

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3420 of 2021

1. Kirti Kumar Rathia S/o Shri Gajendra Singh Aged About 33 Years Village Khamhar, Tehsil Kharsia, District Raigarh Chhattisgarh. Pin 496661
2. Smt. Chitrangana Rahi W/o Nitesh Solanki Aged About 32 Years R/o H.No. C - 3, Shanti Nagar Sri Ram Parisar, District Bilaspur Chhattisgarh Pin 495001
3. Dev Singh Kanwar S/o Late Pratap Singh Kanwar Aged About 40 Years Quarter No. D - 77, R.K. Residency, Yadunandan Nagar, Tifra, District Bilaspur Chhattisgarh Pin 495223
4. Sanjay Diwan S/o Shri Baboo Ram Diwan Aged About 44 Years O/o Junior Engineer CspdcI Gariaband (T) D / C, Near Balak High School Road, Ward No. 01. District Gariaband Chhattisgarh Pin 493885
5. Neelam Poya D/o Shri B.L. Poya Aged About 30 Years House No. 644, Adarsh Chowk, Sunder Nagar, District Raipur Chhattisgarh. 492013
6. Ashish Lakra S/o Shri Ashok Kumar Lakra Aged About 31 Years Ward No. 11, Sai Mandir, Baikunthpur District Koriya, Chhattisgarh Pin 497335
7. Purnima Thakur W/o Shri Komal Singh Thakur Aged About 30 Years House No. 2157, Ward No. 68 Nishad Para, Raipura District Raipur Chhattisgarh 492013
8. Yachana Kathel W/o Shri Mukend Kumar Dudhkaurav Aged About 31 Years House No. 591, Near Govt. Primary School Vip Colony, Changorabhata District Raipur Chhattisgarh
9. Jostin Lakra S/o Shri Norbet Lakra Aged About 31 Years House No. 132/8, New Patrapara, Dharamjaigarh, District Raigarh Chhattisgarh Pin 496116
10. Vandana Nikunj W/o Shri Jostin Lakra Aged About 31 Years House No. 132/8, New Patrapara, Dharamjaigarh, District Raigarh Chhattisgarh Pin 496116
11. Gajadhar Prasad Sidar S/o Lt Shri Ramlal Aged About 43 Years Mission Chowk Near Church Kalmi Malkharouda, District Janjgir Champa, Chhattisgarh Pin 495692

12. Anubha Lakra D/o Simon Lakra Aged About 35 Years Dingapur - I, Iti Rampur District Korba Chhattisgarh Pin 495677
13. Vikas Kunjam S/o Shri D.L. Kunjam Aged About 33 Years Qtr. No. G - 6, Sales Tax Colony, Khamardih District Raipur Chhattisgarh
14. Chhattisgarh Rajya Vidhyut Mandal Aarkshit Varg Adhikari Karmachari Sangh Through Its General Secretary, Sunil Kumar Chouhan, Aged 39 Years, House No. 201, B - 8, Sai Sanil Sindhiya Nagar, District Durg Chhattisgarh. Pin 491001

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Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Energy, Govt. Of C.G. Irrigation Colony, Shanti Nagar, District Raipur Chhattisgarh
2. State Of Chhattisgarh Through Its Secretary, General Administration Deptt. Mantralaya Mahanadi Bhawan, Atal Nagar, Nava Raipur District Raipur Chhattisgarh. Pin 492002
3. M/s Chhattisgarh State Power Holding Co.Ltd. Through Its General Manager, (H.R.) Csphcl, Vidyut Sewa Bhawan Campus, P.O Danganiya, District Raipur Chhattisgarh Pin 492013

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For Petitioner	:	Dr. K. S. Chauhan with Mr. Tribhuvan Das, Advocates
For State	:	Mr. Jitendra Pali, Dy. AG
For Respondent No.3	:	Mr. Jitendra Pali, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

09/07/2021

1. Aggrieved by the order Annexure P-1 dated 19.03.2021 the present writ petition has been filed.
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 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.
9. With the aforesaid liberty, the writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit