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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1502 of 2014**

- Vishnu Prasad Chandrakar S/o Late Shri Aen Lal Chandrakar, Aged About 53 Years, Occupation Service, Presently Posted As Time Keeper, Municipal Corporation Bhilai R/o Qr No. 413, Street No. 14, Sector 8, Bhilai, P.S. Kotwali, Distt. Durg, Civil & Revenue Distt.Durg C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur C.G.
2. Department Of Urban Administration Through The Principal Secretary, Urban Administration & Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur C.G.
3. Director, Urban Administration & Development, Through The Director, Urban Administration & Development, R.D.A. Building Raipur Distt. Raipur C.G.
4. Municipal Corporation Bhilai Through its Commissioner, Municipal Corporation Bhilai, Distt. Durg. C.G.

---- Respondent**And****WPS No. 677 Of 2016**

- Rameshwar Prasad Chandrakar S/o Late Shri Lakhan Lal Chandrakar, Aged About 49 Years, Occupation Service, Presently Posted As Work Assistant Grade- II, Municipal Corporation, Bhilai, R/o Qr. No. 1 D, Street No. 34, Sector 8, Bhilai, District Durg, (Chhattisgarh)

---- Petitioner**Vs**

1. State Of Chhattisgarh Through: The Principal Secretary, Department Of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. Department Of Urban Administration, Through: The Principal Secretary, Urban Administration And Development

Department, Mahanadi Bhawan, Mantralaya, Naya Raipur,
(Chhattisgarh)

3. Director, Urban Administration And Development, Through: The
Director, Urban Administration And Development, R.D.A.
Building, Raipur, District Raipur, (Chhattisgarh)
4. Municipal Corporation, Bhilai, Through: Its Commissioner,
Municipal Corporation, Bhilai, District Durg, (Chhattisgarh)

---- Respondent

And

WPS No. 5622 Of 2016

- Shiv Kumar Sharma S/o Late Fatte Prasad Tiwari, Aged About 54
Years, Occupation- Service, Presently Posted As Spot Assistant,
Municipal Corporation, Durg, R/o Gaya Nagar, Gali No. 4, Ward
No. 4 Durg, District Durg, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through- The Principal Secretary,
Department Of Finance, Mahanadi Bhawan, Mantralaya, Naya
Raipur, Chhattisgarh
2. Urban Administration And Development, Through- The Principal
Secretary, Indravati Bhawan, Mantralaya, Naya Raipur,
Chhattisgarh
3. Directorate, Urban Administration And Development, Through-
The Director, R.D.A. Building, Raipur, District- Raipur,
Chhattisgarh
4. Municipal Corporation, Durg, Through- Its Commissioner,
Municipal Corporation, Durg, District- Durg, Chhattisgarh

---- Respondent

And

WPS No. 5598 Of 2016

- Abdul Hamid S/o Late Sheikh Ahmed, Aged About 50 Years
Occupation- Service, Presently Posted As Assistant Revenue
Inspector, Municipal Corporation, Ambikapur, R/o Rasoolpur,
Ward No. 39, Ambikapur, District Ambikapur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through- The Principal Secretary, Department Of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. Urban Administration And Development, Through- The Principal Secretary, Indravati Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
3. Directorate, Urban Administration And Development, Through- The Director, R.D.A. Building, Raipur, District- Raipur, Chhattisgarh
4. Municipal Corporation, Ambikapur, Through- Its Commissioner, Municipal Corporation, Ambikapur, District- Ambikapur, Chhattisgarh

---- Respondent

And

WPS No. 5669 OF 2016

- Vijay Kumar Sherkar S/o Shri G. Rao Sherkar, Aged About 62 Years Occupation- Service, Presently Posted As Assistant Draftsmen, Municipal Corporation, Bhilai, R/o Nehru Nagar, Block-G, Plot No. 2, Bhilai, District Durg, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through- The Principal Secretary, Department Of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. Urban Administration And Development, Through- The Principal Secretary, Indravati Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
3. Directorate, Urban Administration And Development, Through- The Director, R.D.A. Building, Raipur, District- Raipur, Chhattisgarh
4. Municipal Corporation, Bhilai, Through- Its Commissioner, Municipal Corporation, Bhilai, District- Durg, Chhattisgarh

---- Respondent

And

WPS No. 5625 OF 2016

- Ajay Kumar Verma S/o Late Shri Bhagwati Prasad Verma Aged About about 42 Years, Occupation- Service, Presently Posted As Assistant Grade-II, Municipal Corporation, Raipur, R/o Behind Of Aashirwad Hospital, Gayatri Nagar, Daganiya, Raipur, District Raipur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh The Principal Secretary, Department Of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. Urban Administration And Development, Through- The Principal Secretary, Indravati Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
3. Directorate, Urban Administration And Development, Through- The Director, R.D.A. Building, Raipur, District- Raipur, Chhattisgarh
4. Municipal Corporation, Raipur, Through- Its Commissioner, Municipal Corporation, Raipur, District- Raipur, Chhattisgarh

---- Respondent

And

WPS No. 5617 Of 2016

- Abhimanyu Sinha S/o Shri Dularwa Sinha, Aged About 58 Years Occupation Service, Presently Posted As Pump Operator, Municipal Corporation, Dhamtari, R/o Thorid Nagar, Dhamtari, District Dhamtari, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through: The Principal Secretary, Department Of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. Urban Administration And Development, Through The Principal Secretary, Indravati Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
3. Directorate, Urban Administration And Development, Through: The Director, R.D.A. Building, Raipur, District Raipur, (Chhattisgarh)
4. Municipal Corporation, Dhamtari, Through: Its Commissioner,

Municipal Corporation, Dhamtari, District Dhamtari,
(Chhattisgarh)

---- Respondent

For Petitioner
For Respective Respondents

Mr. Saurabh Sharma, Advocate
Ms. K. Tripti Rao, Panel Lawyer, Mr.
Mr. Rajnish Singh Baghel, Mr. Pankaj
Agarwal and Mr. Dharmesh
Shrivastava, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

28/3/2017

1. Heard.
2. The petitioners are employees of different Municipal Corporations in the State of Chhattisgarh. Their services are governed under the C.G. Municipal Corporation (Appointment & Conditions of Service of Officers and Servants) Rules, 2007 (in short "the Rules, 2007"). They have preferred these writ petitions for quashment of the order dated 14.5.2012 (Annexure P/8 in the leading petition i.e. WPS No.1502 of 2014) as also for a direction to the respondents to grant them arrears of 6th Pay Scale w.e.f. 1.1.2006.
3. On the strength of Rule 2(o), Rule 3 and Rule 13 of the Rules, 2007, read with the provisions of the Chhattisgarh Pay Revision Rules, 2009 (in short "the Rules, 2009"), it is argued that the petitioners are entitled to arrears of 6th Pay Scale as has been

allowed to the Government Servants. It is put-forth that vide order date 17.9.2009 and thereafter, by the impugned order dated 14.5.2012, the Department of Urban Administration and Development, Government of Chhattisgarh has decided to grant benefit of 6th Pay Scale to the petitioners w.e.f. 1.1.2006, however, the payment of arrears from the said date to 31.3.2012 has been denied and instead, it is decided that the notional pay shall be fixed and actual revised pay as applicable in the 6th Pay Scale shall be paid to the petitioners w.e.f. 1.4.2012, whereas, the State Government employees have been granted arrears from 1.1.2006. The petitioners are, thus, clearly discriminated in the matter of grant of arrears of 6th Pay Scale.

4. Ms. K. Tripti Rao, learned Panel Lawyer, Mr. Rajnish Baghel, Mr. Pankaj Agarwal and Mr. Dharmesh Shrivastava, learned Advocates for the respective Corporations, would argue that in view of the State Government's order, the petitioners are not entitled for arrears, because the Rules, 2009 applies to Government Servants and not to the employees of the Municipal Corporations.
5. Rule 3 of the Rules 2007 provides that the posts included in the service shall be such as specified in Schedule I appended to the Rules and the classification of the posts included in the service, its number and scales of pay attached thereto shall be determined by the appointing authority subject to the orders issued by the State Government from time to time.
6. Rule 13(1) of the Rules, 2007 provides that the Corporation shall

be competent to prescribe the method/procedure under which decision is to be taken in respect of medical treatment, General Provident fund and Pension. The other conditions of service which have not been provided in these rules or any other rules made under the Act shall be deemed to be the same which are applicable to government servants on the same post from time to time.

7. The Rules, 2009 is applicable to the employees of the State Government and not to the employees of Municipal Bodies including the Municipal Corporations. The said rules have not been made applicable *mutatis mutandis* to the employees of the Municipal Bodies, because, the scale of pay of an employee of Municipal Corporation is determined by the Appointing Authority as defined under Rule 2(b) of the Rules, 2007, i.e. Mayor-in-Council or the Commissioner and the same is subject to the orders issued by the State Government from time to time.
8. It is the settled law that when applicability of Article 14 is pressed into service, one of the basic facts to be noticed is whether two sets of employees are governed under the same set of rules and working in the same establishment **(See: Harbans Lal and others Vs. State of Himachal Pradesh and others, (1989) 4 SCC 459).**
9. To the petitioners' misfortune, they are appointed and governed under the Rules, 2007 and their pay scales are also different as provided under the Rules, which is wholly different

from the pay scale attached to the same cadre or post in the different Departments of the State Government.

10. It is also to be noticed that determination of the pay scale attached to a particular post under the Rules, 2007 has been made subject to the orders issued by the State Government from time to time, meaning thereby, that even the determination of pay scale is not left to the exclusive wisdom and jurisdiction of the particular Corporation but the same is subject to the Regulations or Orders issued by the State Government.

11. The undermined legislative intent for such provision appears to be for the reason that amongst many Municipal Corporations in the State, a few may be financially better off in comparison to the others, therefore, if a particular rich Corporation grants higher pay scale or allowances to the employees, it will occasion disparity amongst the employees of different Corporations, which would create incongruent situation between the same set of employees, who are governed under the same rules and in such event, it may be a cause of violation of Article 14 amongst such employees.

12. The decision taken by the State Government on 4.5.2012 appears to be a policy decision allowing grant of 6th Pay Scale to the employees with actual benefits from a particular date, but the notional fixation from 1.1.2006, when the 6th pay scale came into force. Such policy decision of the Government, which *prima facie* does not appear to be in violation of the statutory

provision, is not to be easily interfered with by the writ Court because, it has financial implications. Had it been a case that the Municipal Bodies are bound under the Rules to give benefit of arrears of 6th Pay Scale, the issue of financial burden becomes irrelevant, however, when it is at the discretion of the Government and the said discretion appears to have been exercised keeping in view the finances of the Local Bodies, the writ Court may not be entitled to interfere in such policy matters having adverse financial implications.

13. For the foregoing, the all the writ petitions sans substance deserve to be and are hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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