

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3634 of 2011**

Shobhnath Sahu, S/o Santosh Ram, Aged about 44 years, Working as Waterman, Govt. Middle School, Kunkuni, Distt. Raigarh, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through Secretary, Tribal Development Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
- 2.Commissioner, Tribal Welfare Department, Raipur, Chhattisgarh.
- 3.Assistant Commissioner, Raigarh, Tribal Welfare Department, District Raigarh, Chhattisgarh.
- 4.Murlidhar Sharma, S/o Keshav Prasad Sharma, Assistant Grade 3, Govt. High School Bijna, Block Tamnar, District Raigarh, Chhattisgarh.

--- Respondents

WPS No. 3635 of 2011

Shiv Govind Yadav, S/o Sundar Yadav, Aged about 38 years, Working as Chowkidar, Govt. Middle School Tushekela (Kharsiya), Tahsil Kharsiya, Distt. Raigarh, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through Secretary, Tribal Development Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.

2. Commissioner, Tribal Welfare Department, Raipur, Chhattisgarh.
3. Assistant Commissioner, Raigarh, Tribal Welfare Department, District Raigarh, Chhattisgarh.
4. Murlidhar Sharma, S/o Keshav Prasad Sharma, Assistant Grade 3, Govt. High School Bijna, Block Tamnar, District Raigarh, Chhattisgarh.

--- Respondents

WPS No. 3636 of 2011

Bhagau Ram Kurre, S/o Late Prahlad Ram, Aged about 42 years, Working as Cook, Govt. Middle School Purena, Tahsil Kharsia, Distt. Raigarh, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Tribal Development Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. Commissioner, Tribal Welfare Department, Raipur, Chhattisgarh.
3. Assistant Commissioner, Raigarh, Tribal Welfare Department, District Raigarh, Chhattisgarh.
4. Murlidhar Sharma, S/o Keshav Prasad Sharma, Assistant Grade 3, Govt. High School Bijna, Block Tamnar, District Raigarh, Chhattisgarh.

--- Respondents

WPS No. 3640 of 2011

Kheer Prasad Nayak, S/o Vidhyanand Nayak, Aged about 46 years, Working as Peon Govt. Middle

School, Rajghata, Kharsiya, Tahsil Kharsiya, Distt.
Raigarh, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through Secretary, Tribal Development Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
- 2.Commissioner, Tribal Welfare Department, Raipur, Chhattisgarh.
- 3.Assistant Commissioner, Raigarh, Tribal Welfare Department, District Raigarh, Chhattisgarh.
- 4.Murlidhar Sharma, S/o Keshav Prasad Sharma, Assistant Grade 3, Govt. High School Bijna, Block Tamnar, District Raigarh, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Harish Khuntiya, Advocate

For Respondents 1 to 3/State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through Video Conferencing)

30/06/2021

- 1.Since common question of fact and law is involved in all these writ petitions, they have been heard together and are being decided by this common order.

2. The four petitioners are aggrieved by the promotion given to respondent No. 4 on the post of 'Assistant Grade-3' vide impugned order dated 18/02/2009 (Annexure P-1).
3. It is the case of the petitioners that their services were regularized by order dated 16/02/2009 (Annexure P-3), but respondent No. 4, who is junior to them, has been promoted by respondent No. 2 by order dated 18/02/2009 (Annexure P-1), ignoring petitioners' candidature for the promotional post, as such, the order impugned promoting respondent No. 4 on the post of 'Assistant Grade-3' over the petitioners deserves to be quashed.
4. Return has been filed by the State stating inter alia that respondent No. 4 was absorbed on the post of 'Peon' by order dated 15/07/1993 and thereafter, he was regularized on the post of 'Peon' on 19/07/1994 whereas petitioners' services have been regularized on the post of 'Peon' on 16/02/2009 (Annexure P-3), therefore, they are not entitled to question the order of promotion of respondent No. 4 on the post of 'Assistant Grade -3'. It has also been stated in the reply that as per Schedule – II of Scheduled Tribe/Scheduled Caste and Other Backward Class Kalyan Adhinasth (Tratiya Varga

Lipika) Seva Bharti Niyam, 1994 (hereinafter called as the 'Rules of 1994'), on the post of Lower Division Clerk/Assistant Grade – 3, 20% promotions have to be made from Class-IV employees who have passed High School Certificate Examination and have completed 5 years regular service in the particular feeding cadre. As such, the services of petitioners being regularized only on 16/02/2009 (Annexure P-3), they have not completed mandatory 5 years of service so as to be considered for promotion and therefore, the writ petitions deserve to be dismissed.

5.Mr. Harish Khuntiya, learned counsel for the petitioners, would submit that respondent No. 2 is absolutely unjustified in promoting respondent No. 4 on the post of 'Assistant Grade – 3' over the petitioners, ignoring the fact that he is junior to the petitioners, as such, the impugned order deserves to be quashed and direction may be given for considering petitioners' case for promotion on the post of 'Assistant Grade – 3'.

6.Mr. Ravi Bhagat, learned State counsel, would submit that respondent No. 4 was regularized on 19/07/1994 as he has already completed 5 years of service and hence, he was promoted on the aforesaid

post of 'Assistant Grade – 3' by the impugned order (Annexure P-1), as such, the writ petitions deserve to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

8. The four petitioners were admittedly regularized on the post of 'Peon' by order dated 16/02/2009 (Annexure P-3) and in the return filed by the State supported by an affidavit, respondents No. 1 to 3/State has clearly stated that service of respondent No. 4 was regularized on the post of 'Peon' on 19/07/1994 and as per the Rules of 1994, he has been promoted on the post of 'Assistant Grade – 3' by order dated 18/02/2009 (Annexure P-1) after mandatory completion of 5 years of service. As such, respondent No. 4 is admittedly senior to the petitioners as he was regularized on the post of 'Peon' much prior to the date on which petitioners have been regularized.

9. The contention of the petitioners that since they are seniors to respondent No. 4 and thus, the impugned order (Annexure P-1) deserves to be quashed is incorrect and it is not established on

record. AS such, the case of the petitioners, that promotion of respondent No. 4 on the post of 'Assistant Grade - 3' over the petitioners is bad, is hereby rejected.

10. There is one more reason for not entertaining the writ petitions. The petitioners have been regularized on the post of 'Peon' by order dated 16/02/2009 (Annexure P-3) i.e. two days prior to the passing of the impugned order on 18/02/2009 (Annexure P-1) promoting respondent No. 4 on the post of 'Assistant Grade - 3'. According to Schedule - II of the Rules of 1994, on the post of Lower Division Clerk/Assistant Grade - III, 20% promotions have to be made from Class-IV employees who have passed High School Certificate Examination and have completed five years regular service in the particular feeding cadre. Admittedly, petitioners have only been regularized for two days prior to the date on which respondent No. 4 has been promoted. They have even not completed an year of regular service. Thus, as per the Rules of 1994, petitioners were not eligible for promotion on the date on which respondent No. 4 was promoted on the post of 'Assistant Grade - 3' and they are not qualified and empowered to question the impugned

order (Annexure P-1) by which respondent No. 4 has been granted promotion as they will not get the said post vacated by respondent No. 4 on the date of his promotion.

11. The Supreme Court, in the matter of Dr. N.C. Singhal v. Union of India¹, relying upon its earlier pronouncement in the matter of Chitra Ghosh v. Union of India², has clearly held that a person who is not qualified for promotion and will not be benefited if the promotions of others are quashed, is least competent to challenge the promotions. It was held as under :-

"21. Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime grade II in a specialty other than ophthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post vacated by them. "

12. As a fallout and consequence of the aforesaid discussion, it is held that all the four writ petitions deserve to be and are accordingly dismissed on merits and also for the reason that as on 18/02/2009 (Annexure P-1), the date on which respondent No. 4 was promoted, the petitioners were

1 (1980) 3 SCC 29

2 (1969) 2 SCC 228

not qualified for the promotional post of 'Assistant Grade – 3'.

13. At this stage, Mr. Harish Khuntiya, learned counsel for the petitioners, would submit that now that petitioners have completed five years of service on the regularized post, they be allowed to make representation to the competent authority.

14. Accordingly, petitioners are granted the liberty to make representation before the competent authority (respondents No. 1 to 3) in accordance with law.

15. With the aforesaid liberty reserved in favour of the petitioners, these writ petitions stand disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet