

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No. 341 of 2019

(Arising out of order dated 13.05.2019 passed by learned Single Judge in WPS- 3620 of 2019)

1. Pawan Kumar Agrawal S/o Late Tara Chand Agrawal Aged About 43 Years Presently Posted As Civil Judge Class - I, Raipur, District Raipur Chhattisgarh.
2. Pankaj Dixit S/o Shri N.D. Dixit Aged About 48 Years Presently Posted As Civil Judge Class - I Gunderdehi, District Balod Chhattisgarh.

---- Appellants

Versus

1. State Of Chhattisgarh Through Principal Secretary, Department Of Law And Legislative Affairs, Mahanadi Bhawan Mantralaya, New Raipur District Raipur Chhattisgarh.
2. Secretary Chhattisgarh State Public Service Commission, Shanker Nagar, Raipur District Raipur Chhattisgarh.
3. High Court Of Chhattisgarh Through Registrar General, High Court Of Chhattisgarh, Bodri Bilaspur Chhattisgarh.
4. Nidhi Sharma W/o Devesh Tiwari Aged About 36 Years Currently Posted As ADJ Mahasamund, District Mahasamund. (2006 Batch).
5. Anand Prakash Dixit S/o B.S. Dixit Aged About 33 Years Currently Posted As Chief Judicial Magistrate, Raipur, District Raipur. (2008 Batch).
6. Amit Jindal S/o Shri V.K. Jindal, Currently Posted As Civil Judge Class I, Janjgir Champa. (2012 Batch).

-----Respondents

For Appellants	: Shri Kishore Bhaduri, Advocate with Ms Surya Kawalkar Dangi, Advocate.
For Respondents/State	: Shri Siddharth Dubey, Dy GA
For Respondent- 2	: Shri Ashish Shrivastava, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per PR Ramachandra Menon,CJ

30.07.2019

1. Heard on IA No.1 of 2019, application for condonation of delay in filing the present appeal.

2. For the reasons assigned in the application, I.A. No.1/2019 is allowed and delay of 09 days in filing this appeal is hereby condoned.
3. Grievance of the appellants, who were petitioners in WPS No.3620 of 2019, is in respect of the interference declined by the learned Single Judge to settle their seniority with reference to the juniors, who were placed in the select list and got appointment earlier virtually getting a march over the appellants herein, though the same was interdicted and the appellants were ordered to be appointed by of a Division Bench of this Court.
4. We heard learned counsel for the appellants, learned State Counsel and learned Standing Counsel for the Public Service Commission.
5. The sequence of events is as follows :-

The appellants herein having obtained all the necessary qualifications were desirous of participating for selection and appointment to the Post of Civil Judge Class-II. Accordingly, on issuance of a notification in this regard in the year 2003, they forwarded their applications. In the process of selection, the petitioners came to be omitted from being included in the list, which made them to feel aggrieved, and hence, they approached this Court by filing WP No.1827 of 2004.

6. The main challenge raised by them was that, the Rules of Reservation, particularly the 30% of reservation given to women

candidates, as per the relevant Rules, was not worked-out properly by virtue of which, unlawful gains were extended to respondents No. 4 & 5, who came to be given a placement in the select list, in spite of the fact that, by virtue of the better marks obtained by the petitioners/appellants, they were entitled to be placed in the relevant slots. It was also contented that, unlike the reservation for Schedule Castes (SC), Schedule Tribes (ST) and Other Backward Caste (OBC), which is a 'vertical' line of reservation, in the case of reservation for women, it has to be a 'horizontal' reservation. The difference between the vertical reservation and the horizontal reservation, as explained by the Apex Court in **Rajesh Kumar Daria Vs Rajasthan Public Service Commission and others** reported in **2007 (8) SCC 785**, was also sought to be relied on; besides the subsequent ruling rendered by the Supreme Court in the case of **Public Service Commission Uttaranchal Vs Mamta Bisht and others** reported in **2010(12) SCC 204**. The claim was resisted from the part of the respondents.

7. After hearing both the sides, a Division Bench of this Court made specific observations with reference to the nature and scope of challenge and observed that the core question to be decided in the petition was whether, in computing the horizontal reservation for women in unreserved category, the provisions of Article 15 (3) of the Constitution and the Chhattisgarh Lower Judicial (Recruitment and Conditions of Service) Rules, 1994 (for short, 'the Rules 1994') have

been duly complied with or not. It was accordingly, that a reference was made to Article 15(3) & also Rules 6(A) of the Rules 1994.

8. To understand the scope of the different types of reservation i.e. vertical and horizontal, Paragraph-9 of the verdict passed by the Hon'ble Supreme Court in the matter of **Rajesh Kumar Daria** case (supra) was relied on and extracted, which is to the effect that where a special reservation for women is provided within the social reservation for SC, the proper procedure is first to fill-up the quota for 'Scheduled Caste' in the order of merit and then find out the number of candidates among them, who belong to the special reservation group of Scheduled Caste women. If the number of women in such list is equal to or more than the number of special reservation quota, then there was no need for any further selection towards the special reservation quota. After conducting a threadbare analysis of the facts and figures and relevant provisions of law in the light of binding precedents, the Division Bench observed that, after securing the place at Sr. No.15 of the select list of the unreserved category by a person named Ms. Shraddha Shukla, 30% horizontal and compartment wise reservation for women of general or unreserved / OC category was achieved, and, hence, there was no need for giving the benefit of further reservation to respondents No.4 & 5 after achieving 30% reservation. By doing so, the Division Bench held, that the second respondent had definitely committed a grave error and thereby wrongly depriving the petitioners from being

selected to the post of Civil Judge Class-II, who admittedly had scored more marks than the respondents No.4 & 5.

9. The further course of action to be pursued was considered by learned Division Bench in paragraph-14 of the judgment, as to whether, selection of respondents- 4 & 5 should be set aside at that distance of time. It has been noted in the next paragraph, that after completion of selection process, the candidates were appointed in the year 2004, and were serving as 'Judicial Officers' for more than seven years. It is also noted that there were subsequent instances of selection and appointments in the year 2006, 2008 & 2011 as well, and in the said circumstances, it would not be proper to set aside the selection and appointment of respondents- 4 & 5 at that juncture, for no fault on their part. It was accordingly, that the relief was moulded by the Division Bench, holding that the right, which was to be extended to the writ petitioners could not be denied under any circumstance, who actually were entitled to be selected and should have been placed immediately below Ms. Shraddha Shukla and above respondents- 4 & 5 in the select list. The mistake was by virtue of the wrong application and erroneous interpretation of the horizontal reservation and compartment wise reservation sought to be effected by the second respondent. Considering the totality of the facts and circumstances, the Division Bench directed the respondents concerned to appoint the petitioners/appellants herein subject to fulfilment of necessary formalities like Police verification etc., against the available vacancies for the post of Civil Judge

(Junior Division). After giving such a direction, a rider was also added as the last sentence of Paragraph-16, that the seniority of the writ petitioners will, however, be reckoned from the date of their appointment. Since, the appellants were aggrieved with the rider, they filed a petition for modification to the requisite extent, as per, MCC No.681/2016. It is disclosed from the pleadings and proceedings that the Bench held that no interference was warranted in the said petition and MCC came to be dismissed on 28.09.2016. Met with the situation, the appellants herein approached the Government/Departmental authority by filing a detailed representation pointing out the injustice resulted. The representation preferred by the appellants herein came to be rejected by the departmental authorities, pointing out that there was a specific observation/direction given by the Division Bench that the seniority would be with effect from the date of appointment and, as such, it was not possible to have it altered under any circumstance. It was in the said context that the petitioners/appellants decided to move this Court by filing WPS No.3620/19 with the following prayers :-

“(i). That the Hon'ble Court may kindly be pleased to set aside the letter of the respondent no.3 dated 24.06.2016. (Annexure P/1).

(ii). That the Hon'ble Court may kindly be pleased to direct the respondents to consider the seniority of the petitioners above the 2006, 208 & 2012 batch candidates as the petitioners were arbitrarily preclude from being appointed on the post in the year 2004 itself.

(iii). That the Hon'ble Court may kindly be pleased to direct the respondents to grant notional benefits to the petitioners since 2004 the year in which the petitioners were to be granted appointment.

(iv). Any other relief as deemed fit by this Hon'ble Court may also be granted in favour of the petitioner.”

10.After hearing both the sides, co-ordinate Bench of this Court observed that the course pursued by the Departmental Authorities rejecting the representation could not be assailed under any circumstances, for the obvious reason that it was in conformity with the direction given by the earlier Division Bench, clearly holding that the seniority of the petitioners would be with effect from the date of appointment. This made the writ petitioners to approach this Court by the filing the present writ appeal.

11.The learned counsel for the appellants points out that the grave injustice has been resulted, which is liable to be rectified invoking the power and procedure of this Court under Article 226 of the Constitution of India. It is also pointed out that, it is absolutely for no fault on the part of the appellants, that their names were left out in the select list and that it was only because the wrong interpretation of the relevant rules of reservation, which came to be corrected only by the intervention of this Court. It was accordingly that a specific observation was made to the effect that, the appellants/petitioners were liable to be placed immediately after Ms. Shradha Shukla and above respondent nos. 4 & 5, and having declared so, it was quite necessary to have made appropriate provisions for reckoning the service seniority of the petitioners/appellants as well, with effect from the date their juniors were appointed.

12. It is also brought to the notice of this Court that in spite of the declaration of law as above, it took nearly 14 months for the respondents to give appointment to the petitioners/appellants and this has caused maximum prejudice to the career of the appellants. By virtue of the wrong course pursued by the Departmental Authorities, undue benefits have been extended to the juniors including the respondent nos. 4 & 5; whereas the vested rights of the petitioners/appellants have not been protected, which is sought to be highlighted before this Court.

13. Learned counsel representing the State and learned counsel representing the Public Service Commission submits that the verdict passed by the Division Bench in WP No.1827/2004 has become final. The specific declaration/observation made by the Bench that the seniority of the petitioners therein would be with effect from the date of appointment stands intact and, as such, the same could not be varied in any manner, by the Appointing Authorities. The petition for modification/clarification was also dismissed by the Bench, and the present appellants have not sought to challenge the same any further by approaching the Apex Court, if at all they were aggrieved in any manner.

14. Learned counsel for the appellants submits that the observation/declaration made by the Bench in Paragraph No.16 of the verdict in WP No.1827/2004 is virtually against the Chhattisgarh Civil Services (General Condition of Services) Rules 1961 with regard to the fixation of seniority. If it be so, it is always open for the appellants to

pursue other appropriate remedy in accordance with law, before the appropriate forum. Insofar as, the said order stands and review petition filed against the same stands dismissed, this Court is not in a position to deal with the issue on merits again. Accordingly, interference is declined and the petition is dismissed.

Sd /-

(PR Ramachandra Menon)
Chief Justice

Sd /-

(Parth Prateem Sahu)
Judge

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