

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No.2760 of 2015**

1. Shrikant Pandey S/o Shri Gajadhar Prasad Pandey, aged about 32 years.
2. Jagdish Prasad Rawat S/o Shri Ranjana Lal Rawat, aged about 45 years.
3. Smt.Karuna Tiwari W/o Shri Amit Tiwari, aged about 42 years.
4. Suraj Bhargav S/o Shri Bhagwat Prasad Bhargav, aged about 41 years.
5. Hitendra Kumar Yadav S/o Shri Hemant Kumar Yadav, aged about 42 years.
6. Omprakash Kesharwani S/o Shri R.K.Kesharwani, aged about 37 years.
7. Dinesh Kumar Tandon S/o Shri Bhanupratap Tandon, aged about 38 years.

All are working as Peon in the office of the Advocate General, High Court Premises, Bodri, Bilaspur (C.G.).

---Petitioners

Versus

1. The State of Chhattisgarh, Through :- The Secretary, Government of Chhattisgarh, Department of Law & Legislative Affairs, Mahanadi Capital Complex, Raipur (C.G.).
2. The Advocate General, High Court Premises, Bodri, Bilaspur (C.G.).

---Respondents

AND**WPS No.3360 of 2015**

Smt.Barkha Sharma W/o Shri Arun Kumar Sharma, aged 42 years, Office of the Advocate General, High Court Premises, Bodri, Bilaspur (C.G.).

---Petitioner

Versus

1. The State of Chhattisgarh, Through :- The Secretary, Government of Chhattisgarh, Department of Law & Legislative Affairs, Mahanadi Capital Complex, Raipur (C.G.).
2. The Advocate General, High Court Premises, Bodri, Bilaspur (C.G.).

---Respondents

Shri Kishore Bhaduri, Advocate for petitioners in WPS No.2760/2015.

Smt.Barkha Sharma, Petitioner in person in WPS No.3360/2015.

Shri Rajeev Shrivastava, Advocate for the State.

Shri P.Bharat, Addl.A.G. for the o/o Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/11/2017

1. These are the two Writ Petitions filed by the employees working in the office of Advocate General, High Court, Bilaspur in class-IV category. The prayer made in these two Writ Petitions is for consideration of their claim for the class-III post applying rules which were amended in the erstwhile State of Madhya Pradesh wherein the reservation for the post to be filled in Assistant Grade-III from among the departmental class-IV category employees was enhanced from 10% to 25%.

2. The claim of the petitioners was that, the said enhancement of 25% has been made applicable even in the State of Chhattisgarh, but for some reason, the same has not been acted upon for the recruitment which has been made to the post of Assistant Grade-III in the Law and Legislative Department under which the ministerial part of the office of Advocate General also comes. According to the petitioners, the recruitment in the Law and Legislative Department still was being carried out keeping reservation from class-IV employees at 10% which was as per rules as it existed when the rules were framed and there are a

couple of subsequent amendment and modification made by the State Government in this regard which is not being applied.

3. The counsel for the petitioner submits, that the rules in various department both in the erstwhile State of Madhya Pradesh and subsequently in the State of Chhattisgarh also except for the Law and Legislative Department of the Chhattisgarh Government have been amended and the new rules have been framed keeping the percentage of reservation for such category of employees at 25% and therefore the petitioners should also be treated at par and for them also, the percentage of reservation for the post of Assistant Grade-III from departmental class-IV employees should be maintained at 25% and thus prayed for suitable modification in this regard.

4. The counsel for the respondents submits, that the stand of State of Chhattisgarh in this regard is that, firstly, the enhancement which was made by State of Madhya Pradesh vide order dated 23/05/1996 was only a memo and it was not an order or circular issued by the State Government and therefore it would not automatically becomes applicable in the State of Chhattisgarh. It was further contended that the State of Chhattisgarh down the line on 15/01/2015 has amended the rules and have not touched the reservation part as available in the schedule. That the fact the percentage in the schedule has not been amended, it impliedly remains at 10% and cannot be considered to have automatically become 25%. It was further contended, that the State Government had consciously not touched the 10% in the schedule in spite of memos and circulars of Madhya Pradesh and therefore also it

would not have automatic application so far as the petitioners are concerned.

5. The State counsel in this regard submits, that the enhancement that has been made from 10% to 25% was not brought into force by way of any amendment to the rules, except for the circular which existed at the time of the creation of the State and which has also not been adopted by the State of Chhattisgarh and by Law and Legislative Department in the State of Chhattisgarh. He further submits, that the recruitment of the category for which the petitioners are claiming are governed by a separate set of rules known as Chhattisgarh Law and Legislative Affairs Department Service (Recruitment and Condition of Service) Rules, 1983. According to the counsel for the State, all the enhancements have being made only by way of issuance of memo/circular with a direction for taking proper steps for amending the rules, but the rules till date have not been amended and the percentage of reservation from class-IV to class-III remains 10%.

6. At this juncture the counsel for the State makes a statement on instructions that, the Law and Legislative Department in the State of Chhattisgarh also has initiated steps for framing new rules in the State of Chhattisgarh and that he has also been instructed, that the rules in this department shall also be in similar terms i.e. similar to the rules which have been framed in the other department so far as reservation from class-IV to class-III is concerned. He however submits, that as long as the new rules are not framed, the petitioners would be governed by old rules where as per schedule in the Recruitment Rules, the percentage of reservation shown is still 10% and which has already been acted

upon and as 10% post are already filled, there is no vacancies available for consideration of the petitioners claim.

7. Shri P.Bharat, Additional Advocate General appearing on behalf of respondent No.2 during the course of arguments submits, that so far as the rules governing the other departments i.e. Education Department, Women and Child Department, Commercial Tax Department, Revenue Department so also in the General Administration Department as well, all recruitments which are being carried out for filling up of post of Assistant Grade-III is by reserving 25% posts from departmental class-IV employees.

8. Having considered the rival contentions put forth on either side, the moot question which evolves to be considered is, whether it would be 25% post which would be reserved for promotion from class-IV to class-III while filling of the post of Assistant Grade-III ? Undisputedly, the rules was framed under the erstwhile State of Madhya Pradesh was known as Madhya Pradesh Law and Legislative Affairs Department Service (Recruitment and Conditions of Service) Rules, 1983. Schedule II of the said rules provides for number of posts as well as the percentage of post to be reserved for being filled from among the employees of class-IV category in the establishment and the percentage at the time of framing of the Rules was 10% for the post of Lower Division Clerk-cum-typist. This post subsequently was reclassified as Assistant Grade-III. This 10% as per the schedule was enhanced to 15% by an order issued in the name of Governor of the said Madhya Pradesh dated 15/11/1994. Subsequently, vide another order passed on 19/01/1989, again 15% was enhanced to 20%. That finally on 23/05/1996, the erstwhile State of Madhya Pradesh

issued another order whereby the said reservation for class-IV category of employees promotion to the post of Assistant Grade-III was enhanced from 20% to 25%. It has been informed by the petitioners that pursuant to this enhancement all recruitments made in the State of Madhya Pradesh for the post of Assistant Grade-III are being carried out keeping reservation for class-IV category employees in the establishment at 25%. He submits that, subsequently though there was an amendment brought to the rules in the year 2011 by the State of Chhattisgarh, but that was confined only in respect of educational qualification in the filling up of posts of Assistant Grade-III and that would also be applicable only to the direct recruits and it would not be applicable so far as promotion from class-IV to class-III is concerned.

9. At this juncture it would be relevant to refer to the order passed by the State of Chhattisgarh on 31/10/2002 which was an order issued by the General Administration Department holding, that all circulars, orders and memos issued under the undivided Madhya Pradesh till 31/10/2000 would remain in operation in the State of Chhattisgarh as well, unless the rules are either amended or new rules are framed.

10. The order of General Administration Department dated 31/10/2002 reflects that, the State Government has adopted all the circulars, memos and directions issued by the undivided State of Madhya Pradesh till 31/10/2000 which includes the circulars, orders and memos dated 15/11/1984, 19/01/1989 and 23/05/1996 i.e. raising the reservation from 10% to 15%, 15% to 20% and later from 20% to 25%. The order dated 31/10/2002

says that unless these orders are either specifically cancelled or amended, they would remain in force in the State of Chhattisgarh. Neither has this order been withdrawn by the State of Chhattisgarh nor an amendment brought to the said circular so far as reservation for promotion from class-IV to class-III is concerned.

11. Thus for all practical purposes, the periodical order dated 15/11/1984 which stood modified on 19/01/1989 and later got further modified vide order dated 23/05/1996 remains in force in the State of Chhattisgarh as well.

12. The documents which have been produced before this court in respect of Education Department, Women and Child Department, General Administration Department, Revenue Department, Commercial Tax Department so also Tribal Welfare Department have adopted the said orders. They have been taking into consideration the said circulars of the State Government and have kept reservation for class-IV category employees for promotion to class-III cadre at 25%. This court thus sees no reason as to why there should be an exception to the Law and Legislative Department.

13. Thus, once when by virtue of the order dated 31/10/2002, the State of Chhattisgarh having held that all the circulars, memos and directions issued by the undivided State of Madhya Pradesh would be applicable in the State of Chhattisgarh as well, the petitioners also in the instant case would be entitled for the same treatment wherein they should also be considered for the post of Assistant Grade-III wherein the percentage of posts available to

them should be taken as 25% as and when the next vacancy arises.

14. Accordingly, the present Writ Petition stands allowed and disposed off with a direction to the respondent No.1 that, as and when the next recruitment to the post of Assistant Grade-III would be conducted in the Law and Legislative Department, the case of the petitioners would also be considered keeping the total number of post available to them at 25% in accordance to the circular dated 23/05/1996.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit