

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2405 of 2021

1. Chhattisgarh Rajya Vidhyut Mandal Aarakshit Warg Adhikari Karmachari Sangh Through Its President Kamlesh Kumar Thakur, Office At- E/270, Kailash Vihaar, H. T. P. S. Colony Korba West Chhattisgarh
2. Kamlesh Kumar Thakur S/o Shri M. R. Thakur Aged About 42 Years R/o C-185, H. T. P. S. Colony Korba West Chhattisgarh
3. Alok Lakra S/o Shri T Lakra Aged About 39 Years R/o Nb-55, CSEB East Colony, Korba Chhattisgarh
4. Praveen Kumar Bhagat S/o Late Shri B. R. Bhagat Aged About 36 Years R/o NC-29, CD Type Colony, Korba Eest Chhattisgarh
5. Subhash Chandra Bhagat S/o Shri R. S. Bhagat Aged About 41 Years R/o Flat No. 203, Moon Block, Power Height Residential Colony, Budhwari, Korba West Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Energy Department, Government Of Chhattisgarh, Irrigation Colony, Shanti Nagar, Raipur Chhattisgarh
2. Chhattisgarh State Power Holding Company Limited Through General Manager (Hr), Chhattisgarh State Power Holding Company Limited, Vidyut Sewa Bhawan Campus, Danganiya Raipur Chhattisgarh

---Respondents

For Petitioner	: Shri Anchal Kumar Matre, Advocate.
For State	: Shri Jitendra Pali, Dy. A.G.
For Respondent No. 2	: Shri K. R. Nair, Advocate.
For Intervener	: Shri Nirnay Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07.09.2021

1. The present writ petition has been filed assailing the order dated 19.03.2021 (Annexure P/1) passed by the respondent No. 2, whereby the respondent No. 2 has formulated rules for issuance of the interim promotion to the employees working under the respondent No. 2 -establishment.

2. The primary challenge to the said order of the respondent No. 2 seems to be the litigation pending before this High Court in two writ petitions one WPPIL 91 of 2019 and other WP(S) No. 9778 of 2019. In both these writ petitions, there is an interim order granted by the Division Bench so far as the operation of the new amended rules of reservation published by the State Government and which has also been adopted by the respondent No. 2 establishment.
3. The further challenge also is that the same is in-contravention to the judgment of the Hon'ble Supreme Court in the case of **Jarnail Singh & Ors. vs. V. Lachhmi Narain Gupta & Ors.** Reported in 2018(10)SCC396.
4. During the course of hearing, the learned counsel for the respondents have pointed out that the same order dated 19.03.2021 was already subject to challenge before this Court vide order WP(S) No. 3420 of 2021 decided on 09.07.2021 and taking into consideration the submission made by the counsel for the petitioner therein, which also primarily was on the same ground which has been raised by the petitioner herein in Paragraph 02 to 08, this Court held as under:-
 2. For better understanding of the issue raised by the petitioners, it would be more appropriate to quote the impugned order itself and which for convenience sake the translated version is being reproduced hereinunder :-

Order

- "1. According to the interim order passed by the Hon'ble High Court in Writ Petition No.9778/2019 and in the above perspective , vis-a-vis the promotional procedures issued by the General Administration Deptt, Chhattisgarh Govt. the interim promotion may be given in the power companies on the basis of provisional existing seniority list and seniority position, the promotion will be subject to the final outcome of the above Petition by the High Court.

2. In the seniority list those officers/employees belonging to reserved categories availing the benefit of reservation have been promoted and became senior that percentage of promotion may be made exceeding up to 50% against the sanctioned post with reference to the order in M. Nagaraj (Writ Petition no.61/2002 and Jarnail Singh (WPNo.30621/2011) passed by the Hon'ble Supreme Court.
3. Till the interim order vacated or the final order passed by the Hon'ble Court, the number of promotions received by the officers/employees if found more than vacant posts, they will either be adjusted or in the absence of the class wise post they would be reverted to the former post which may be mentioned in the promotion order ;
4. That, the officers promoted in the year 2020 and present officers promoted, their inter se seniority would be determined based on the vacation of stay order/final decision or any order passed by the Hon'ble Court and the same may be mentioned in the order of promotion.
5. This issues with the approval of competent authority."

Sd/- General manager (HR)

Chhattisgarh State Power Holding Company Ltd. Raipur

- 3 .Contention of the petitioner assailing the order is that the said order is per se in contravention to the judicial dictum of the Hon'ble Supreme Court in the case of **M. Nagaraj & Others V. Union of India & Others, (2006) 8 SCC 212** and also in the case of **Jarnail Singh & Others Vs. Lachhmi Narain Gupta & Others, (2018) 10 SCC 396** and other orders of the Hon'ble Supreme Court. Further contention of the petitioner herein is also that as a consequence and implication of the impugned order under challenge in the writ petition, the petitioners and other similarly placed persons belonging to the reserved category are being either deprived or denied of their right for promotion which otherwise they are entitled for by virtue of the reservation policy that was applicable in the establishment.
4. Plain perusal of the impugned order Annexure P-1 would reveal that the same has been issued in the light of the order passed by the Division Bench of this Court in a bunch of writ petitions, the leading of which being WPIL 91/2019 and other connected matters, wherein the Division Bench vide its order dated 09.12.2019 dealing with the interim application has held as under :-

"When the matter came up for consideration before this Court on 29-11-2019, we passed a detailed order as to course and events and made an observation to the effect that, the petitioner had prima facie made out a case for granting interim relief. However, considering the request made on the part of the Government to give an opportunity to get instructions and to make appropriate submissions, particularly, in the light of earlier direction given by this Court, which is stated as violated as put-forth by the petitioner; time was given in this regard. No return has been filed or no proper satisfactory explanation is forthcoming, but for the submission that a letter bearing No. एफ 20-3/ 2019 /1-3 dated 05-12-2019 has been issued by the State to the Central Government, Ministry of Social Justice and Empowerment, pointing out the relevant aspects and for

issuance of some guidelines. At the same time, the fact remains that notifications have been issued by way of Annexures P-1, P-2 & P-3 and steps are going on to fill up the posts accordingly, ignoring the rule of law. In the said circumstances, we find it appropriate to grant an interim order as prayed for. Further proceedings pursuant to Annexures P-1, P-2 & P-3 will stand stayed for a period of 2 months. However, it is made clear that this order will not place any hurdle with regard to regular promotion and we make it applicable only with regard to extent of reservation to the eligible lots.

The respondents are directed to file their version.

List the matter for further consideration in the week commencing from 6th January, 2020."

5. If we read the interim order granted by the Division Bench of this Court in the said set of writ petitions and thereafter peruse the impugned order, it would reveal that the said order has been passed taking into consideration and also pursuant to the interim directions given by the Division Bench of this Court. The respondents while issuing the impugned order have also been conscious enough holding that any promotions in between that shall be made would be subject to the outcome of those writ petitions.
 6. In the opinion of this Court, the respondents have taken due care to ensure due compliance of the interim order granted by the Division Bench of this Court in the aforesaid bunch of writ petitions and have also affixed the rider of any promotion being subject to the outcome of the said writ petitions.
 7. Now in the given facts and circumstances of the case, if at all if the petitioners are aggrieved of the impugned order Annexure P-1 they ought to have first intervened in the said writ petition and got the order suitably modified subject to the outcome of those writ petitions or else the petitioners have a right to challenge any particular order of promotion if at all issued by the respondents which is detrimental to the interest of the petitioner or is in contravention to the service rules governing the field of promotion applicable upon the respondents which again is not under challenge or a point of issue raised in the present writ petition.
 8. Given the said facts, the present writ petition in its present form stands disposed of reserving the right of the petitioners to either intervene in the pending writ petitions before the Division Bench of this Court and seeking for appropriate modification of the interim directions and the right of the petitioner also stands reserved to question or challenge any particular order of promotion depriving or denying the promotion to the petitioners which have been passed subsequent to the impugned order Annexure P-1 having been issued.
5. A fact which requires consideration at this juncture is that the said order squarely applies to the facts of the present case also where the challenge is on the identical set of facts and grounds. While

disposing of the said writ petition, this Court has granted the advantage to the petitioner therein to intervene in the two petitions pending before the Division Bench and seek for an appropriate relief therein and also reserving the right of the petitioner to individually challenge any consequential promotion order if any published by the respondent No. 2 by which the petitioner is directly affected or his right is adversely affecting.

6. Given the facts, this Court is of the firm view that the order passed by this Court in the said writ petition i.e. WP(S) No. 3420 of 2021 would squarely cover the issues involved in the present writ petition also and the present writ petition also deserves to be disposed of in similar terms.
7. Accordingly, the writ petition stands disposed of in-terms of the order passed in WP(S) No. 3420 of 2021 dated 09.07.2021.

Sd/-
(P. Sam Koshy)
Judge