AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3793 of 2018

1. Pushpa Khalko W/o Jayprakadh Ekka, Aged About 37 Years Posted At Nagar Palika, Bagicha, District Jashpur Chhattisgarh
2. Khirod Bhoi S/o G.H. Bhoi, Aged About 35 Years Posted At Nagar Palika Dongargarh, District Rajnandgaon Chhattisgarh
3. Prahlad Pandey S/o Kashi Pandey, Aged About 37 Years Posted At Nagar Panchayat Dabhara, District Janjgir Champa Chhattisgarh
4. Netram Ratnesh S/o C.R. Ratnesh, Aged About 48 Years Posted At Nagar Palika Parishad, Akaltara, District Janjgir Champa Chhattisgarh
5. Sachit Kumar Sahu, S/o M R Sahu, Aged About 36 Years Posted At Nagar Palika Parishad, Sakti, District Janjgir Champa Chhattisgarh
6. Satish Yadav S/o Late Anand Ram Yadav, Aged About 41 Years Posted At Nagar Palika, Kamdol, District Raipur Chhattisgarh
7. Vikas Patle, S/o C. B Patle, Aged About 37 Years Posted At Nagar Palika Parishad, Gobra, Navapara, District Raipur Chhattisgarh
8. Gyan Punj Kulmitra, S/o Late H. R. Kulmitra, Aged About 46 Years Posted At Nagar Palika Parishad, Shivpur Charcha, District Korea Chhattisgarh
9. Vishnu Prasad Yadav, S/o Nandram Yadav, Aged About 43 Years Posted At Nagar Palika, Gaurela, District Bilaspur Chhattisgarh
10. Mobin Ali, S/o Tahir Ali, Aged About 41 Years Posted At Dantewada, District Bastar Chhattisgarh
11. Dinesh Kosariya, S/o Chedu Ram Komariya, Aged About 43 Years Posted At Nagar Palika, Kharod, District Janjgir Champa Chhattisgarh
12. Smt. Madhulika Singh Chandel, W/o Vineet Singh Chandel, Aged About 40 Years Posted At Nagar Panchayat Malhar, District Bilaspur Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through Urban Administration And Development Department, Mahandi Bhawan, Naya Raipur, District Raipur Chhattisgarh

2. The Secretary, Department Of Law And Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh

-----Respondents

For Petitioners	:	Shri Kishore Bhaduri, Shri Sunnyj Agrawal and Shri Pankaj Singh, Advocates
For Respondents/State	:	Smt Fouzia Mirza, Additional Advocate General

---

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Ajay Kumar Tripathi, Chief Justice
11.02.2019

1. Petitioners are Officers of various Municipalities of State of Chhattisgarh. They are working in the respective places of posting as Chief Executive Officers, Class B/C. Their appointment and selection is made by the State on the recruitment and recommendation made by the State Public Service Commission. They have been compelled to file the present Writ Application because by virtue of Schedule-IV appended to Chhattisgarh State Municipal (Executive Engineering/Health Services Recruitment & Conditions of Services) Rules, 2017 (for short, 'Rules 2017'), they have given avenues of promotion to Revenue Officers of the Municipalities to be promoted to the post of Executive Officers of the Municipalities.

2. They want the provisions of the Schedule to be struck down to be *ultra vires* not only of the Article 14 and 16 of the Constitution of India, as also because it also violates the scheme of things under the 74th Constitutional amendment, especially Part IX-A of the Constitution of India.

3. Schedule- IV of Rules 2017 reads as under:

<table>
<tr><th>Sl No</th><th>Name of the service or post from which promotion to be made</th><th>Minimum period required to qualifying for promotion to the next higher post</th><th>Name of service or post to which promotion is to be made</th><th>Departmental promotion committee</th><th>Remarks</th></tr>
<tr><td>(1)</td><td>(2)</td><td>(3)</td><td>(4)</td><td>(5)</td><td>(6)</td></tr>
<tr><td>1.</td><td>Chief Municipal Officer, Class "A"</td><td>06 years</td><td>Chief Municipal Officer Class "AA"</td><td rowspan="3">1. Chairman, Public Service Commission or his nominee:
- Chairman

2.Principal Secretary/ Secretary/Special Secretary (Independent Charge), Urban Administration and Development Department
-Member

3.Commissioner/ Director, Directorate of Urban Admin and Development Department
-Member

4.Representative of Scheduled Caste/Scheduled Tribe
- Member</td><td></td></tr>
<tr><td>2.</td><td>Chief Municipal Officer, Class"B" and Revenue Officers in Municipal Council/ Nagar Panchayat</td><td>06 years</td><td>Chief Municipal Officer, Class "A"</td><td></td></tr>
<tr><td>3.</td><td>Chief Municipal Officer, Class"C" and Revenue Inspectors "AA/A/B"</td><td>06 years</td><td>Chief Municipal Officer, Class "B"</td><td></td></tr>
</table>

4. A case has been built on behalf of the petitioners that Revenue Officers, Accountants, Sanitary Inspectors and Sub-Engineers etc., are appointed by the respective Municipal Authorities and they do not constitute a State cadre because by virtue of their selection and appointment, they are employees of the concerned Municipality where they have been recruited and appointed. They are under direct control of Municipal Authorities and State has no role to play either in their recruitment or their appointment, though in the earlier Rules there was a provision where confirmation of such appointment was needed from the State.

5. The Chief Executive Officers are the head of a Municipality, who are State employees and exercise effective control and authority over all municipal staff including Revenue Inspectors working in the Municipality.

6. By virtue of Schedule- IV the State authorities are trying to give an opening to the Revenue Inspectors of the Municipalities to be "promoted" as Chief Executive Officers which will not only make the subordinates at par with the present petitioners but will also have the effect of changing the employer from that of a Municipality to one of the State.

7. Serious objection, therefore, has been taken on behalf of the petitioners that whatever may be the object and purpose behind such decision of the State authorities, they do not have power to promote Municipal employees as State Government employees by virtue of the provisions incorporated in Schedule- IV to the Rules 2017.

8. Arguing further, it is the case of these petitioners that two unequals cannot be equated, employees of two different organisations cannot be brought under one chain of command and that such Revenue Inspectors do not have a common cadre since their appointment is municipal centric. The steps taken by the State authorities therefore, throws the entire settled hierarchy between the employees of the State and the employees of Municipal Corporations into disarray.

9. We do not have to go into the details of legal position with regard to the Status of Municipalities after the 74^{th} Constitutional amendment incorporated in Part-9A of the Constitution of India because the said amendment undisputedly gives an independent status as a third tier of

governance. Such amendment takes away from the state the original arrangement of them being a limb or extension of the State.

10. Not only in the Constitutional scheme of things but even otherwise, the very composition of the two services clearly establishes that the Chief Executive Officers of various Municipalities who admittedly are State employees cannot be equated with the employees appointed by different Municipalities to be at par merely because they have similar kind of exposure while working as Revenue Inspectors in the Municipalities in question.

11. They are one too many anomalies which emerge. Two different set of employees are being equated and being given parity in matters of promotion by virtue of the amendment brought about in Schedule- IV to the Rules 2017 and we do agree with the stand and submission of learned counsel representing the petitioners that such an arrangement made under the Rules 2017 seems to violate Articles 14 and 16 of the Constitution of India.

12. Learned Additional Advocate General representing the State does make a valiant effort to support the Rules 2017 and Schedule on the ground that such provisions and powers were vested in the State from the very beginning which will be reflected from Section 94(4) of the Madhya Pradesh Municipalities Act, 1961 which had been now been adopted by the State of Chhattisgarh and Rule 6, 7 and 9 of the Madhya Pradesh Services Rules 1967.

13. There is fallacy in the stand taken by learned Additional Advocate General representing the State for two obvious reasons. The 1961 Act and 1967 Rules where pre-Constitutional amendment Act or Rules. If they are put under judicial test today after the 73rd Constitutional Amendment, there will be serious doubt whether the Act and the Rule will stand the test of time.

14. The issue is not even that. A new Rule has been notified by the State Government itself on 10.10.2017 and this notification of the Rule has to satisfy the touch stone of Articles 14, 16 and the 73rd Constitutional amendment. If the factual position is not a matter of dispute that the Chief Executive Officers are employees of the State and the Revenue Inspectors are employees of different municipalities, then the two different employees of different employers cannot be merged by way of promotion for creating avenues of promotion for them, merely on the ground that this is being done to give an opening to the Revenue Inspectors and they have to go through a process before the benefit of promotion can accrue to them.

15. It is not the object but the power which is being tested and we come to a conclusion that the manner in which it is sought to be pushed through by incorporating such a provision in Schedule- IV to Rules 2017 falls foul of Articles 14 and 16 of the Constitution of India if not the 73rd Amendment and Chapter 9A of the Constitution of India.

16. Writ Application succeeds. Schedule- IV of Rules 2017 in relation to grant of avenues of promotion to Revenue Inspectors on the post of

Chief Executive Officers is struck down as *ultra vires*. As a consequence thereof, the notification contained in Annexure P/1 dated 02.02.2018 giving leeway of one year to Revenue Inspectors for availing the benefit of participation in such exercise of promotion must also go. The same is also quashed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma