CGHC010331942025 2026:CGHC:46000-DB

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WA No. 580 of 2025**

District Judge District And Session Court, Rajnandgaon, District - Rajnandgaon Chhattisgarh

**…... Appellant**

**versus**

Chandrashekhar Kanwar S/o Santosh Kanwar Aged About 30 Years R/o Ward No. 14, Piproud, District Raipur Chhattisgarh

**.... Respondent**

| | | |
|---|---|---|
| For Appellant(s) | **:** | Shri Ashish Tiwari, Advocate |
| For Respondent(s) | **:** | Shri Vikash Dubey, Advocate |

**Hon'ble Mr. Krushna Ram Mohapatra, Chief Justice**
**Hon'ble Mr. Santosh Sharma, Judge**

**Judgment on Board**

**Per : Krushna Ram Mohapatra, Chief Justice**

**30/10/2026**

**1.** This is an appeal filed by the appellant assailing the order dated 25.06.2025 passed by learned Single Judge, in WPS No.3862/2024 which was disposed of along with WPS No.2570/2024 directing as under :-

"**23.** Consequently, the petitioners are directed to be appointed on the posts of Assistant Grade-III in WPS No. 2570/2024 & Assistant Grade-III (Typist/Sell Amin) in WPS No. 3862/2024 within six weeks from the date of receipt of copy of this order.

YASMIN KHAN
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> **24.** It is made clear that on reinstatement of the petitioners on the posts for which they have applied, they will not be entitled to get any backwages for the intervening period and seniority will be granted to the petitioners from the date they will be appointed by the respondents."

**2.** The factual back drop of this case relevant for adjudication of the writ appeal is that pursuant to an advertisement dated 28.06.2023 issued by the appellant for recruitment to various posts including 09 posts of Assistant Grade – III, which included two posts for Scheduled Tribe category, the respondent submitted his candidature for the post of Assistant Grade – III post in the ST category. The respondent, in due course appeared for skill test of the Assistant Grade-III and was placed at serial number 1. In the final select list his name was at serial No.1 in the wait list of ST category. The candidate who joined as Assistant Grade-III being selected in the Scheduled Tribe Category, resigned from his post within one year from the date of publication of the select list published on 17.09.2023. Thus, the respondent made an application to be appointed in the vacant post of ST category made for Assistant Grade-III. His representation was rejected. Assailing the same, the respondent had filed WPS No.3826/2024, wherein the impugned order as quoted above was passed.

**3.** Learned counsel appearing for the parties do not dispute the factual position as stated above. It is submitted by learned counsel for the appellant, the District Judge – Rajnandgaon, that when a candidate from the select list had already joined in the

post of Assistant Grade-III ( in ST category) and subsequently resigned, it could not be treated as a vacant post, as a selected candidate had already joined in the said post. However, he subsequently resigned. Hence, the said post can only be filled up by way of a fresh selection and not from the wait list as claimed by the respondent. He also relies upon ***Sudesh Kumar Goyal Vs. State of Haryana, (2023) 10 SCC 54*** and submits that the respondent has no vested right to claim for appointment to the post, as it is at the discretion of the employer to fill the post of not. He also relied on other case law in support of his submissions.

**4.** Learned counsel for the respondent refuting such contentions submits that the advertisement itself is quite clear and left no room for any doubt or confusion. He also drew attention to the relevant portion of the advertisement to buttress his arguments. The said clause in the advertisement is reproduced here under for ready reference :-

> "चयन सूची तथा प्रतीक्षा सूची– कौशल/ दक्षता परीक्षा में प्राप्त अंकों के आधार पर कामन मेरिट सूची तैयार की जावेगी। जिसमें से अधिकतम अंक प्राप्त करने वाले अभ्यर्थी की वर्गवार चयन सूची एवं प्रतीक्षा सूची तैयार की जावेगी, जो कि 1:3 के अनुपात में होगी और प्रतीक्षा सूची परिणाम घोषित होने की तिथि से एक वर्ष तक प्रभावशील रहेगी। यदि चयनित अभ्यर्थी, चयनित पद का कार्यभार ग्रहण करने के 01 वर्ष के भीतर पद से त्यागपत्र देता है, या उसे पदमुक्त कर दिया जाता है, मृत्यु या अन्य कारणों से उक्त पद रिक्त हो जाता तो उक्त पद को रिक्त मानते हुए प्रतीक्षा सूची उल्लेखित अभ्यर्थी को उक्त पद हेतु जिला एवं सत्र न्यायाधीश, राजनांदगांव के द्वारा नियुक्ति आदेश जारी किया जा सकेगा। समान अंक प्राप्त होने की स्थिति में जन्मतिथि के आधार पर वरीयता तय की जावेगी, जिस अभ्यर्थी की जन्मतिथि पहले होगी, उन्हें प्राथमिकता प्रदान की जावेगी। जन्मतिथि भी समान होने पर स्नातक में प्राप्त अंक को प्राथमिकता प्रदान की जावेगी।"

**5.** He thus submits that in the advertisement itself it is made clear that in case a selected candidate after joining the post, resignes from the service within one year or he has been removed or if on death of a selected candidate or for any other reason any post as per the said advertisement remains vacant, then it will be treated as a vacant post and will be filled up from wait list candidate. He therefore submits that the clause in the advertisement leaves no room and for any other interpretation relying upon any case law. A conscious declaration is made in the advertisement by the employer to fill up the post from the wait list treating it to be vacant in case the aforesaid exigency occurs within a period of one year from the date of publication of the select list. Since, the respondent who was at serial No.1 in the wait list submitted his application within the time stipulated for appointment to the vacant post, the appellant could not have denied the employment. It is also submitted that the learned Single Judge discussing in detail the rival contentions of the parties, relevant case laws and taking into consideration the aforesaid clause of the advertisement came to a categorical conclusion that the respondent is entitled to be appointed to the post of Assistant Grade-III in ST category. Thus, there is no illegality in the impugned order which would warrant interference.

**6.** Taking note of submissions made by learned counsel for the parties and on perusal of the record more particularly the advertisement appended to the writ petition as well as other

relevant documents, this Court finds that pursuant to the advertisement dated 20.06.2023 for the post of Assistant Grade-III in the Civil Judgeship of the Rajnandgaon, the respondent along with other candidate submitted their candidature. The respondent had submitted his application in the ST category of Assistant Grade-III and was at serial No.1 in wait list. The candidate who was appointed in ST category submitted his resignation after joining in the said post within one year from the date of publication of the select list. Thus, the respondent submitted a representation before the District Judge for being appointed to the said post as it fell vacant consequent upon resignation of the selected candidate. The said application was rejected on the ground that the said post would only be filled up by fresh recruitment as the post never fell vacant consequent upon resignation of an incumbent. Learned counsel for the appellant made his submission in support of the same. Placing reliance upon the decision of ***Sudesh Kumar Goyal*** *(supra)* and other judgments he submitted that no candidate has any vested right to be appointed to a vacant post and the employer has the discretion to take a decision for filling up the said post. It is his submission that learned District Judge had a discretion either to appoint a candidate from the wait list or not. Thus the respondent did not have any enforceable legal right to be considered for appointment to the said post.

**7.** We are unable to accept such contentions as the clause of the advertisement as quoted above clearly stipulates that in case of

resignation of an incumbent within a period of one year from the date of publication of the select list, the post would be treated to be lying vacant and would will be filled up from the wait list. Such a condition in the advertisement binds the employer to consider the appointment of the candidate, who is in the wait list like the respondent. In presence of the aforesaid clause of the advertisement which was consciously incorporated by the employer (appellant), such a discretion would not be available to the employer to be exercised. The settled law is of no assistance to the case of the appellant in view of the specific condition in the advertisement with regard to filling up the vacant post from the wait list. Denial to consider the appointment of a candidate from the wait list would amount to arbitrariness and reasonableness. As such the appellant had no other options than to consider appointment of the respondent to the vacant post of Assistant Grade-III (ST category). That having not been done the learned District Judge has committed an error, which is dehors the conditions of the advertisement itself. Learned Single Judge discussed the issue in detail in the impugned order and directed for appointment of the respondent to the vacant post of Assistant Grade-III in the ST category. It is submitted at the bar that the post is still lying vacant.

**8.** In view of the discussions made above, this Court does not find any infirmity in the direction of learned Single Judge. Accordingly, the writ appeal being devoid of merit is dismissed and in

consequence thereof the impugned order so far as it relates to WPS No.3862/2024 is confirmed.

**9.** Interim order dated 07.08.2025 stands vacated.

**Sd/-** **Sd/-**

**(Santosh Sharma)** **(Krushna Ram Mohapatra)**

**Judge** **Chief Justice**

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