

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3110 of 2015**

1. Gyaneshwar Bansod S/o Late Shri Namdeo Bansod, Aged About 53 Years R/o Presently Working As Junior Account Officer, Office Of The Commissioner Schedule Tribe And Schedule Caste Development, Raipur R/o M - II - 113, Phase No. 1, Kabir Nagar, Raipur, District Raipur Chhattisgarh
2. Arvind Xalxo, S/o Shri Namdeo Bansod, Aged About 53 Years Presently Working As Junior Account Officer, Office Of The Commissioner Schedule Tribe And Schedule Caste Development, Raipur, Ro M - II - 113, Phase No. 1, Kabir Nagar, Raipur, District Raipur Chhattisgarh
3. A.D. Pawar, S/o Late A.S. Pawar, Aged About 50 Years Presently Working As Accountant, Office Of The Commissioner Schedule Tribe And Schedule Caste Development, Raipur, R/o M - II/53, Phse No. 1, Kabir Nagar, Raipur, District Raipur Chhattisgarh
4. Surendra Kumar Markandey S/o Late Ramprasad Markandey, Aged About 37 Years Presently Working As Accountant, Office Of The Commissioner Schedule Tribe And Schedule Caste Development, Raipur R/o Thakkar Bara, Ward No. 9, House No. 404, Near Krishna Medical Store, Gudhiyari, Raipur, District Raipur Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Schedule Caste And Schedule Tribe Development, New Mantralaya, Mahandi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. The Secretary, Department Of General Administration, New Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
3. Director/ Comissioner, Directorate Schedule Caste And Schedule Tribe Development, Indravati Bhawan, Naya Raipur, District Raipur Chhattisgarh
4. Shriniwas Patel, Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Surajpur District Surajpur Chhattisgarh.
5. M. R. Markam Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Dantewada, District Dantewada Chhattisgarh.
6. N. K. Mahapatre Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Raigarh District Raigarh, Chhattisgarh.
7. Smt. Meera Mourya Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Jagdalpur District Jagdalpur, Chhattisgarh

8. H. L. Dewangan Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Rajnandgaon, District Rajnandgaon Chhattisgarh.
9. K. L. Pandey, Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Janjgir Champa District Janjgir Champa Chhattisgarh.
10. Bandhuraam Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Ambikapur, District Surguja Chhattisgarh.
11. Smt. Shobha Munger Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Raipur District Raipur Chhattisgarh.
12. Janik Rao Mourya Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Koriya District Koriya Chhattisgarh.
13. A. N. Mishra Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Jashpur, District Jashpur Chhattisgarh.
14. Chandrahas Uike Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Raipur District Raipur Chhattisgarh.
15. M. R. Chouhan Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Raigarh District Raigarh Chhattisgarh.
16. Ramsingh Marawi Working As Junior Accounts Officer Posted At Office Of The Principal, Gurukul School, Pendra Road, District Bilaspur Chhattisgarh.
17. R. K. Sahu, Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Koriya District Koriya Chhattisgarh.
18. P. P. Datta Gupta Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Janjgir Champa District Janjgir Champa Chhattisgarh.
19. J. N. Mishra Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Bilaspur District Bilaspur Chhattisgarh.
20. J. L. Rajak Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Bilaspur District Bilaspur Chhattisgarh.
21. R. L. Maitri Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Korba District Korba Chhattisgarh.
22. D. S. Netam, Working As Junior Accounts Officer Posted At Office Of The Assistant Commissioner Tribal Development, Kanker, District Kanker Chhattisgarh.

---- Respondents

For Petitioner	: Shri Jitendra Pali, Advocate.
For Respondent/State	: Shri Y. S. Thakur, Additional Advocate General.
For Private Respondents	: Shri Amrito Das and Shri K. Rohan, Advocates.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Pritinker Diwaker, Judge

Order on Board

19/07/2018

Per Ajay Kumar Tripathi, Chief Justice

1. A notification dated 1st June, 2013 was issued by the State of Chhattisgarh which was supposed to be a Rule framed under Article 309 of the Constitution of India. The Rule is known as 'Chhattisgarh Scheduled Tribe and Scheduled Caste Development Department, sub-ordinate (Class-III Ministerial) Service Rules, 2013. Schedule IV has been appended to the said Rule which deals with the appointment by promotion as well as condition of eligibility for promotion/transfer. It is the entry made in Schedule IV, Sl. No.2 of Column No.2 and Column No.3, which is the subject matter of challenge in the writ application. A prayer has been made on behalf of the Petitioners that the said entry in Schedule IV is required to be struck down as being *ultra vires* the Constitution of India.
2. Submission of the counsel for the Petitioners is that there is a hierarchy of posts which provides for promotion so far as these Petitioners are concerned. They are said to be Junior Accounts Officer and Accountants. Accountant is the feeder cadre post for promotion to Junior Accounts Officer. The next post which is available for promotion so far as the Junior Accounts Officer posted in the field is said to be the Office Superintendent, for which five year's eligibility has been laid down. However, a sub-classification has been made with regard to such Junior Accounts Officers who are posted at the Headquarters or the Head of the Department Office.

3. As per the entry in Schedule IV, all those persons who are posted at Head of the Department Office, they will be entitled for promotion after five years to the post of Assistant Superintendent and after completion of a period of five years, they will be eligible for promotion as Office Superintendent. Meaning thereby that all those employees who are posted in the field will earn promotion to the post of Office Superintendent after five years but if they happen to be posted in the Head of the Department Office, to earn the post and position of Office Superintendent, they have to spend 10 years in service. Schedule IV of the Chhattisgarh Scheduled Tribe and Scheduled Caste Development Department, sub-ordinate (Class-III Ministerial) Service Rules, 2013, is as under:

SCHEDULE-IV

(See Rule 13 and 14)

Name of Department	Name of Service/Post from which promotion is to be made	Name of post/service to which promotion is to be made	Minimum period to qualify for promotion	Name of Member of Department Promotion Committee (See rule 14)
(1)	(2)	(3)	(4)	(5)
A – Head of Department Office				
Scheduled Castes and Scheduled Tribes Development Department	1. Assistant Superintendent/ Auditor	Office Superintendent	5 years	1. Additional Director, Tribal Development- Chairman. 2. Deputy Commissioner, (Establishment-02/03) Tribal Development- Member 3. Deputy Commissioner, (Education) Tribal Development- Member 4. Joint Director Tribal Research and Training Institution- Member

	2. Assistant Grade-I/ Junior Accounts officer	Assistant Superintendent	5 years	1. Additional Director, Tribal Development- Chairman. 2. Deputy Commissioner, (Establishment-02/03) Tribal Development- Member 3. Deputy Commissioner, (Education) Tribal Development- Member 4. Joint Director Tribal Research and Training Institution- Member
	3. Accountant (Accounts Trained)	Junior Accounts Officer	5 years	1. Additional Director, Tribal Development- Chairman. 2. Deputy Commissioner, (Establishment 02/03) Tribal Development- Member 3. Deputy Commissioner, (Education) Tribal Development- Member

4. Submission of counsel for the Petitioners is that there is a common gradation list of Junior Accounts Officers as well as the Office Superintendents. It is a State-cadre post and there is no distinction between those who are posted in the field or those who are posted in the Head of the Department Office. By inserting the entry in question in Schedule IV, the State authorities have tried to create a class amongst class where a person who is posted in the field will earn accelerated promotion to the post of Office Superintendent after five years, but, if for some fortuitous circumstance, the person from the field gets transferred and posted at Head of the Department Office, he has to wait for five years to earn promotion to the post of Assistant Superintendent first and another five years to

become Office Superintendent. This, according to the counsel is an unreasonable classification and a class amongst class has been sought to be created by the State when there is no reasonableness to such classification or object sought to be achieved if the service conditions are same. All the employees belong to one State-cadre and there is a common gradation list for the employees. The place of posting of the employees cannot be a reason for consideration in matters of promotion or maintaining uniformity. The effort on the part of the State authorities to bring in yet another post for promotion for the employees posted at Head of the Department Office has no justification. In this regard, certain decisions of the Hon'ble Supreme Court has been cited at the Bar, one of the recent case being ***Maharashtra Forest Guards and Foresters Union v. State of Maharashtra & Others***; reported in (2018) 1 SCC 149. The Hon'ble Supreme Court, while dealing with such issue culled out certain principles from previous decisions and had this to say in paragraphs 11 and 12, which reads as under:

"11. There was also no sub-classification as in the instant case. Having upheld the Rule, it was further held at paragraph-51 as follows: (*State of J&K v. Triloki Nath Khosa* (1974) 1 SCC 19, p. 40)

"51. But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good governments and excellence and equality are not friendly bed-fellows. A pragmatic approach has therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. *But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment: What after all is the operational residue of equality and equal opportunity?*"

(Emphasis supplied)

12. The concurring words of Krishna Iyer, J. at paragraphs-57 and 58 are also relevant: (*Triloki Nath Case*, SCC p. 42)

"57. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70 per cent marks could become Chief Engineers and those with 60 per cent alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it.

"58. The role of classification may well recede in the long run, and the finer emphasis on broader equalities implicit in the concluding thought of the leading judgment will abide. *The decision in this case should not - and does not - imply that by an undue accent on qualifications the Administration can cut back on the larger tryst of equalitarianism or may hijack the founding and fighting faith of social justice into the enemy camp of intellectual domination by an elite. The Court, in extreme cases, has to be the sentinel on the qui vive.*"

(Emphasis supplied)

It may be seen that it is a case where promotion to the post of Executive Engineer and above was wholly assigned to graduates, a classification based on educational qualification. There is no such reservation or even a quota reserved for graduates in the instant case."

5. Submission at the Bar on behalf of the Petitioners, therefore, is that by virtue of entry made in Schedule IV, the Respondent authorities have created a class amongst class which does not stand to reason nor does it satisfy the requirement of Articles 14 and 16 of the Constitution of India keeping in mind as to how such classification can be done and with what object, such classification attempts to achieve.

6. In the reply-affidavit filed on behalf of the Respondent-State, the stand of the State is that the set up of the Head of Department Office and the set up of the subordinate offices are totally different. The nature of work which is taken or is required to be performed at the Head of the Department Office is also different

from the nature of work which is performed by the employees, may be on identical post for the field.

7. What is surprising, however, is that there is no denial of the fact that it is a common service with a common gradation list and the gradation list is not prepared on the basis of place of posting, be at the Head of the Department of Office or the field. The seniority of the employees is common and the only distinction which makes or mars the prospects of early promotion on the post of Office Superintendent is where the employee is posted by the employer. Since an employee has no control over the place of posting and it is totally in the hands of the employer, therefore, the same set of employee by virtue of being posted either in the Head of Department Office or in the field cannot have two different channels of promotion. In one case, the people posted in the field can be promoted as Office Superintendent after five years whereas, these Petitioners, who happen to be posted in the Head of the Department Office have to spend 10 years in service to become Office Superintendent. There is no difference in the pay-scale which is granted to the persons posted in the field or in the Office of Head of Department.

8. In the above circumstances, since the law is pretty well settled that there cannot be a class amongst class or the mini classification cannot be based upon micro distinction, the present case, according to our opinion, falls foul of Article 14 and 16 of the Constitution of India. The employees of the department cannot be treated differently and the object and the reason provided for in the counter affidavit of the State does not satisfy the test of Article 14 and 16 of the Constitution of India.

9. In the above circumstances, the entry made in Schedule IV especially serial No. 2 of column No. 2 and column No. 3 appended with the Chhattisgarh Scheduled Tribe and Scheduled Caste Development Department, sub-ordinate (Class-III Ministerial) Service Rules, 2013 are struck down to be *ultra vires* the Constitution of India. The avenues of promotion both for the persons posted in the

field as well as in the Head of Department Office have to be same and identical.

10. Since the relevant entry to Schedule IV has been struck down by this High Court as unconstitutional, it goes without saying that any exercise which may have been carried out or is being done by convening the DPC for such promotion would be uncalled for and unwarranted and such exercise will be a nullity.

11. The writ application stands allowed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE