

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 4023 of 2019**

1. Shiv Kumar Yadav, S/o. Shri S.P. Yadav, Aged About 52 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Baloda, Tahsil - Baloda, District Janjgir-Champa (C.G.), R/o Behind Hotel Kalika, Chadaniyapara, Janjgir, District Janjgir-Champa Chhattisgarh
2. Jugal Kishore Mishra, S/o. Late Shyam Sundar Mishra, Aged About 56 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Pali, Tahsil - Pali, District Korba Chhattisgarh, R/o A/110 Sagar Home, Phase- 2, Sakri, Bilaspur Chhattisgarh
3. Govind Prasad Sao, S/o. Late Dalu Ram Sao, Aged About 59 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Kasdol, Tahsil - Kasdol, District Baloda Bazar – Bhatapara, Chhattisgarh, R/o. Sirpur Road, Near Gyatri Mandir, Kasdol, District - Baloda Bazar - Bhatapara Chhattisgarh
4. Bhuneshwar Prasad Sahu, S/o. Shri Taitram Sahu, Aged About 54 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Pamgarh, Tahsil - Pamgarh, District Janjgir-Champa Chhattisgarh, R/o. Village Kotetara, Tahsil Jaijaipur, District Janjgir-Champa Chhattisgarh
5. Komal Prasad Sahu, S/o. Late Horilal Sahu, Aged About 52 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Pamgarh, Tahsil Pamgarh, District Janjgir-Champa Chhattisgarh, R/o Village Behind Mission Compound, Ward No. 21, Janjgir, District Janjgir-Champa Chhattisgarh
6. Asha Ram Aditiya, S/o. Late Sukhru Ram Aditiya, Aged About 51 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Raigarh, Tahsil Raigarh, District Raigarh Chhattisgarh, R/o Near Jute Mill, Raigarh, District Raigarh Chhattisgarh
7. Harihar Sewa Barik, S/o. Late Anirudh Prasad Barik, Aged About 55 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Pusor, Tahsil - Pusor, District Raigarh Chhattisgarh, R/o Near Agrasen Bhawan, Baramkela, Tahsil Baramkela, District Raigarh Chhattisgarh
8. Santosh Kumar Nirmalkar, S/o. Mukut Ram Nirmalkar, Aged About 51 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Pathariya, Tahsil Pathariya, District Mungeli Chhattisgarh, R/o Village - Pendri, Tahsil - Pathariya, District Mungeli Chhattisgarh
9. Chit Ram Pali, S/o. Bhagwani Ram Pali, Aged About 58 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Janakpur, Tahsil Janakpur, District Baikunthpur Chhattisgarh, R/o Block Colony, Janakpur, District Baikunthpur Chhattisgarh
10. Ratan Singh Thakur, S/o. Late Trilok Singh, Aged About 59 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Baloda-Bazar, Tahsil - Baloda - Bazar, District Baloda-Bazar-Bhatapara Chhattisgarh, R/o Ward No. 22 Baloda-Bazar, District Baloda-Bazar-Bhatapara Chhattisgarh

11. Raj Kumar Yadav, S/o. Chedu Ram Yadav, Aged About 56 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Dondilohara, Tahsil - Balod, District Balod, Chhattisgarh, R/o Seoni Chal, Main Road, Dondilohara, District Balod Chhattisgarh
12. Kaushal Prasad Shrivastava, S/o. Krishan Rai Shrivastava, Aged About 55 Years, Occupation - Service, Presently Working As Time Keeper At Rural Engineering Service, Sub Division - Lormi, Tahsil - Lormi, District Mungeli, Chhattisgarh, R/o Behind Marketing Society, Lormi, District Mungeli Chhattisgarh

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Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Panchayat & Rural Development, Raipur, Chhattisgarh
2. Development Commissioner, Rural Engineering Services, Development Commissioner Officer, Raipur, Chhattisgarh.

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For Petitioners	:	Mr. Malay Shrivastava, Advocate
For State/Respondents	:	Mr. Gagan Tiwari, Dy. Govt. Advocate.

Hon'ble Shri P.R.Ramachandra Menon, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

Order On Board

Per P.R.Ramachandra Menon, C.J.

17.06.2019

Heard

1. The challenge made in this petition is mainly in respect of the laxity on the part of the authorities of Government in formulating or modifying the rules governing the field of recruitment in the respondent establishment, particularly in respect to the posts of 'Time Keeper', which the petitioners are holding for more than 25 years, without any avenue for promotion.
2. The sum & substance of grievance projected before this Court is that the petitioners on proving the credentials, were selected and appointed in the posts of 'Time Keeper'. The rules governed in the field of recruitment and promotion have been formulated and notified by the competent authority and they are the Chhattisgarh Development Commissioner, Panchayat &

Rural Development of Class-III of (Ministerial & Non-Ministerial) Services Rules, 2011, which came into effect in the year 2011. Despite amendment of the Rules in the year 2014, the fact remains that it does not provide anywhere any avenue of promotion for 'Time Keepers' which is sought to be deprecated in view of the law laid down by the Supreme Court on the point. Hence, the prayers as extracted below :

- (i) That, this Hon'ble Court may kindly be pleased to quash the Schedule 4 of the Rules, 2011 being ultra virus to Article 14 & 16 of the Constitution of India.
 - (ii) That, this Hon'ble Court may kindly be pleased to direct the Respondents to create avenues for promotion to the petitioners from the post of helper.
 - (iii) Any other relief(s)/ orders(s)/ direction(s) in favour of petitioners, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.
 - (iv) Cost of the petition may kindly be awarded to the petitioners.
3. Learned counsel for the petitioners submits that, in the total career of any employee, some avenue of promotion has necessarily to be provided, so as to boost up the morale and to extract the maximum utility of the employee concerned, in turn increasing the productivity. The Apex Court had occasion consider this aspect time and again and as per the ruling reported in **(2008) 5 SCC 100** in case of **Food Corporation of India & Ors. v. Parashotam Das Bansal & Ors.**, the salient features in this regard have been highlighted as revealed from para 9, 10 & 14 which are extracted below for easy reference.

"9. The appellant is a 'State' within the meaning of [Article 12](#) of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service.

10. This Court in [Dr. Ms. O.Z. Hussain v. Union of India](#) [1990 Supp. SCC 688], opined :

"7. This Court, has on more than one occasion, pointed

out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate."

14. This Court in [*State of Tripura & Ors. v. K.K. Roy*](#) [(2004) 9 SCC 65], upon taking into consideration some of the earlier decisions of this Court, held :

"6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of [Article 12](#) of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the appellant should have followed the said principle."

4. Learned counsel representing the State submits that the idea and understanding of the petitioners as to the challenge raised against the rules is wrong and misconceived. The absence of any avenue of promotion in the recruitment rules, by itself, cannot make the rules ultra vires to the constitution. We find considerable force in the said submission. How the existing rules become ultra vires to the constitution is not demonstrated by the petitioners in the petition. It may be a fact that the petitioners have been continuing in the posts of 'Time Keeper' for more than 2 decades because of the inadequacy in the rules framed and notified. But this by itself can't and will not make the existing Rules ultra vires to the constitution; more so when the Rule making power of the competent authority is not challenged. It is ofcourse a matter to be considered by the rules making authority and in the present case, the Government.
5. Learned counsel for the petitioners submits that the petitioners have not moved the Government so far. In the said circumstances, we grant liberty to the petitioners to move to the Government at the first instance by making a proper representation referring to the facts and figures. It shall be filed before the respondent No.1 within one month from today upon which the same shall be considered and finalized by the respondent No.1 after affording an opportunity of hearing to all the interested parties passing final orders, in accordance with law, as expeditiously as possible.
6. With such observation, the petition stands disposed of.

Sd/-
(P.R.Ramachandra Menon)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge