

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 2684 of 2018**

1. Shrikant Singh S/o Shri Balram Singh, Aged About 31 Years Occupation Unemployed (Diploma In Sanitary) R/o. Ward No. 21, Nagar Palika Parishad Manendragarh, District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
  2. Vijay Kumar Chihtol, S/o Shri Heeralal Chihtol, Aged About 31 Years Occupation- Unemployed (Diploma In Sanitary), R/o. Ward No. 3, Nagar Panchayat Ledri, Tahsil Manendragarh District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
  3. Jaidev Kumar Yadav, S/o Shri Ramkumar Yadav, Aged About 24 Years Occupation Unemployed (Diploma In Sanitary), R/o. 151-B, Risali Sector, Bhilai Nagar, District Durg (Chhattisgarh), District : Durg, Chhattisgarh
- Petitioners**

**Versus**

1. The State Of Chhattisgarh Through The Secretary, Department Of Urban Development, New Mantralaya, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
  2. The Secretary, Department Of General Administration, State Of Chhattisgarh, New Mantralaya, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
  3. The Director- Urban Administration And Development, State Of Chhattisgarh, D-Block, Fourth Floor, Indrawati Bhawan, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
  4. The Secretary, Chhattisgarh Professional Examination Board (Vyapam), Raipur Chhattisgarh., District : Raipur, Chhattisgarh
- Respondents**

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| For Petitioners       | : | Mr. A.N. Bhakta, Advocate                                                                                                              |
| For Respondents/State | : | Mr. Prafull N. Bharat, Additional A.G.<br>and Dr. Saurabh Kumar Pande,<br>Advocate for the respective<br>respondents, on advance copy. |

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**DB : Hon'ble Shri Justice Manindra Mohan Shrivastava, J****Hon'ble Shri Justice Sharad Kumar Gupta, J****Order On Board by Manindra Mohan Shrivastava, J.****28.03.2018**

Heard.

1. By this petition under Article 226 of the Constitution of India, the petitioners have challenged the constitutional validity of the amendment carried

out in Chhattisgarh Municipal Services (Scale of Pay and Allowances) Rules, 1967 vide notification dated 18.05.2017 whereby the qualification for appointment to the post of Sanitary Inspector have been amended to provide that the candidates should have passed B.Sc. in Biology from any recognized University and Diploma in Sanitary Inspector from any recognized institute.

2. The relevant prescription under challenge in this petition is conveniently quoted herein below :

| (1) | (2)                | (3)                          | (4)                                                                                                                                  |
|-----|--------------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| "5. | Sanitary Inspector | Rs.5200-20200+Grade Pay 2800 | Should have passed B.Sc. in Biology from any recognized University and diploma in Sanitary Inspector from any recognized institute." |

3. Learned counsel for the petitioners argued that by such a prescription of stringent qualification as an essential eligibility criteria for appointment to the post of Sanitary Inspector, the Rule making authority has violated the Constitutional mandate of Article 14 & 16 of the Constitution of India inasmuch as the prescription of the qualification is not based on any reasonable or rational classification. He would submit that earlier the statutory scheme as it stood prior to amendment, only provided that the candidates should have passed the examination of Sanitary Inspector from a recognized institution. The said qualification has been amended without any relevance to the requirements of duties and functions of the Sanitary Inspector.

4. In order to substantiate his submission, learned counsel for the petitioners referred to scheme of recruitment of Sanitary Inspector in the establishment of All India Institute of Medical Science, Raipur as also Municipal Council New Delhi that in those Recruitment Rules, there is no such prescription.

5. The challenge to the validity of the Rule is required to be tested on well settled principles authoritatively laid down by the Apex Court in plethora of decisions.

It is well settled that grounds of judicial review of legislative action are much more restricted than those of the judicial review of administrative action. In the case of *Bhim Sen Vs. State of U.P.* AIR 1955 SC 435, it was held that judicial review is permissible to examine whether rules and regulations made by the executive or any other are within their statutory power.

6. It is also well settled that the validity of a legislation/Rule could be challenged on the limited ground of legislative competence or that it is violative of any of the provision of Constitution and in case of subsidiary legislation, additionally, is inconsistent with the enabling act or in excess of Rule making power.

7. In the present case, the Rules have been framed by the Governor in exercise of Constitutional power under proviso to Article 309 of the Constitution of India. Even though, it is not a case of primary legislation by a legislature, nevertheless, Rules framed by the Governor in exercise of constitutional power stand on a high pedestal and are undoubtedly legislative in nature. The validity of the Rule could be challenged only on the limited ground as we have considered herein above.

8. This is no challenge to the validity of Rule on the ground that it lacks competence. The grievance of the petitioners appears to be that because of prescription of a stringent qualification, large number of aspiring candidates in the open market would be disqualified. We are afraid, this alone could not be a ground to successfully challenge validity of the Rules framed in exercise of power under the Constitution. The law makers and the rule makers have authority vested in them under the law to lay down legislative/rule policy and merely because, it does not suit a section of aspiring candidates, it cannot be held to be unconstitutional.

9. Upon comparison of the unamended Rules and the Rules under challenge, we find that now a stringent qualification is insisted upon in the matter of appointment to the post of Sanitary Inspector, who are required to perform duty as a part of public governance. It cannot be over emphasized that challenge faced by local body in the matter of maintaining sanitation within the municipal area is a great challenge. Therefore, merely because the qualification now prescribed are stringent, we are not inclined to interfere with the legislative exercise.

10. The argument of learned counsel for the petitioners that the prescription of qualification is not based on reasonable qualification, to say the least, is without any material placed before us. There is nothing in the petition to show that qua the nature of duties and functions required to be performed by a Sanitary Inspector, prescription of requirement of having passed B.Sc. with Biology, has no relevance and obtaining graduation in any other branch of

discipline would make no difference. The petitioners have no pleaded in the petition with regard to the nature of duties and functions required to be performed by a Sanitary Inspector. The burden to establish that the legislation is not based on reasonable classification and has no rational integra, having reasonable nexus with the object sought to be achieved, is required to be discharged with proper pleadings and material, we do not find on record.

11. In the result, we do not find any ground to interfere with the Rule under challenge and therefore, the petition must fail and is dismissed.

Sd/-

**(Manindra Mohan Shrivastava)**  
**Judge**

Sd/-

**(Sharad Kumar Gupta)**  
**Judge**