

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order Reserved on 03.12.2019****Order Delivered on 17.12.2019****Writ Petition (S) No. 3545 of 2018**

Arvind Singh Thakur S/o Shri Nand Lal Singh Thakur, aged about 38 Years, Working as Driver at State Industrial Court Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through its Secretary, Department of Labour, Mantralaya, Naya Raipur, P.S. Rakhi, Raipur Chhattisgarh.
2. Secretary, Department of General Administration, Mantralaya, Naya Raipur, P.S. Rakhi, Raipur Chhattisgarh.
3. State Industrial Court, Through its Chairman Industrial Court Bilaspur Chhattisgarh.

---- Respondents

For Petitioner : Shri Vinod Deshmukh, Advocate

For Respondent/State : Shri Gagan Tiwari, Deputy Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Order****Per Parth Prateem Sahu, Judge**

1. The Petitioner who is working on the post of Driver with Respondent No.3 has filed this instant petition with following reliefs :

“10.1 The this Hon'ble Court may be pleased to issue a appropriate writs/writ, directions/direction, orders/order, declaring the Schedule I to IV (see rule 5, 7 & 8) of the Chhattisgarh Labour Judicial Service (Class-IV) Recruitment Service Rules, 2007 as a ultra virus and further directed the State

Government to provide the promotional avenue for the employees who are working to the post of Driver i.e. from the post of Driver to the next higher post in the Chhattisgarh Labour Judicial Service (Class-IV) Recruitment Service Rules, 2007.

10.2 This Hon'ble Court be pleased to direct the respondent authority to consider the case of the petitioner for promotion to the next higher pay.

10.3 This Hon'ble Court be pleased to hold that non providing the promotion avenue in Chhattisgarh Labour Judicial Service (Class-IV) Recruitment Service Rules, 2007 by the State Government is violation of Article 14 & 16 of the Constitution of India as well as fundamental rights.

10.4 Any other relief as deemed fit by this Hon'ble Court."

2. The case of the Petitioner is that he was appointed on the post of Driver vide order dated 18.01.2005 and since then, he is continuing on his post without there being any adverse remarks or complaints against him. This petition has been filed on the ground that services of the Petitioner is governed by Chhattisgarh Labour Judiciary Service (Class-IV) Recruitment Rules, 2007 (hereinafter referred to as 'Rules of 2007'). The category of Class-IV employee has been shown in Schedule-I of Rule 5 of the Rules of 2007 wherein apart from the post of Driver, post of Daftari, Jamadar, Peon and Choukidar has been mentioned. Schedule-II, which is appended to Rule 7, is the manner of recruitment on the Class-IV post wherein

Driver, Peon and Choukidar has been shown to be recruited 100% from direct recruitment and post of Jamadar and Daftari are to be filled up from 100% promotion and as per Schedule-IV appended to Rule 8 provides for promotion from the post of Peon/Choukidar to Daftari/Jamadar, but the post of Driver has not been shown in Schedule-IV to be promoted to any further post. This is the reason, the Petitioner has filed this petition with the aforementioned reliefs.

3. Shri Vinod Deshmukh, learned counsel appearing for the Petitioner submits that Petitioner was initially appointed on the post of Driver vide order dated 18.01.2005 and since last more than 13 years, he has not been promoted. He further submits that under the Rules of 2007, there is no promotional avenue for and at the same time, the Peons/Chourkidars who were appointed under the same Rules and finds their post in Schedule-I along with the Petitioner i.e. the post of Driver, as per Schedule-IV appended to Rule 8, Peon/Choukidar are entitled to be promoted after completion of five years of service on the post of Daftari/Jamadar; therefore, Schedule-I to IV appended to Rules 5, 7 and 8 of Rules of 2007 are required to be held to be ultra vires. He also submits that the Respondents may be directed to consider the case of the Petitioner for promotion to the next higher post.

4. Shri Gagan Tiwari, Deputy Government Advocate appearing on behalf of the State submits that though the Petitioner in relief clause 10.1 has sought relief for declaring Schedule-I to IV appended to Rules 5, 7 and 8 of the Rules of 2007 to be ultra vires, but has not pleaded any specific ground challenging the competency

of the Rule Making Authority or its inconsistency with any other law. He further submits that Rules of 2007 has been formulated in exercise of powers conferred by proviso to Article 309 of the Constitution of India. He also submits that the post of Driver and Peon are of entirely different in nature and character; and the Petitioner cannot equate himself with the Peons/Choukidars.

5. The Respondent/State has filed additional return to writ petition and placed on record the amendment notification incorporated under the Chhattisgarh Labour Judiciary Class-III (Non-Gazetted) Service Recruitment Rules, 2010 showing that the post of Driver has been shown in Schedule-I at Sl.No.11 and the pay is equivalent to the pay of Assistant Grade-III and Steno-Typist, which clearly shows that the post of Driver has been upgraded in Class-III employees from Class-IV employees, therefore, grievance of Petitioner stands redressed.

6. We have heard learned counsel appearing for the respective parties.

7. The main grievance of the Petitioner herein is with regard to non-promotional avenues as provided in Rules of 2007 for the post of Driver, which is a Class-IV post. The Petitioner himself filed a document and looking to the provisions of Rules of 2007, he has been provided higher time pay-scale since 19.01.2015. It is not necessary that every employee has a right to be promoted on any post, but of course, if there is no promotional post available for the said employee, the Government has a policy to provide monetary

benefits against it and in the case of Petitioner, Respondent/State has adopted the said mechanism by granting higher time pay-scale to the Petitioner.

8. Now the grievance of the Petitioner with regard to promotion from Class IV to higher class is concerned, the State Government has already notified the post of Driver to be a Class-III post and the pay-scale is equated with the post of Assistant Grade-III and Steno-Typist vide notification dated 27.12.2018 (Annexure R/1).

9. In view of above amendment brought into effect by Respondents, now the Petitioner's classification has been changed from Class-IV to Class-III employee and thereby his scale of pay will also be consequentially fixed in the pay-scale of Class-III employee, and the grievance of the Petitioner stands redressed.

10. In the result, we do not find any merit in the petition, the same is liable to be and is hereby dismissed.

11. However, even if, the Petitioner is still aggrieved by any disparity with respect to the fixation of his pay or post, he will be at liberty to bring it to the notice of the appropriate authority by way of making representation before the authority/committee dealing with fixation of pay or to the State.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge