

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 1238 of 2021

1. Ghanshyam Singh Rathore S/o Shri Govind Ram Rathore, Aged About 41 Years R/o B-6, Krishnasudamapuri, Sector-1, Ddu Nagar, Raipur, District Raipur (Chhattisgarh) **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Food Civil Supplies And Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur Chhattisgarh.
2. Director, Food Civil Supplies And Consumer Protection Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur (Chhattisgarh) **---Respondents**

For Petitioner	:	Shri Prateek Sharma, Advocate.
For State	:	Shri Sudeep Verma, Dy. G.A. with Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22.03.2021

1. The grievance of the petitioner in the present writ petition is the inaction on the part of the respondents in not holding DPC for promotion from the post of Assistant Director to the post of Dy. Director.
2. According to the petitioner there is a large number of vacancies which has been created on the post of Dy. Director on account of either superannuation or promotion. According to the petitioner, he became eligible for promotion in the year 2016 and that even in 2016 there were vacancies available but on account of not holding the DPC, the promotion could not be carried out.
3. The State Counsel on seeking instruction submits that since there was a confusion in the department as regards the reservation policy which needs to be applied for filling of promotional post of Dy. Director and on account of the litigation pending consideration before the Division Bench of this Court, the authorities would not hold the DPC within the stipulated period.

4. It would be relevant at this juncture to take note of the order passed by the Division Bench of this Court in WPPIL No. 91/2019 wherein the Division Bench vide order dated 08.01.2020 clarifying the interim order granted earlier has held as under:-

The Applicants, in I.A. Nos.04 to 10 filed in WPPIL No.91 of 2019 and I.A. Nos.03 to 41 filed in WPS No.9778 of 2019 for intervention, have sought themselves to be impleaded in these proceedings pointing out that their rights by virtue of being a member of either scheduled caste or scheduled tribe are likely to be adversely affected and hence they are necessary parties, to be heard. It is also pointed out that, this Court, as per order dated 09.12.2019, has only stayed Annexures P/1, P/2 and P/3; but wrongly interpreting the same, the State Government is effecting promotion only in the unreserved segment, leaving the deserving scheduled caste and scheduled tribe segments.

This is sought to be rebutted by the learned counsel appearing for the Petitioners in WPS No.9778 of 2019 pointing out, with reference to I.A. No.19 of 2020 filed by Arvind Minj, that the proceedings filed along with the application, clearly reveal that the promotions given by the State are also in the 'reserved segment' and hence that there is no basis at all in the submission made across the bar.

This Court does not intend to deal with the merits of promotion given to the 'unreserved segment' or as to the alleged denial of the same to the 'reserved segment'. As far as the interim order is concerned, it is explicitly clear that the stay is in respect of further steps pursuant to Annexures P/1, P/2 and P/3. The reasons for passing the said order are also clearly discernible therefrom. On 29.11.2019, the sequence of events was taken note of, including as to the striking down of the '2003 Rules', which governed the field of reservation in promotion, by a Division Bench of this Court as per Annexure P/5; with liberty to the State to frame new Rules, strictly in conformity with the law declared by the Apex Court in *M. Nagaraj and Others v. Union of India and Others*, (2006) 8 SCC 212 and *Jarnail Singh and Others v. Lachhmi Narain Gupta and Others*, (2018) 10 SCC 396. Subsequently, when the matter was taken up for consideration on 02.12.2019, the learned Advocate General submitted that some inadvertent mistake had crept in respect of the Rules under challenge and that steps were being taken on war footing to have the same rectified. Accordingly, the learned Advocate General sought to have a posting on the next Monday, to make appropriate submissions.

The matter came up for consideration on 09.12.2019, when no satisfactory explanation was offered; but for stating that a letter dated 05.12.2019 had been sent to the Central Government seeking for issuance of some guidelines. This led to the order passed on 09.12.2019 whereby all further proceedings pursuant to Annexures P/1, P/2 and P/3 were stayed for a period of two months. This Court only made it clear, based on the submissions

made by the respective parties that, the said order will not place any hurdle in granting 'regular promotion'. This Court had not directed the State Government to effect any promotion; but for clarifying that the Government was free to effect regular promotion in accordance with law; without giving effect to Annexures P/1, P/2 and P/3. When the old Rules were struck down as per Annexure P/5 verdict, whether the Government would be justified in effecting any promotion on the basis of the said Rules, can only be answered in the 'negative'. Insofar as this Court has not restricted the Government to effect promotion only one segment, it is open for the State to take appropriate action complying with the order passed by this Court on 09.12.2019 and also giving effect to Annexure P/5 judgment, whereby the earlier Rules were set aside.

5. Taking into consideration, the aforesaid specific observation made and clarification given by the Hon'ble Division Bench, this Court is of the opinion that there would be no fruitful purpose served in keeping the writ petition pending, the present writ petition at this juncture can be disposed of directing the respondent-authorities to proceed further with the promotional process for filling of the post of Dy. Director from the feeder post of the Assistant Director in accordance with Rules governing the field and also taking into consideration the observation made by the Division Bench on 08.01.2020 as referred in the preceding paragraphs, the authorities have to decide the claim after due verification of the facts so far as entitlement of the petitioner is concerned.
6. Let an appropriate decision be taken within a period of four months from the date of receipt of copy of this order.
7. Accordingly the writ petition is disposed of.

Sd/-
(P. Sam Koshy)
Judge