

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2380 of 2011**

Dinesh Kumar Tripathi, aged about 55 years, S/o Shri Ram Vishal Tripathi,
Posted as Assistant Research Officer, R/o A/7, Priyadarshini Nagar,
Bilaspur (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Water Resources Department, Sihawa Bhawan Raipur (CG).
2. Engineer in Chief, Water Resources Department, Sihawa Bhawan, Raipur (CG).
3. Chhattisgarh State Public Service Commission through the Secretary, Shankar Nagar road, Raipur (CG).
4. Shri S.S. Paikra, Posted as Research Officer, Office of the Chief Engineer, Mahanadi Godawari Kachhar, Raipur (CG).

---- Respondents

For Petitioner	:	Shri Pranjal Shukla, Advocate.
For State	:	Shri Raghvendra Verma, Govt. Advocate.
For Respondent 3 :		Shri Vivek Sharma under instructions of Shri Ashish Shrivastava, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order on Board****19.08.2020**

1. The petition was initially filed in April, 2011 claiming for the relief of a direction to the respondents to fill up the post of Research Officer from among the unreserved candidates. The further relief sought for was for a direction to the respondents to consider the case of the petitioner for promotion for the said post of Research Officer since he is in the zone of consideration.
2. Pending the writ petition, the Respondent-State has issued an order of promotion dated 03.02.2012 (Annexure P/7) which has subsequently been challenged by the petitioner by way of amendment.
3. Brief facts of the case relevant for the adjudication of the present writ

petition is that, the petitioner was appointed as Research Assistant on 22.05.1980. Considering the seniority, the petitioner was promoted to the post of Assistant Research Officer in the year, 1992 and he continued to work as Assistant Research Officer even at the time of filing of the present writ petition.

4. The next promotional post from the post of Assistant Research Officer is to the post of Research Officer. The rules governing the field is the Chhattisgarh Irrigation Engineering and Geological Service (Gazetted) Recruitment Rules, 1968 (in short, The Rules, 1968). The aforesaid rules stood amended in the year, 1990 and as per the amended provision, the post of Research Officer was to be filled 50 percent by transfer from the post of Executive Engineers (Civil) within the department and the remaining 50 percent of the post was to be filled up by way of promotion from the feeder cadre of Assistant Research Officer i.e. the cadre in which the petitioner was working.
5. Initially when the cadre was bifurcated at the time of reorganization of the State, 6 posts of Research Officer and 35 posts of Assistant Research Officer were allotted to the State of Chhattisgarh as would be evident from Annexure P/2 with the writ petition. However in the year, 2007 the said sanctioned strength of 6 posts of Research Officer was reduced to 5 posts vide Annexure P/3 dated 04.01.2007. The last promotion made on the said post of Research Officer was in the year, 2003. Since the petitioners were all eligible they were all hoping for the respondents to fill up the vacant post timely. The next promotions were made by the respondents vide Annexure P/4 on 09.02.2010 when two persons namely Smt. Gayatri Sathe and Shri A.K. Mahobia were promoted. Smt. Sathe was from the unreserved category and she stood retired in February, 2011. Shri A.K. Mahobia who was promoted along with Smt. Sathe belonged to the reserved (SC)

category.

6. The respondents thereafter started preparation for holding DPC for promotion to the post of Research Officer from among the feeder cadre of Asst. Research Officer and accordingly the ACRs of the Assistant Research Officers who fell in the zone of consideration were called upon. Since Shri A.K. Mahobia, who was promoted in the year, 2010 belonged to the reserved category and Smt. Sathe who retired in February, 2011 was from the unreserved category, the petitioner expected to be promoted against the vacant post. It was expected by the petitioner that since Smt. Sathe who retired was from the unreserved category therefore the post was supposed to be filled from among the unreserved category and the petitioner thus had a chance.
7. According to the petitioner, even Shri A.K. Mahobia who was promoted earlier was junior to the petitioner, however, by virtue of reservation he got advantage and got promoted ahead of the petitioner. Apprehending a similar situation, the petitioner had approached this court seeking for the relief as mentioned in the initial paragraphs of this order. However, pending the writ petition the impugned order dated 03.02.2012 was passed and subsequently the respondent No.4 got promoted on the post of Research Officer.
8. Now the grievance of the petitioner is that the respondent No.4 Shri S.S. Paikra who has been promoted on 03.02.2012 is again an officer much junior to the petitioner and therefore he should not have been promoted ahead of the petitioner. Another contention which the petitioner has raised is the fact that since under the Rules, 1968 there is only 50 percent of post from the total cadre strength of 5 which could be filled up by way of promotion from among the Assistant Research Officer. 50 percent of the said total strength of 5 comes to 2.5 and which rounded off comes to 3 and

if 2 persons i.e. Shri A.K. Mahobia and Shri S.S. Paikra stand promoted, the percentage of reservation would exceed far more than 50 percent. Thus, the said promotion would be in contravention to the law laid down by the Supreme Court in case of **Indira Sawhney Vs. Union of India and Others**, 1992 (Suppl) 3, SCC 217, which has subsequently been reiterated in catena of decisions.

9. Per contra, the State counsel opposing the petition submitted that the State authorities have never crossed the limit of reservation prescribed. The total cadre strength is 5 and 50 percent of that comes to 2.5 and the appointments made against the reserved post is only 2. Thus, there is no violation of any of the rules and guidelines applicable or the judgments of the Supreme Court. According to the State counsel, the reservation has to be determined from the total strength in the cadre.
10. Having heard the contentions put forth on either side and on perusal of records, today when the writ petition is being heard, the hard reality which has to be accepted is the fact that the petitioner has since retired from service in the year, 2015-16. From 2012, in between till the petitioner had retired there has been no promotions made by the departments. Now what is to be seen is that if the contention of the State counsel is accepted then out of 2.5 which is the 50 percent of 5, the promotion given to 2 of the officers from among the reserved category cannot be said to be bad. At the same time, if the contention of the counsel for the petitioner is to be accepted that 50 percent ought to have been from among the quota fixed for the promotees from among the Assistant Research Officers even then 50 percent of 5 would come to 2.5 which rounded off comes to 3. Of this 3, if 50 percent is to be reserved for candidates from the reserved category, then the figure comes to 1.5 which again if rounded off comes to 2, even then the respondents are justified in filling up of the post of Research

Officer from among the Assistant Research Officers from the reserved category.

- 11.** Another aspect which needs consideration is that, after retirement of Smt. Sathe, out of 5 only 1 post stood filled that too by Shri A.K. Mahobia and as such there were 4 posts left vacant, of which applying the 50 percent ratio, 2 posts were to be filled from among the Assistant Research Officer and 2 posts from among the Executive Engineers in the department. Of the 2 posts which were to be filled up from among the Assistant Research Officers, the department vide order dated 03.02.2012 have issued an order of promotion promoting the senior most person from among the unreserved category i.e. Shri Shivnath Katiyar and one post was filled from among the ST category by promoting the respondent No.4. Shri A.K. Mahobia the earlier officer promoted on the post of Research Officer belonged to the SC category and he has been promoted against the reserved post for SC category. The claim of the petitioner that 2 posts which were to be filled up by promotion of Research Officer were to be filled up from the unreserved category candidates in the cadre of Assistant Research Officer thus is totally unfounded.
- 12.** Given the aforesaid facts and circumstances of the case, this court is of the opinion that no strong case has been made out by the petitioner for grant of any relief, nor is there any strong material adduced by the petitioner to hold Annexure P/7 dated 03.02.2012 to be illegal or contrary to law. Moreover, by efflux of time since the petitioner has also retired from service and in between as long as he was in service there has not been any further promotions made, the petitioner would not be entitled for any relief.
- 13.** The writ petition accordingly stands rejected.

Sd/
(P. Sam Koshy)
Judge

