



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.84 of 2020

{Arising out of order dated 30-7-2018 passed by the learned
Single Judge in W.P.(S)No.1200/2013}

Zila Panchayat Raipur, Through the Chief Executive
Officer, Zila Panchayat Raipur, District Raipur,
Chhattisgarh

(Respondent No.2)
---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Department of
Panchayat and Rural Development, Mahanadi Bhawan, New
Raipur, Atal Nagar, Raipur, District Raipur,
Chhattisgarh

(Respondent No.1)

2. Smt. Shams Banu, aged about 43 years, wife of Shri
Mohammad Rafique, R/o Shanti Nagar, Ward No.4, Gali
No.2, Near House of Murti Thakur, Police Station
Chikhali, District Rajnandgaon, Chhattisgarh

(Petitioner)

---- Respondents

For Appellant: Mr. Manish Nigam, Advocate.

For Respondent No.1 / State: -

Mr. Rahul Tamaskar, Govt. Advocate and

Mr. Ankur Kashyap, Deputy Govt. Advocate.

For Respondent No.2: -

Ms. Diksha Gouraha, Advocate.

Division Bench: -

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sanjay Kumar Jaiswal, JJ.

Order on Board

(28/03/2024)

Sanjay K. Agrawal, J.

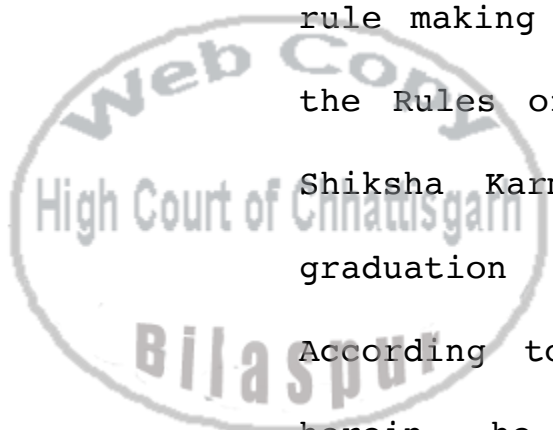
1. Invoking the appellate jurisdiction of this Court under
Section 2(1) of the Chhattisgarh High Court (Appeal to
Division Bench) Act, 2006, the appellant herein namely

Zila Panchayat, Raipur has preferred this writ appeal calling in question legality, validity and correctness of the judgment & order dated 30-7-2018 passed by the learned Single Judge in W.P.(S)No.1200/2013 by which the writ petition filed by respondent No.2 herein has partly been allowed and the appellant herein has been directed to consider the case of respondent No.2 herein on the post of Shiksha Karmi Grade-I.

2. Advertisement was issued by the Zila Panchayat, Raipur on 5-10-2009 for recruitment on the post of Shiksha Karmi Grade-I as per the Chhattisgarh Panchayat Shikshakarmi (Recruitment and Conditions of Service) Rules, 2007 (for short, 'the Rules of 2007') and minimum qualification prescribed for the post of Shiksha Karmi Grade-I was second division in post graduation in which respondent No.2 herein also participated along with other candidates, but in the result of said recruitment process declared on 9-1-2010, the writ petitioner / respondent No.2 herein has been declared ineligible as she did not have the requisite qualification under the Rules of 2007. However, a Division Bench of this Court in the matter of **Ram Chandra Ram and another v. State of Chhattisgarh and others**¹, in batch of writ petitions, directed that if the condition in the Rules of 2007 is relaxed,

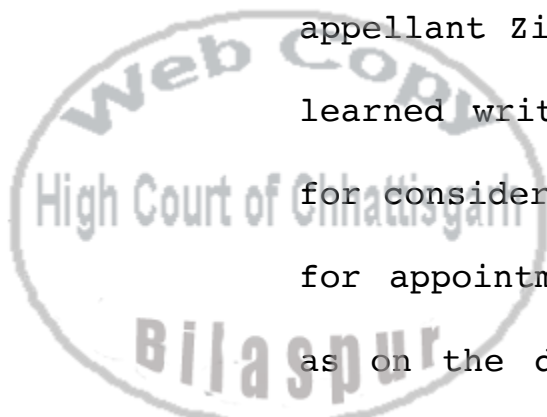
1 W.P.(S)No.6282/2009, decided on 1-7-2010

candidates, who were not allowed to participate in the examination because of above condition, will be allowed to participate in future. (However, the writ petitioner / respondent No.2 herein was not party in that batch of writ petitions.) Thereafter, on 20-9-2010, the writ petitioner / respondent No.2 herein also filed W.P.(S) No.5403/2010 which was disposed of in terms of the order passed in Ram Chandra Ram (supra) giving liberty to the petitioner to move representation which he moved, however, with effect from 7th April, 2011, the rule making authority of the State Government amended the Rules of 2007 and qualification for the post of Shiksha Karmi Grade-I has been prescribed as post graduation in the concerned subject and B.Ed.. According to the writ petitioner / respondent No.2 herein, he being a third division pass in post graduation degree became eligible for the post of Shiksha Karmi Grade- I with effect from 7-4-2011, however, pursuant to another writ petition filed by respondent No.2 namely W.P.(S)No.1412/2012, the writ court directed the writ petitioner's / respondent No.2's representation to be decided which was ultimately decided by the Zila Panchayat, Raipur on 6-3-2013 rejecting the representation holding that respondent No.2 did not possess the requisite qualification on the date of advertisement which was



challenged by respondent No.2 by again filing writ petition i.e. W.P.(S) No.1200/2013 in which the learned Single Judge by the impugned order directed for consideration of the writ petitioner's case for the post of Shiksha Karmi Grade-I. Being aggrieved against that order, the writ appellant / Zila Panchayat, Raipur has preferred this writ appeal calling in question legality, validity and correctness of the order impugned.

3. Mr. Manish Nigam, learned counsel appearing for writ appellant Zila Panchayat, Raipur, would submit that the learned writ court absolutely went wrong in directing for consideration of the case of respondent No.2 herein for appointment on the post of Shiksha Karmi Grade-I, as on the date of advertisement dated 5-10-2009, the writ petitioner / respondent No.2 herein did not have the minimum qualification for appointment on the said post i.e. second division in post graduation + B.Ed., though by subsequent notification dated 28-1-2011, he had become eligible and he would be entitled to participate in future as per the judgment in **Ram Chandra Ram** (supra), but he cannot be held eligible for present recruitment process, as the amendment in the Rules of 2007 with effect from 7-4-2011 would have prospective effect. In that view of the matter, the Zila Panchayat has rightly rejected the representation

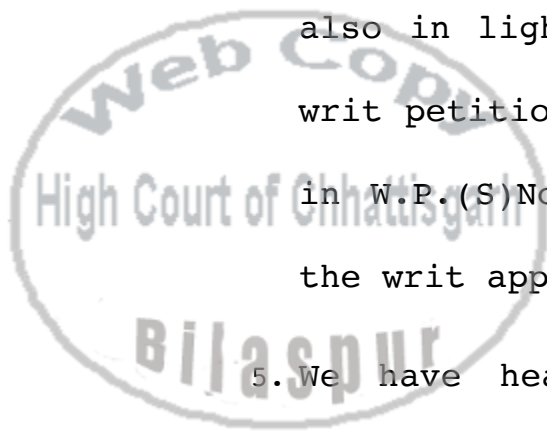



of the writ petitioner / respondent No.2 herein and therefore the order impugned passed by the learned Single Judge deserves to be set aside by dismissing the writ petition and the writ appeal deserves to be allowed.

4. Ms. Diksha Gouraha, learned counsel appearing for respondent No.2 herein / writ petitioner, would submit that the learned Single Judge has rightly directed for consideration of respondent No.2's case in light of the decision of this Court in Ram Chandra Ram (supra) as also in light of respondent No.2's own showing in her writ petition W.P.(S) No.5403/2010 and the order passed in W.P.(S)No.1412/2012. In that view of the matter, the writ appeal deserves to be dismissed.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

6. It is not in dispute that advertisement for appointment on the post of Shiksha Karmi Grade-I was issued by the appellant Zila Panchayat on 5-10-2009 and as per the Rules of 2007, minimum qualification for appointment on the post of Shiksha Karmi Grade-I was second division in post graduation with B.Ed. which the writ petitioner / respondent No.2 herein did not have had and consequently, while declaring the result of recruitment





on 9-1-2010, she was held ineligible as she did not have the requisite qualification for the post of Shiksha Karmi Grade-I. The State Government by notification dated 7-4-2011 amended the Rules of 2007 and the qualification prescribed was post-graduation with B.Ed. The writ petitioner filed writ petition before this Court in which a direction was issued to consider the representation of the petitioner and pursuant to the impugned direction which was issued by the writ court, the writ petitioner's / respondent No.2's representation has been rejected by the Zila Panchayat, Raipur holding that she did not have the requisite educational qualification for the post of Shiksha Karmi Grade-I on the date of advertisement i.e. 5-10-2009. However, the learned Single Judge has allowed the writ petition in light of the direction issued in this regard by a coordinate Division Bench of this Court in Ram Chandra Ram (supra) holding that if the condition in the Rules of 2007 is relaxed, candidates, who were not allowed to participate in the examination because of the said condition, will be allowed to participate in future.

7. The Union Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to certain constitutional and judicially recognised restrictions can legislate



prospectively as well as retrospectively. The power to make retrospective legislation enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is "deemed to be prospective only - *"nova constitutio futuris formam imponere debet non praeteritis"*—a new law ought to regulate what is to follow, not the past. It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 15th Edition, at p.408-410.)

8. It is well settled law that subordinate legislation can be given retrospective effect if the power in this behalf is contained in the main Act.



9. In the matter of Mahabir Vegetable Oils (P) Ltd. v. State of Haryana², their Lordships of the Supreme Court have held as under: (SCC p.633, paras 41-43)

"41. We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See *West v. Gwyne*³.)

43. A retrospective effect to an amendment by way of a delegated legislation could be given, thus, only after coming into force of sub-section (2-A) of Section 64 of the Act and not prior thereto."

See also *MRF Ltd. v. Asstt. Commr. (Assessment) Sales Tax*⁴.

10. The principle of law laid down in Mahabir Vegetable Oils (P) Ltd. (supra) has been followed in MRF Ltd. (supra) and thereafter, in the matter of State of Rajasthan and others v. Basant Agrotech (India) Limited⁵.

2 (2006) 3 SCC 620

3 (1911) 2 Ch 1 : 104 LT 759 (CA)

4 (2006) 8 SCC 702

5 (2013) 15 SCC 1





11. In the matter of Federation of Indian Mineral Industries and others v. Union of India and another⁶, their Lordships of the Supreme Court have considered the aspect of retrospective applicability of subordinate and delegated legislations and held that unless the parent statute, expressly or by necessary implication authorizes the delegated legislation to make rules retrospectively, it cannot do so. It has been observed by their Lordships as under: -

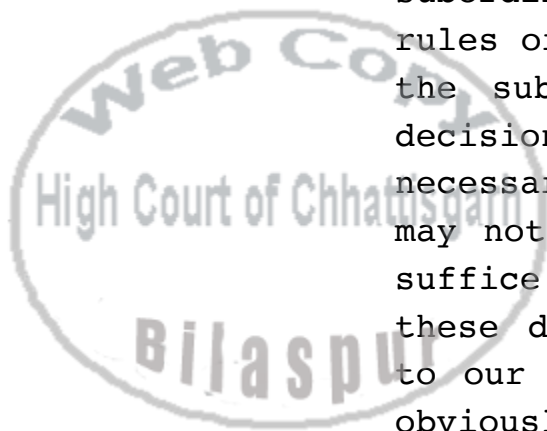
"26. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject-matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of them—indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so. [*Hukam Chand v. Union of India*⁷ and *Mahabir Vegetable Oils (P) Ltd. v. State of Haryana*⁵].

(ii) Delegated legislation is ordinarily prospective in nature and a right or a

6 (2017) 16 SCC 186

7 (1972) 2 SCC 601



liability created for the first time cannot be given retrospective effect. (*Panchi Devi v. State of Rajasthan*⁸)

(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. [*Ahmedabad Urban Dev. Authority v. Sharadkumar Jayantikumar Pasawalla*⁹ and *State of Rajasthan v. Basant Agrotech (India) Ltd.*⁸]

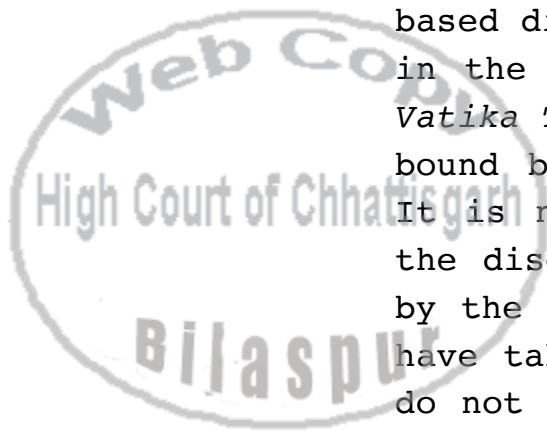
27. A much more erudite, general and broad-based discussion on the subject is to be found in the Constitution Bench decision in *CIT v. Vatika Township (P) Ltd.*¹⁰ and we are obviously bound by the conclusions arrived at therein. It is not at all necessary for us to repeat the discussion and the conclusions arrived at by the Constitution Bench in the view that we have taken except to say that our conclusions do not depart from the conclusions arrived at by the Constitution Bench."

12. As such, it is well settled now that every statute shall be construed as prima facie prospective unless expressly or by necessary implication it is made to have a retrospective operation. It is also trite law that a power conferred to make a subordinate legislation must be exercised in conformity with the parent Act. A subordinate legislation can be given a retrospective effect and operation if any power in this

8 (2009) 2 SCC 589 : (2009) 1 SCC (L&S) 408

9 (1992) 3 SCC 285

10 (2015) 1 SCC 1

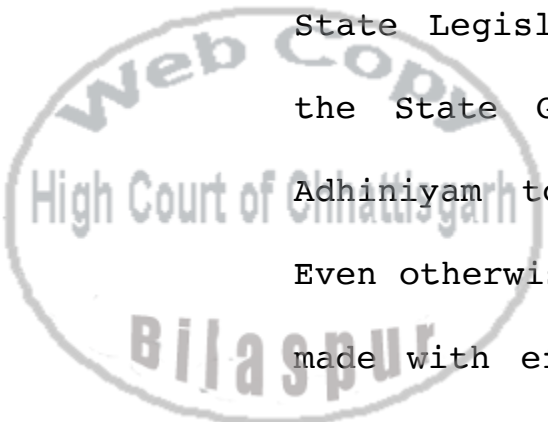




behalf contained in the main Act as held by their Lordships of the Supreme Court in the aforesaid judgments.

13. Reverting to the facts of the case, the impugned amendment in the Rules of 2007 has been made in exercise of the powers conferred under Sections 70(1) & 53(1)(b) read with Section 95(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. As such, a careful perusal of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, would show that no power has been given by the State Legislature to the rule-making authority or to the State Government under Section 95 of the said Adhiniyam to make rules with retrospective effect. Even otherwise, amendment in the Rules of 2007 has been made with effect from 7-4-2011 which has been framed with prospective effect, it has not been given retrospective effect and there is no mention in the notification to that effect.

14. However, the contention of Ms. Diksha Gouraha, learned counsel for respondent No.2 herein, may be noted that in Ram Chandra Ram (supra), relaxation has been directed to be considered. In Ram Chandra Ram (supra) it has only been directed that if the condition in the Rules of 2007 is relaxed, candidates who were not allowed to participate in the examination because of the said condition, will be allowed to participate in



future. In the present case, the writ petitioner / respondent No.2 herein was allowed to participate in the recruitment process and she has been declared disqualified as she did not have the requisite qualification under the Rules of 2007. In that view of the matter, the submission of learned counsel for respondent No.2 has no merit.

15. For the foregoing reasons, the impugned order directing consideration of the case of the writ petitioner / respondent No.2 herein is hereby set aside and W.P.(S) No.1200/2013 stands dismissed. The writ appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge



Head Note

Subordinate legislation can be given retrospective effect if the power in this behalf is contained in the main Act.

अधीनस्थ विधायन को भूतलक्षी प्रभाव से लागू किया जा सकता है, यदि इस संबंध में शक्ति मूल अधिनियम में निहित हो।

