

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6741 of 2008**

Sheetal Prasad Suryavanshi, aged about 48 years, S/o Shri Dhansai Suryavanshi, presently posted and working as Assistant Grade-II, Municipal Corporation, Korba, District Korba (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Urban Administration Department, DKS Building, Mantralaya, Raipur (CG)
2. Municipal Corporation, Korba, District Korba (CG) through its Commissioner.
3. Raghuram Yadav S/o late Shri Aghanlal Yadav, Municipal Corporation, Korba, District Korba (CG)
4. Mohanlal Mishra S/o Shri Maujilal Mishra, Municipal Corporation, Korba, District Korba (CG)

---- Respondents

For Petitioner	:	Shri S. S. Baghel, Advocate
For Respondent no.1	:	Ms. Sunita Jain, P.L.
For Respondent no.2	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.09.2018**

The prayer sought for by the petitioner in the present writ petition is for a direction to the respondent no.2 to consider the case of the petitioner for grant of promotion from the date the respondents 3 & 4 who are junior to him have been granted i.e. from 27.09.1995.

2. The whole contention of the petitioner is that he had joined the

service of respondent no.2 ahead of respondents 3 & 4. Counsel for the petitioner referred to the gradation list to show that the petitioner was appointed on 28.10.1989 whereas respondent no.3 was appointed on 26.12.1989, as such for all practical purposes, the petitioner was senior to respondent no.3. Similar is the contention so far as respondent no.4 is concerned.

3. According to the counsel for the petitioner, the only difference was that respondents 3 & 4 were from Peon cadre whereas the petitioner was from Choukidar cadre. However, so far as grant of promotion from Class-IV to Class-III is concerned, the criteria is the same and it is always the senior who has to be considered for promotion subject to his fulfilling the minimum eligibility criteria i.e. the minimum length of service as a regular Class-IV employee under the employer which in the instant case was fulfilled by the petitioner but for the reasons best known, the petitioner was not granted promotion along with respondents 3 & 4 i.e. from 27.09.1995 and the respondents have not till date disclosed any reason as to why the petitioner is not entitled for the benefit on parity with respondents 3 & 4. According to the counsel for the petitioner, the petitioner had on an earlier occasion filed a petition i.e. WP No. 1443/1998 which stood disposed of on 13.02.2006 with a direction to the concerned authorities to consider the representation of the petitioner but respondent no.2 in spite of all repeated efforts, deliberately sat on the said representation of the petitioner without deciding the same which led to the filing of the present subsequent writ petition. Thus, counsel for the petitioner prayed for suitable direction for considering the case of the petitioner for promotion w.e.f. 27.09.1995.

4. Counsel appearing for respondent no.2 Corporation opposing the

petition submits that it is a case where the petitioner has not challenged the order of promotion to respondents 3 & 4 dated 27.09.1995 and unless the said order is said to be bad in law, the petitioner would not be entitled for any relief. He submits that the present writ petition was filed in the year 2008 and as such the same suffers from delay for which the petition deserves to be rejected. Counsel for respondent no.2 tried to draw the distinction that the petitioner is from Coukidar cadre whereas respondents 3 & 4 are from Peon cadre, therefore, the petitioner cannot claim parity with the promotion granted from Peon cadre.

5. The reply of the respondent Corporation is totally silent on the pleadings and contentions raised by the petitioner. Counsel for the respondent no.2 Corporation also was not able to provide any detailed information as to what was the basis on which respondents 3 & 4 have been granted promotion. Counsel for the Corporation was also not able to show the provision of either rules or guidelines under which promotion was granted to respondents 3 & 4 neither has he been able to justify the Act on which the petitioner though being senior was not considered for promotion. Counsel for the Corporation also was not in a position to show whether there was any guideline which envisages that Peons would be considered for promotion ahead of Choukidars even if Choukidars were appointed prior to Peons.

6. Given the aforesaid circumstances where the counsel for the Corporation has not been able to provide any justification for the promotion given to respondents 3 & 4 this Court is inclined to accept the contention of the petitioner based on the documents enclosed with the writ petition which clearly reflects that the petitioner was appointed ahead of respondents 3 &

4 and he was confirmed in service ahead of respondents 3 & 4.

7. So far as the objection of delay is concerned, the same may not be sustainable for the reason that the petitioner had already filed a writ petition in the year 1998 challenging the promotion granted to the private respondents and the said writ petition got disposed of only on 2006 where the petitioner was directed to file a representation and the respondent Corporation did not decide the representation which led to the filing of the present writ petition.

8. Under the circumstances, the present writ petition stands disposed of with a direction to respondent no.2 to consider the case of the petitioner for promotion along with respondents 3 & 4 who have been granted the benefit of promotion from 27.09.1995. If the petitioner is found eligible for promotion, he shall be granted the same forthwith. However, if the petitioner is found eligible, he would be entitled for only the notional benefits of fixation on the promoted post and all actual benefits shall be prospective. It is expected that the necessary compliance would be done within a period of 4 months from the date of receipt of certified copy of this order.

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