

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 733 of 2018**

{Arising out of order dated 30.07.2018 passed by learned Single Judge in Writ Petition (S) No. 1765 of 2015}

- Ranjit Singh, S/o Duj Singh, aged about 32 years, R/o Village Mohatara Kurmi, Tahsil Lormi, District Mungeli (C.G.)

---- **Petitioner****Versus**

1. Chandra Prakash Kashyap, S/o Heeralal Kashyap, aged about 35 years, R/o Village Mohatara, Post Devharat, Tahsil Lormi, District Mungeli (C.G.)
2. State of Chhattisgarh, Through – Secretary, Department of Law and Legislative Affairs, Mahanadi Bhawan, Naya Raipur (C.G.)

---- **Respondents**

For Appellant	:	Shri Tarendra Kumar Jha, Advocate.
For Respondent No.1	:	None.
For Respondent No.2/State	:	Shri U.N.S. Deo, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu****Judgment on Board****Per Ajay Kumar Tripathi, Chief Justice****05.10.2018**

1. Appointment of the present Appellant on the post of Peon in the Office of Additional Public Prosecutor, Mungeli has been set aside by the learned Single Judge on a challenge made by Respondent No.1 who was the Petitioner before the writ Court. It is in this background that the order dated 30.07.2018 passed by the learned Single Judge has been assailed in the appeal.
2. Allegations were made that without any advertisement or proper procedure having been followed, on the basis of some name invited from the employment exchange, the present Appellant got picked up for the appointment for the said

post. The learned Single Judge examined the matter, even looked into the records of the selection, but was not satisfied that any fair and open method was adopted for such selection.

3. The learned Single Judge, thereafter taking note of the various ratios and decisions rendered by the Hon'ble Apex Court in relation to selection and appointment on public post, concluded that since the basic object behind having an open method of selection lies within the ambit of Article 14 and 16 of the Constitution of India and since public employment is a national wealth and cannot be dished out on a platter to favour a few and employment is a right guaranteed under the Constitution, at least for consideration, the appointment of the present Appellant was set aside.
4. This Court is not required to reproduce the ratios of the various decisions which have been taken note of by the learned Single Judge because the essence of those decisions have been culled out above.
5. Learned counsel representing the Appellant on the basis of the decision of the Hon'ble Apex Court rendered in the case of **D. Saroja Kumar Vs. R. Helen Thilakom & Others** reported in **(2017) 9 SCC 478** makes a preliminary objection that a candidate who has already participated and failed cannot be permitted to assail such selection or appointment. Such a principal or ratio of law is not the issue in the present case. Such ratio will apply in such cases where it is *prima facie* established that the entire exercise of such selection does not violate the requirements of Article 14 and 16 of the Constitution of India. If such a selection *per se* is illegal or irrational, then the preliminary objection cannot be used as a shield to put a seal of approval over such illegal selection.
6. The objection so raised against the decision of the learned Single Judge, therefore, is rejected. The appeal has no merit. It is dismissed.

7. Before parting, however, the Court directs the Respondent authorities to advertise the post invite applications, follow the process so required and make selection of the best candidate from those who respond. It is further clarified that the Appellant, if not otherwise held to be ineligible, will also get a right for consideration.
8. The appeal is otherwise dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge