh, Near Garur Bhawan, Katora Talab, Raipur (Chhattisgarh)

---- **Petitioners**

Vs

1. State of Chhattisgarh Through: The Secretary, Department Of School Education, D.K.S. Bhawan, Raipur, (Chhattisgarh)
2. Director, Directorate Of Public Education, Raipur (Chhattisgarh)
3. District Education Officer Rajnandgaon, Distt.-Rajnandgaon (Chhattisgarh)
4. Santosh Kumar Verma, S/o Late Jhaggar Singh Verma, Aged About 50 Years Working As Upper Division Teacher, Govt. Middle School, Nawapara, Block Simga, District Balodabazar Bhatapara, (Chhattisgarh)
5. Devnath Verma, S/o Shri Sewan Ram Verma, Aged About 47 Years Working As Upper Division Teacher, Govt. Middle School Shiksarikesli, Block Simga, District Balodabazar Bhatapara, (Chhattisgarh)
6. Smt. Kumari Dewangan, W/o Shri Jeevan Lal Dewangan, Aged About 49 Years Working As Upper Division Teacher, Govt. Middle School, Sasaholi, Block Tilda, District Raipur, (Chhattisgarh)

---- **Respondents**

And

Writ Petition (S) No. 5536 of 2010

Puni Ram Chauhan S/o Late Dhodhi Chauhan, Aged About 42 Years, Shiksha Karmi Grade II, R/o In Front Of Aansh Hotel, Kumharpara, Jagatpur, Raigarh, Distt. Raigarh (Chhattisgarh)

---- Petitioner

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhavan, Raipur, District Raipur (Chhattisgarh)
2. State of C.G. Through The Secretary, Panchayat And Rural Development Department D.K.S. Bhawan, Raipur, Distt. Raipur (Chhattisgarh)
3. The Directorate of Public Instructions, Raipur, Distt. Raipur (Chhattisgarh)
4. District Education officer, Raigarh, Distt. Raigarh (Chhattisgarh)
5. The Chief Executive Officer, Jila Panchayat, Raigarh, Distt. Raigarh (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 4239 of 2010

1. Lalit Kumar Devta S/o Shri Chaturbhuj Devta, Aged About 49 Years R/o Village Gaurtek, Block Basna, District Mahasamund (Chhattisgarh)
2. Hemraj Patel Aged About 51 Years S/o Late Shri Salik Ram Patel, U.D.T., Middle School, KolihaDevri, Post Ganekera, Via Basna, Distt.-Mahasamund (Chhattisgarh)
3. Mahendra Kumar Mahapatra Aged About 53 Years S/o Shri Bhikhari Charan Mahapatra, U.D.T., Middle School, Habekanta, Block Basna, Distt.-Mahasamund (Chhattisgarh)
4. Vaishnav Patra Aged About 52 Years S/o Shri Dhoba Patra, U.D.T., Middle School, Rasoda, Block Basna, Distt.-Mahasamund (Chhattisgarh)

---- Petitioners

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer Mahasamund, Distt.-Mahasamund (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 5985 of 2010

1. Loknath Sinha S/o Late Ghasiram Sinha, Aged About 51 Years Upper Division Teacher, Govt. School Pathar, Block Magarlod, District Dhamtari (Chhattisgarh)
2. Chandrahas Sahu Aged About 55 Years S/o Late Bodhan Singh Sahu, U.D.T. Govt. Middle School Kamroud, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
3. Horilal Sahu Aged About 42 Years S/o Shri Lakhan Lal Sahu, U.D.T. Govt. Middle School Sonpairi, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
4. Dwarika Prasad Sahu Aged About 51 Years S/o Late Dihum Ram Sahu, U.D.T. Govt. Middle School Shuklabhata, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
5. Chain Singh Sahu Aged About 52 Years S/o Shri Makhan Lal Sahu, U.D.T. Govt. Middle School Sonpairi, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
6. Shyam Lal Sahu Aged About 44 Years S/o Shri Kunji Ram Sahu, Govt. Girls Middle School Magarlod, Block Magarlod, Distt. Dhamtari (Chhattisgarh)

---- Petitioners

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Mantralaya, Raipur (Chhattisgarh)
2. District Education Officer, Dhamtari, Distt. Dhamtari (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 5996 of 2010

1. Nemichand Hirwani S/o Late Kartik Ram Sahu, Aged About 49 Years Upper Division Teacher, Govt. Girls Middle School, Magarlod, District Dhamtari (Chhattisgarh)
2. Umedi Ram Sahu Aged About 52 Years S/o Shri Ghasiya Ram, U.D.T. Govt., Girls Middle School, Megha, Magarlod, Distt. Dhamtari (Chhattisgarh)
3. Johat Ram Sahu Aged About 49 Years S/o Shri Derha Ram, U.D.T. Govt., Girls Middle School Badi Kareli, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
4. Nathu Ram Yadav Aged About 59 Years S/o Shri Ram Chand Yadav, U.D.T. Govt. Middle School, Mohadi, Block Magarlod, Distt. Dhamtari (Chhattisgarh)

5. Gajendra Kumar Puri Aged About 56 Years S/o Shri Chitrasen Puri, U.D.T. Govt. Middle School, Dabha, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
6. Manohar Lal Sinha Aged About 54 Years S/o Shri Sukul Ram Sinha, Govt. Middle School, Sounga, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
7. Ramadhar Dewangan Aged About 56 Years S/o Shri Kartik Ram Dewangan, Govt. Middle School, Khisora, Block Magarlod, Distt. Dhamtari (Chhattisgarh)

---- Petitioners

Vs

1. State of Chhattisgarh AThrough The Secretary, School Education Department, D K S Bhawan, Mantralaya, Raipur (Chhattisgarh)
2. District Education Officer, Dhamtari, Distt. Dhamtari (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 5997 of 2010

1. Vishay Lal Sahu S/o Shri Budh Ram Sahu, Aged About 57 Years Upper Division Teacher, Govt. High Secondary School, Magarlod, District Dhamtari (Chhattisgarh)
2. Bhushan Lal Nishad Aged About 58 Years S/o Shri Ramji Nishad, U.D.T. Govt. Middle School, Dhourabhata, Block Magarlod, Distt. Dhamtari (Chhattisgarh)
3. Komal Singh Sahu Aged About 57 Years S/o Shri Manrakhan Lal Sahu, U.D.T. Govt, Middle School, Luge, Block Magarlod, Distt. Dhamtari (Chhattisgarh)

---- Petitioners

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Mantralaya, Raipur (Chhattisgarh)
2. District Education Officer, Dhamtari, Distt. Dhamtari (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 5351 of 2010

1. Anil Yadav S/o Late Shri Bodhram Yadav, Aged About 50 Years R/o Near Lal Tunki, Bus Stand Road, Raigarh, District Raigarh (Chhattisgarh)

2. Vipin Kumar Dadsena Aged About 50 Years S/o Late Pakram Dadsena, R/o Middle School, Girnar, Raigarh, District Raigarh (Chhattisgarh)
3. Lalu Chacko S/o Shri K. C. Chacko, Aged About 45 Years R/o C-5, Shailendra Nagar, Raigarh, District Raigarh (Chhattisgarh)
4. Manoj Raj S/o Shri Kamla Rai, Aged About 43 Years R/o Near Jute Mill, Raigarh, District Raigarh (Chhattisgarh)

---- **Petitioners**

Vs

1. State of Chhattisgarh Through Its Secretary, School Education Department, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer Raigarh, District Raigarh (Chhattisgarh)

---- **Respondents**

And

Writ Petition (S) No. 4919 of 2010

1. Baldau Singh Patel S/o Shri Neelkanth Patel, Aged About 47 Years Occupation Upper Division Teacher, Presently Posted At Govt. Pre-Middle School, Maatra, Block Saja, Education District Bemetara, District Durg (Chhattisgarh) R/o Village Surujpura, Post Parsbod, Thana Saja, Teh. Berla, District Durg (Chhattisgarh)
2. Bharat Singh Verma Aged About 50 Years S/o Shri Fatte Lal Verma, Occupation U.D.T. Presently Posted At Govt. Pre-Middle School Koudba, Block Berala, Education Distt. Bemetara, Distt. Durg (Chhattisgarh) R/o Village Parasbod, Thana Saja, Tehsil Saja, District Durg (Chhattisgarh)

---- **Petitioners**

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, DKS Bhawan, Raipur District Raipur (Chhattisgarh)
2. District Education Officer, Durg, Distt. Durg (Chhattisgarh)

---- **Respondents**

And

Writ Petition (S) No. 4818 of 2010

Bhagirathi Beghel Aged About 48 Years S/o Shri Dau Lal Baghel, Assistant B.E.O. Fingeshwar, Distt. Raipur (Chhattisgarh)

---- **Petitioner**

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer, Raipur, Distt. Raipur (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 4819 of 2010

1. Raghuram Braik S/o Late Shri Manbharan Ram, Aged About 57 Years Upper Division Teacher, Middle School, Lokhandi, Block Jashpur, District Jashpur (Chhattisgarh)
2. J.R. Yadav Aged About 57 Years S/o Late Shri Bhadro Ram, U.D.T. Middle School Kunkuri, Block Kunkuri, Distt. Jashpur (Chhattisgarh)
3. Gopal Kumar Verma Aged About 50 Years S/o Late Shri S.S. Verma, U.D.T. Middle School, Jashpur, Block Jashpur, Distt. Jashpur (Chhattisgarh)
4. Ravishankar Mahto Aged About 57 Years S/o Late Shri Rainu Ram, Assistant Teacher, Boys Primary School Sitonga, Block Jashpur, Distt. Jashpur (Chhattisgarh)

---- Petitioners

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer, Jashpur, Distt. Jashpur (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 4876 of 2010

1. Thanoo Ram Verma S/o Late Shri Narayan Prasad Verma, Aged About 46 Years Upper Division Teacher, C- 68, Rishabh Nagar, Amlidih, Raipur, District Raipur (Chhattisgarh)
2. Rajendra Kumar Chandrakar Aged About 46 Years S/o Shri B.L. Chandrakar, R/o Near Tiwari Nursing Home, Abhanpur, Distt. Raipur (Chhattisgarh)

---- Petitioners

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer, Raipur, Distt. Raipur (Chhattisgarh)

---- Respondents

And

Writ Petition (S) No. 4891 of 2010

Amarnath Yadu S/o Ramsingh Yadu, Aged About 51 Years Head Master, Primary School Sahrikhar, Block Nagri, Distt. Dhamtari (Chhattisgarh)

---- Petitioners

Vs

1. State of Chhattisgarh Through The Secretary, School Education Department, D K S Bhawan, Raipur (Chhattisgarh)
2. District Education Officer, Dhamtari, Distt. Dhamtari (Chhattisgarh)

---- Respondents

For Petitioners	: Shri Anoop Majumdar, Advocate.
For Respondent/State	: Shri Y.S.Thakur, Additional Advocate General
For Intervenor	: Shri Ratnesh Kumar Agrawal, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Judgment

Per Thottathil B. Radhakrishnan, Chief Justice

1. These writ petitions are filed challenging the constitutional validity of a provision in the Chhattisgarh School Education (Gazetted) (School Level) Services Recruitment and Promotion Rules, 2008; for short '2008 Rules', which prescribes a departmental examination for promotion to the post of Headmaster, Pre-Middle school. The eligibility criteria prescribed for appointment and promotion to the post of Lecturer and Principal of High and Higher Secondary schools is also challenged.

2. Heard the learned counsel for the Petitioners, learned Additional Advocate General and the learned counsel for those persons who have been impleaded as Respondents at their request following the order dated 16.09.2014 passed by the Hon'ble Supreme Court of India in Civil Appeal Nos. 8906-8932 of 2014 and connections.

3. These writ petitions were allowed by this Court on 05.04.2011 quashing Entry No. 2 of Column No. 7 of Sr. No. 3 of Schedule II appended to the 2008 Rules and consequentially, the advertisements issued by the respective District Education Officers for the post of Headmaster, Middle School. That judgment was carried to the Supreme Court in Special Leave Petitions (Civil); 'for short 'the SLPs', for which leave was granted leading to the registration of Civil Appeals which were decided as per order dated 16.09.2014 mentioned above. It is apposite to quote the said order of the Apex Court, which reads as follows:

"Leave granted.

2. After hearing learned senior counsel and counsel for the parties, we are of the view that matter needs to be reheard by the High Court after present appellants are impleaded as party-respondents. The hearing to the present appellants is necessary as we are informed that they were duly selected for the post of Head Master, Middle School after clearing departmental limit examination.

3. In view of the above, it is not necessary to examine other issues raised in the appeals.

4. Civil Appeals are allowed as above. The impugned order is set-aside. Writ Petitions (C) Nos. 4012, 4239, 4581, 4640, 4686, 4818, 4819, 4876, 4859 4891, 4919, 5291, 5351, 5476, 5496, 5693, 5761, 5762, 5997, 5996, 5536, 5881, 5979, 5980, 5985, 5998 of 2010 and 215 of 2011 are restored to the file of the High Court of Chhattisgarh for fresh hearing and consideration in accordance with law after impleadment of the present appellants as party-respondents.

5. Applicants in I.A. Nos. 137-163 of 2013 in civil appeal Nos. 8906-8932 of 2014 may apply to the High Court for their impleadment/intervention. It will be open to the parties to bring to the notice of the High Court the events that have taken place subsequent to the filing of the writ petitions."

4. Following the aforesaid order, the Intervenors filed applications seeking impleadment. Those applications have been allowed. No application

has been made by any of the writ petitioners seeking impleadment of any other person.

5. In view of the direction of the Apex Court that it will be open to the parties to bring to the notice of the High Court the events that have taken place subsequent to the filing of the writ petitions, it is brought to our notice that Chhattisgarh School Education (Gazetted) (School Level) Services Recruitment and Promotion Rules, 2014; for short '2014 Rules', were made and published in the gazette on 22.05.2014, i.e. the day on which those Rules would come into force by virtue of Sub-rule (2) of Rule 1 thereof. Those Rules, among other things, provide for repeal of earlier Rules.

6. It needs to be now noted that 2014 Rules came into force w.e.f 22.05.2014 i.e. before the Hon'ble Supreme Court passed the aforequoted order on the Civil Appeals on 16.09.2014.

7. All the writ petitions were filed after issuance of advertisements inviting applications for departmental limited examination and after such examinations were held. However, those who have participated in those departmental examinations in different districts are not impleaded in the writ petitions. Those persons who moved the Apex Court and have later been impleaded at their instance in the proceedings before the High Court are concerned only with the recruitment in the district of Raipur. It is an admitted fact that the departmental examinations were held for different districts.

8. When the selection procedure in relation to a selection is under challenge, more particularly when the rule providing for the particular selection procedure is impeached, the writ petitions would not be maintainable without the candidates, who will be displaced if the writ petitions are allowed, being impleaded in the array of the parties. It is imperative that

all the candidates are to be impleaded. It is laid down in **Prabodh Verma v. State of Uttar Pradesh; (1984) 4 SCC 251**, that a High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the person who would be vitally affected by the judgment being before it as respondent and if the petitioners refused to so join them, the High Court ought to dismiss the writ petition for non-joinder of necessary parties. In the case in hand, the order of remand dated 16.09.2014 passed by the Apex Court was necessitated fundamentally because the necessary parties were not impleaded in the writ petitions. In spite of that, the Petitioners have not taken any steps to implead the parties who would be affected by any decision that may be rendered in these writ petitions in favour of the writ petitioners. Under such circumstances, no relief could be granted to the Petitioners who have not impleaded the necessary parties in spite of adequate opportunity in this regard. See also for support: **K.H.Siraj v. High Court of Kerala; (2006) 6 SCC 395**. **A.M.S.Sushanth v. M. Sujata; (2000) 10 SCC 197** is authority for the position that principles of natural justice demand that any person who was likely to be adversely affected by the order should have had an opportunity of being heard. It was held in **Public Service Commission, Uttaranchal v. Mamta Bisht; AIR 2010 SC 2613** that non-joinder of necessary party is fatal to such writ petitions.

9. In the light of the aforesaid binding precedents, these writ petitions have to fail on the ground of non-impleadment of necessary parties in spite of adequate opportunity being available even after the order of remit was passed by the Hon'ble Supreme Court.

10. The impugned 2008 Rules was preceded by the Chhattisgarh Public Service (Promotion) Rules, 2003; for short '2003 Rules', as per which the promotions were to be made on the basis of seniority-cum-suitability;

except in cases of promotions to Class I posts carrying higher pay scale, which was to be made on the merit-cum-seniority. The plea raised by the writ petitioners is fundamentally that on completion of the requisite service, they were eligible for consideration for promotion to the post of Lecturer or Headmaster, Middle School, but such eligibility for promotion was curtailed by the prescription of departmental limited examination through the 2008 Rules. The authority to make 2008 Rules in supersession of 2003 Rules in exercise of power under Article 309 of the Constitution of India, is not and cannot be, disputed. The Establishment is well within the authority to recast the modality of appointment to higher cadres, including where promotion is the method of appointment. No case of any hostile discrimination has been made out. The yearning or aspiration of a person in service to promotion under the 2003 Rules is not something that amounts to unsurmountable legitimate expectation eligible to be reckoned as a crystallised right in terms of the Constitution that would invalidate the 2008 Rules on any principle relating to validity. The plea of the Petitioners on this count, therefore fails.

11. The next allegation of the Petitioners is that different District Education Officers had understood the 2008 Rules in varied manner and that this led to different yardsticks being prescribed for the selection and that the selections were held at different points of time. This, according to us, is not one which affects the constitutionality of the Rules made under Article 309 of the Constitution, which govern the field. Firstly, we do not see any vagueness in the 2008 Rules which tends to make it palpably perverse and unreasonable that it cannot be put to operate, by a reasonably prudent administration. All that has been attempted to be demonstrated is that the District Education Officers of different districts acted differently in relation to the conduct of limited departmental examinations. That does not vitiate the Rules made under Article 309 of the Constitution. This challenge also fails.

12. The persons who have sought intervention following the order of remit passed by the Hon'ble Supreme Court had pointed out that they had succeeded and were promoted following the limited departmental examination, but have however been demoted as a result of judgment passed by this Court on 05.04.2011 which has since been set aside by the Hon'ble Supreme Court through the order of remit made on 16.09.2014. Since we do not find any reason to interfere with the impugned 2008 Rules or the advertisements and the limited departmental examinations conducted, and also because these writ petitions are bad for non-joinder of necessary parties inspite of due opportunity, the action taken under the impugned Rules and the impugned selection have necessarily to be given effect to. This means that those persons who have been reverted or promoted as a consequence of the judgment rendered by this Court on 05.04.2011, which has since been annulled by the Apex Court through the order of remand dated 16.09.2014, have to be restored to respective positions that they held before 05.04.2011. Obviously, the 2014 Rules would then operate on such fact situation.

13. For the aforesaid reasons, these writ petitions fail.

14. In the result, these writ petitions are dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE