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HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 08-08-2018****Order delivered on 27-10-2018****WPS No. 1889 of 2014**

1. Mathura Prasad Kashyap, S/o Shri Bedilal Kashyap, Aged About 57 Years, Caste Kurmi, Posted At Revenue Inspector, PS Bilaspur, Dist. Bilaspur, Chhattisgarh
2. Surendra Shrivastav S/o Prem Lal Shrivastav, Aged About 52 Years President Chhattisgarh Revenue Association, Raipur R/o Prem Sadan, Hiramoti Line, Rajnandgaon, C.G. Posted At Revenue Inspector P.S. Rajnandgaon, District : Rajnandgaon, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Revenue and Disaster Management, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. Commissioner, Land Records Department, Raipur, Distt. Raipur C.G.

---- Respondent**WPS No. 3201 of 2014**

1. Santosh Kumar Pandey, S/o Shri C.S. Pandey Aged About 40 Years R/o Chantidih Ramayan Chowk Main Road, Bilaspur Tahsil And Distt. Bilaspur C.G.
2. Padumlal Patanwar S/o Late Dataram Aged About 56 Years R/o Nikhileshwaram Colony Muktidham Road, Saarkanda, Tahsil And Distt. Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Revenue And Disaster Management, Mahanadi Bhawan, Mantralaya, Raipur, Tahsil & Dist. Raipur C.G.
2. Vyavasayik Pariksha Mandal (VYAPAM), through Examination Controller, Pension Bada Raipur, Tahsil & District : Raipur, Chhattisgarh

---- Respondent

For Petitioners in WPS No.1889 of 2014	Ms. Surya Kawalkar Dangi, Advocate
For Petitioners in WPS No.3201 of 2014	Shri Santosh Kumar Pandey, Petitioner No.1 in person
For Respondent/State	Shri Y.S. Thakur, Addl. Adv. General

Hon'ble Shri Justice Ajay Kumar Tripathi, CJ
Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

The following order of the Court was passed by ***Prashant Kumar Mishra, J.***

1. The writ petitions would challenge the constitutional validity of Rule 6 of the Chhattisgarh Kanisth (Junior) Prashaskiya Seva Barthi Niyam, 1980 (*henceforth 'the Rules, 1980'*) with further prayer to quash the advertisement dated 4-3-2014 and to direct the respondent authorities to fill the post of Naib Tahsildar as per the provisions of the Land Records Manual (*Bhu Abhilekh Niyamawali*).
2. Petitioners of WPS No.1889 of 2014 are working as Revenue Inspectors in the Department of Revenue, Government of Chhattisgarh whereas petitioner No.1 in WPS No.3201 of 2014 has since obtained voluntary retirement from the post of Patwari, however, at the time of filing of petition he was the Vice President of Chhattisgarh Patwari Sangh and the petitioner No.2 is the Revenue Inspector.

3. The petitioners are aspiring for promotion on the post of Tahsildar. Promotion to the post of Tahsildar on which the petitioners desire to be promoted, is governed under the provisions of the Rules, 1980. Rule 6 of the said Rules provides for the method of recruitment. Originally, at the inception Rule 6 provided that out of total available vacancies, 70% posts shall be filled up by direct recruitment; 10% posts to be filled by clerical grade employees working in the Board of Revenue, Commissionerate and Collectorate by way of direct recruitment through limited competitive examination and the remaining 20% posts shall be filled up by promoting the Revenue Inspectors.
4. Rule 6 above suffered amendment on 11-7-1991 directing 60% posts to be filled up by direct recruitment; 10% from clerical staff of Board of Revenue, Commissionerate and Collectorate; another 10% from Graduate Patwaris and Revenue Inspectors by way of direct recruitment through limited competitive examination, however, 20% promotion quota of Revenue Inspectors was kept intact.
5. Thereafter, Rule 6 suffered the present impugned amendment on 22-2-2011 to the effect that out of the total promotion quota, 20% posts will be filled by promotion of Revenue Inspectors and the remaining 20% will be filled by selection through limited competitive examination in which 10% posts will be filled from Clerks and 10% posts from Patwaris and Revenue Inspectors.

6. The petitioners are aggrieved by clubbing of 10% posts to be filled up by direct recruitment through limited competitive examination from Clerks and Patwaris, in addition to Revenue Inspectors.
7. It is argued that the Patwaris and Clerks are inferior to Revenue Inspectors, therefore, they cannot be appointed directly on the post of Naib Tahsildar. It is further submitted that Clerks & Patwaris have been brought at par with the Revenue Inspectors treating unequals as equals for eligibility to compete for promotional post of Naib Tahsildar. Petitioners have also assailed the wisdom of legislature in conducting separate limited competitive examination for Patwaris & Clerical staff. It is the case of the petitioners that the Patwaris & Clerks who are junior to the Revenue Inspectors discharging inferior or subordinate functions and duties shall become superior to Revenue Inspectors, therefore, it is a case of showing undue favour to the Clerks and Patwaris. It is also putforth that Patwaris & Clerks have been made eligible for promotion for the post of Naib Tahsildar without they being first appointed in the intermediate higher post of Revenue Inspector and, thus, they are allowed to jump over Revenue Inspectors in the matter of promotion. Learned counsel next contended that functions and duties assigned to Patwaris & Revenue Inspectors are different than the duties assigned to Clerks who are ministerial staff, therefore, clubbing them together to make them eligible for accommodating for promotion for the post of Naib Thasildar is

illegal, arbitrary and irrational. It is also submitted that the impugned Rules, 1980 are *ultra vires* being in violation of the provisions of the Land Records Manual (*Bhu Abhilekh Niyamawali*).

8. Learned Addl. Advocate General appearing for the State has argued that the Land Records Manual (*Bhu Abhilekh Niyamawali*) does not have statutory flavour being mere guidelines. Learned Addl. Advocate General would argue that quota of 20% promotion post from Revenue Inspectors has remained in the Rules from very inception in 1980 and similarly 10% quota for Clerks is in existence from the very beginning and the provision has withstood the test of practical workability being in the statute book for more than three decades. It is further put forth that fixing quota for Clerks, Patwari and Revenue Inspectors over and above 20% promotion quota of Revenue Inspectors is for creating avenues for accelerated promotion and there is absolutely no illegality, irrationality or arbitrariness.
9. Learned Addl. Advocate General would next submit that the petitioner in person (Petitioner No.1 Santosh Kumar Pandey in WPS No.3201 of 2014) having obtained voluntary retirement has no locus to maintain the writ petition and not being a lawyer he cannot be permitted to argue the matter on behalf of the petitioner No.2 (Padumlal Patanwar). Raising strong objection to the maintainability of both the petitions, it is argued that the selection

pursuant to the impugned advertisement being already over and the persons having already been appointed, the writ petitions cannot be heard and decided without impleading and hearing the selected candidates. The defect in selection process pointed by the petitioner in person has not been pleaded, therefore, they need not be taken up for adjudication.

10. The history of subject legislation demonstrates that right from the beginning 10% promotion quota by way of direct recruitment through limited competitive examination has been earmarked for ministerial staff/clerks working in the Board of Revenue, Commissionerate and Collectorate. Similarly 20% promotion quota of Revenue Inspectors has been consistently earmarked right from the beginning and there is no dent or reduction in that quota of the Revenue Inspectors to which cadre the petitioners belong, therefore, their promotion quota having not been reduced, they ought not to have any grievance to the subject amendment. 10% quota of clerks/ministerial staff being a part of legislation from the very beginning and the same having continued for the last about 38 years, the same has an element of constitutionality and workability.
11. As a matter of fact, the impugned amendment has increased the chance of promotion of Revenue Inspector because over and above their own 20% promotion quota they are also entitled to compete in the 10% quota earmarked to be filled up from amongst Patwaris

and Revenue Inspectors through limited competitive examination.

12. It is settled law that the concept of equality before law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The guarantee of equal protection of law and equality before the law does not prohibit reasonable classification. Equality before law does not mean that things which are different shall be treated as though they were the same, however, the principle of equality does not absolutely prevent the State from making differentiation between the persons and things. The State has always the power to have a classification on a basis of rational distinctions relevant to the particular subject to be dealt with but such permissible classification must satisfy the two conditions namely the classification to be founded on intelligible differentia which distinguishes persons or things that are grouped from others who are left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the legislation. (See : **K.R. Lakshman and Others v Karnataka Electricity Board and Others**¹ pg.445 p. 4).
13. In **K.R. Lakshman** (supra) the Supreme Court further said that so long as the classification is based on a rational basis and so long as all the persons falling in the same class are treated alike, there can

¹ (2001) 1 SCC 442

be no question of violating the equality clause. If there is equality and uniformity within each group, the law cannot be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation, some included in the class get an advantage over others, so long as they are not singled out for special treatment. When a provision is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it and having ascertained the policy and object of the Act, the Court has to apply a dual test namely whether the classification is rational and based upon an intelligible differentia. The power to make classification can be exercised not only by the legislature but also by the administrative bodies acting under an Act. In this matter the Supreme Court was dealing with a challenge of bifurcation of quota of promotes in the ratio of 1 : 1 between the technically qualified and technically unqualified persons. The Supreme Court concluded that the bifurcation is based on intelligible differentia and therefore, it is not hit by Article 14 of the Constitution of India.

14. In the case at hand, separate quota has been earmarked for Revenue Inspectors by way of promotion and for Clerks, Patwaris and Revenue Inspectors by way of direct recruitment through limited competitive examination. The cadres included in the feeder cadre are working in the Department of Revenue having

knowledge over the subject on account of the duties assigned to them and the experience gained by lapse of time. The main thrust of challenge appears to be that Clerks have been clubbed with Patwaris, however, firstly Clerks have not been clubbed with Revenue Inspectors to which cadre the petitioners belong and secondly the petitioner No.1 in WPC No.3201 of 2014 (Santosh Kumar Pandey) having left the job, no Patwari has come forward to challenge the said amendment/legislation complaining that they have been wrongly clubbed with the Clerks. Even if a Patwari would have challenged the impugned amendment, we do not think that there would have been any change in the scenario because Clerks are equally conversant with the nature of work of the Revenue Department, as they have been dealing with the files relating to the Revenue matter throughout their service career. They are not alien to the Department or to the subject which they would be required to deal as Naib Tahsildar. Thus, applying the test of reasonable classification under Article 14 also, there is no arbitrariness in clubbing Clerks & Patwaris for competing for 10% promotion quota. Since it is by way of competitive examination, only the best meritorious Clerks would be selected and there is no harm in providing accelerated channel of promotion to meritorious candidates working in the Department.

15. The legislative power and authority in field of enactment of law including subordinate legislation has been succinctly pronounced

by the Supreme Court in **P.U. Joshi and Others v Accountant General, Ahmedabad and Others**² in the following way in para 10 :

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of

2 (2003) 2 SCC 632

time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

(Emphasis supplied)

16. In an extremely recent judgment the Supreme Court in **Lok Prahari through its General Secretary v State of Uttar Pradesh and Others**³ has reiterated the principle as to when a legislation can be declared *ultra vires* on the ground of infringement clause under Article 14 of the Constitution of India. After considering the previous judgments on the issue in the matters of **Budhan Choudhry and Others v State of Bihar**⁴, **E.P. Royappa v State of Tamil Nadu and Another**⁵, **Ramana Dayaram Shetty v International Airport Authority of India and Others**⁶, **Sharma Transport represented by D.P. Sharma v Government of A.P. and Others**⁷, **Kumari Shrilekha Vidyarthi and Others v State of U.P. And Others**⁸ and **State of Punjab and Another v Brijeshwar Singh Chahal and Another**⁹, the Supreme Court held thus in para 35 :

35. The “final” culmination is in Shayara Bano vs. Union of India where two members of the Bench (Hon’ble R.F. Nariman and Uday Umesh Lalit, JJ.) wrote as follows (SCC p.99, para 101):

“101. It will be noticed that a Constitution Bench of this Court

3 (2018) 6 SCC 1
 4 AIR 1955 SC 191
 5 (1974) 4 SCC 3
 6 (1979) 3 SCC 489
 7 (2002) 2 SCC 188
 8 (1991) 1 SCC 212
 9 (2016) 6 SCC 1

in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

The above view received support of a third member of the Constitution Bench (Hon’ble Kurian Joseph, J.)

(Emphasis supplied)

17. As per the test laid down by the Supreme Court in **Lok Prahari** (supra) as to when a legislation including subordinate legislation can be declared *ultra vires* on the ground of challenge under Article 14, we have already examined above as to whether the impugned amendment in the Rules, 1980 suffers from manifest

arbitrariness which would mean any act of legislature being capricious, irrational and/or without adequate determining principle or is excessive and disproportionate. As discussed in the preceding paragraphs, we have not found any arbitrariness while the legislature has provided separate quota for Revenue Inspectors and for Clerks & Patwaris for promotion to the post of Naib Tahsildar. The impugned amendment does not fall foul of Article 14 of the Constitution of India as the legislature has the complete freedom and authority to provide to determine the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions. The subject falls within the arena of State's policy making authority and it is the settled law that the writ Courts do not interfere with the policy decision of the legislature or the State if it does not violate Article 14 of the Constitution of India.

18. Submission has been made that when quota has been provided for Clerks to climb up in the promotion channel to the post of Naib Tahsildar, similar avenues for Patwaris & Revenue Inspectors to compete for promotion in the ministerial channel should also be provided, however, as held by the Supreme Court in **M/s Narinder Chand Hem Raj and Others v Lt. Governor, Administrator, Union Territory, H.P. and Others**¹⁰ the Courts are not policy

10 AIR 1971 SC 2399

makers, therefore, writ of mandamus cannot be issued directing the legislature to make particular law.

19. It is also to be seen that during pendency of both the writ petitions the entire selection process is over and the persons have been appointed/promoted on the post of Naib Tahsildar. None of the appointees/promotees have been impleaded as necessary party in these petitions. It is the well settled proposition of law that no adjudication can be made behind the back of the party (*See : Ranjan Kumar etc. etc. v. State of Bihar and others*¹¹).
20. For the foregoing, petitioners have failed to persuade us to hold that the impugned amendment in the Rules, 1980 allowing the Clerks and Patwaris to directly compete for promotion to the post of Naib Tahsildar through limited competitive examination is in any manner arbitrary and unreasonable.
21. As a sequel, both the writ petitions, *sans substratum*, are liable to be and are hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

11 2014 (3) Supreme 646