

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.3154 of 2017**

1. Awanish Chaurasiya S/o Shri M. P. Chourasiya, Aged About 42 Years Posted As Assistant District Prosecution Officer (A D P O), Posted In The Office Of Deputy Director Prosecution Raipur, District Raipur, Chhattisgarh.
2. Radheshyam Nagvanshi, S/o Shri M. K. Nagvanshi, Aged About 41 Years Posted As Assistant District Prosecution Officer (A D P O), Posted In The Office Of Deputy Director Prosecution Raipur, District Raipur, Chhattisgarh.
3. Smt. Anjali Singh, W/o Kshitijay Singh, Aged About 41 Years Posted As Assistant District Prosecution Officer (A D P O), Posted In The Office Of Deputy Director Prosecution Raipur, District Raipur, Chhattisgarh.
4. Smt. Kanchan Nirmalkar, W/o Shri Dhananjay Nirmalkar, Aged About 44 Years Posted As Assistant District Prosecution Officer (A D P O), Posted In The Office Of Deputy Director Prosecution Bilaspur, District Bilaspur, Chhattisgarh.
5. Ku. Anurekha Singh, D/o Shri B. P. Singh, Aged About 39 Years Posted As Assistant District Prosecution Officer (A D P O), Posted In The Office Of Deputy Director Prosecution Durg, District Durg, Chhattisgarh.
6. Smt. Pushpa Kiran Bhagat, W/o Shri D. R. Bhagat, Aged About 52 Years Posted As Assistant District Prosecution Officer (A D P O), Posted In The Office Of Deputy Director Prosecution Durg, District Durg, Chhattisgarh.
7. Vivek Tirpathi, S/o Shri Tirpathi Aged About 40 Years Posted As Assistant District Prosecution Officer (A D P O), Posted In The Office Of Deputy Director Prosecution Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhawan, New Raipur District Raipur, Chhattisgarh.
2. Director, Directorate Of Prosecution, Indravati Bhavan, New Raipur District Raipur, Chhattisgarh.
3. Chhattisgarh Public Service Commission, Through Secretary, Chhattisgarh State Public Service Commission Raipur, Shankar Nagar, Raipur District Raipur, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Anup Majumdar, Advocate
For Respondent/State	:	Shri S. P. Kale, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

05/10/2017

Heard.

2. The petitioners, who are working as Additional District Prosecution Officer, have filed this petition seeking direction to the respondents to convene Departmental Promotion Committee (In short "DPC") for promotion to the next higher post of District Prosecution Officer.

3. Learned counsel for the petitioners submits that in the State of Chhattisgarh, large number of posts of District Prosecution Officer are lying vacant. According to the petitioners, as many as 26 posts of District Prosecution Officer are lying vacant. The next contention of learned counsel for the petitioners is that in view of the recruitment rule in the matter of promotion to the post of District Prosecution Officer, known as Chhattisgarh Public Prosecution (Gazetted) Services Recruitment and Promotion Rules, 2008, the Assistant District Prosecution Officer, who have completed 8 years of service, are eligible for being considered for promotion to the post of District Prosecution Officer. The petitioners are those, who have completed 8 years of minimum eligibility criteria and thus, eligible Officers are available. Non convening of DPC would not only adversely affect the right of being considered for promotion to the next higher post, despite availability of vacancy, but also hamper the criminal justice system, because the District Prosecution Officer play a vital role.

4. On the other hand, learned State counsel, referring to the averments made in the reply, submits that the process of promotion to the post of District Prosecution Officer has already been initiated and some time is likely to be taken to complete the exercise of considering the cases of eligible Officers for promotion as per the criteria under the rules and passing orders of promotion. According to him, the relevant documents have already been sent to the Public Service Commission and the DPC is to be convened by the Public Service Commission.

5. The post of District Prosecution Officer is required to be filled up by way of promotion. Applicable rules as contained in Chhattisgarh Public Service Promotion Rules, 2003, are extracted as hereinbelow:-

6. **Promotion on the basis of seniority subject to fitness-**

(1) --- xxx ---

(2) --- xxx ---

(3) --- xxx ---

(4) The meeting of the Departmental Promotion Committee shall be held every year. It shall consider the suitability of the public servants for promotion separately with reference to the vacancies of each year starting with the earliest year onwards. The Departmental Promotion Committee shall consider the suitability of the public servants for promotion to fill up the unfilled vacancies of the earlier year or years separately and prepare the select list for the relevant year accordingly. Thereafter, the Departmental Promotion Committee shall consider the suitability of the public servants for promotion to fill up the existing and anticipated vacancies of the current year."

6. The Rules of 2003 clearly create an obligation to hold DPC and consider the cases of promotion every year according to suitability of public servants. Once Rules create an obligation for considering cases of eligible Officers for promotion to the next higher post, subject to availability of vacancy and eligible Officers, the respondents are under an obligation, statutory in nature, to convene DPC every year. The mandate of Rules creates statutory obligation and corresponding right in favour of the eligible officers for being considered for promotion according to the applicable rules.

7. This Court is concerned to notice that 26 posts of District Prosecution Officer are lying vacant all over the State. Earlier, the Division Bench of this Court in the case of ***Tijau Kanwar and others vs. State of Chhattisgarh (Criminal Appeal No.222 of 2005, Order dated 30-11-2009)*** expressed serious concern over the vacancy of the post of District Prosecution Officer. Concern of this Court was expressed thus:-

“For effective functioning of the Prosecution Department and to make the Prosecution Department operational, it is necessary that no post should be left vacant, especially the posts responsible for control & supervision of the working of the Prosecution Department. The posts of Director (Prosecution), Additional Director (Prosecution), Joint Director (Prosecution) & Deputy Director (Prosecution) are of supervisory and administrative nature.

Therefore, the Director (Prosecution) & the Additional Director (Prosecution), present in the Court, are directed to make immediate request to the Government for one time relaxation in eligibility criteria for promotion to the vacant posts of Additional Director (Prosecution) & Deputy Director (Prosecution). The Director (Prosecution) shall also ensure that posts should not be left vacant on the ground of eligibility criteria, which would adversely affect the working of the prosecution and in case of future exigency suitable requests be made to the State Government from time to time.”

8. In the light of the aforesaid direction of this Court in the case of ***Tijau Kanwar*** (supra) and the present situation, it is clear that the post of District Prosecution Officer have not been filled up, which is not only defying the directions issued by this Court, but also adversely affecting the administration of criminal justice system. Interest of justice would require that the posts of District Prosecution Officer are filled up at the earliest and the respondents-State/PSC is obliged under the law to ensure that the promotions on the post of District Prosecution Officer are made at the earliest without unnecessary delay.

9. Resultantly, a writ of mandamus is required to be issued that the respondent-PSC shall convene DPC in this year 2017 itself, in view of the provisions contained in Rule 6(4) of the Rules of 2003 for considering eligible Additional District Prosecution Officer for promotion to the next higher post of District Prosecution Officer. State shall

make available necessary records, information inputs, so that PSC is able to hold DPC as per the aforesaid direction.

10. With the aforesaid direction, this petition is finally disposed off.

11. Before parting with the case, keeping in view the concern of Criminal Justice System, the respondent-State is directed to submit a report before the Registry of this Court on or before 15-01-2018 with regard to compliance of the directions issued by this Court.

SD/-
(Manindra Mohan Shrivastava)
Judge