AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2274 of 2024

1. Kedar Nath Anant S/o Soukhi Lal Anant, Occupation Govt. Service Psychiatric Social Work Posted At - Psychiatric Hospital, Sendary, District Bilaspur (C.G.)
2. Dr. Deepti Dhurandhar W/o Parveen Sheokand, Occupation - Govt. Service Psychiatric Social Work Posted At Psychiatric Hospital, Sendary, District Bilaspur (C.G.)
3. Dr. Mrs. Alka Agrawal W/o Akash Agrawal, Occupation - Govt. Service Psychiatric Social Work Posted At Psychiatric Hospital, Sendary, District Bilaspur (C.G.)
4. Mrs. Pratibha Tiwari W/o Shyama Charan Tiwari, (Wrongly Mentioned In Annexure P/12) Occupation - Govt. Service Psychiatric Social Work Posted At Psychiatric Hospital, Sendary, District Bilaspur (C.G.)
5. Jarina Siddiqui W/o Md. Zulfiquar Siddiqui, Occupation - Govt. Service Psychiatric Social Work Posted At Psychiatric Hospital, Sendary, District Bilaspur (C.G.)

---- Petitioners

Versus

1. State Of Chhattisgarh Through - The Secretary Department Of Health And Family Welfare Secretariat, Mahanadi - Bhavan, Naya Raipur, District Raipur (C.G.)
2. The Aayukt Swasthya Sewayen Secretariat C.G. Raipur Secretariat Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Sanchalak Swasthya Sewaien Secretariat Mahanadi Bhawan Raipur, District Raipur (C.G.)
4. Sambhagiya Sanyukt Sanchalak Swasthya Sewayen Bilaspur, District Bilaspur (C.G.)
5. The Hospital Superintendent Rajya Mansik Chikitsalaya Sendari, District Bilaspur (C.G.)
6. Sanyukt Sanchalak Kosh Lekha Pension, Bilaspur, District Bilaspur (C.G.)

---- Respondents

(Cause Title taken from Case Information System)

For Petitioners	:	Mr. S.P.Sahu, Advocate.
For Respondent / State	:	Mr. R.S.Marhas, Additional Adv. General

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Sachin Singh Rajput, Judge

Order on Board

***Per* Ramesh Sinha, Chief Justice**
16/04/2024

Heard Mr. S.P.Sahu, learned counsel for the petitioner and Mr. R.S.Marhas, learned Additional Advocate General for the State on advance copy.

2. The petitioners in this petition pray for following reliefs -

"10.1. This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus by which declares that serial Number 35 of Schedule–I of the Chhattisgarh Health and Family Welfare Department Non-Ministerial Para-Medical and Nursing (Directorate Health Services) Class – III Service Recruitment Rules, 2013 is ultra vires.

10.2 Further may kindly be pleased to issue a writ in the nature of mandamus or appropriate writ direct therein to the respondent to classify the post of Psychiatric Social Worker of Rajya Mansik Chikitsalaya Sendari Bilaspur (CG) as Class -II & Petitioners be treated as class -II employee from the date of joining.

10.3 Further may kindly be pleased to issue a writ in nature of mandamus or appropriate writ direct therein to the respondents to grant pay scale pay band and Grade Pay to the petitioner as given in Gwalior Mansik Arogya Shala, Gwalior (M.P.) i.e. Rs.15600-39100+7000 from their date of joining.

10.4 Further may kindly be pleased to direct the respondents to

grant all the consequential benefits.

10.5 Further may kindly be pleased to direct the respondents to promote the petitioners on the post of Clinical Psychologist.

10.6 Further may kindly be pleased to issue a writ in direction order as this Hon'ble Court deem fit in the favour of the petitioners in the interest of justice.

10.7 Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner.

3. Facts of the case is that the State of Chhattisgarh / respondent No.1 framed Rules "The Chhattisgarh Health and Family Welfare Department Non-ministerial Paramedical & Nursing (Directorate Health Service) Class -III Service Recruitment Rule, 2013 (for short 'the Rules of 2013') and published it in the C.G. Rajpatra (Asadharan) dated 24/06/2013. These rules came into force from the date of its publication in the official gazette i.e. 24/06/2013. The respondent No.4 issued appointment order of the petitioner on 02/09/2013. The petitioners joined their service and they successfully completed in-service training of 3 months in the National Institute of Mental Health & Neuro Sciences (Deemed University) Bangalore which has issued certificate to the petitioners. The petitioners completed their probation period successfully and they have been regularised on 16/12/2015.

4. Mr. S.P.Sahu, learned counsel for the petitioners submits that at serial No.35 of Schedule-I of the Rules of 2013, classification is shown as class – III, pay scale pay band as Rs.5200-20200 and Grade pay of Rs.2400 for the post of Psychiatric Social Worker whereas the same post has been classified as

Class-II and pay scale pay band Rs.15600-39100 and grade pay Rs.7000/- in Gwalior Mansik Arogya Shala, Gwalior Madhya Pradesh. It is submitted that this part of the Rules of 2013 i.e. SL No.35 of Schedule-I of the Rules 2013 is ultra vires being direct conflict to the Article 14 and 16 of the Constitution of India. It is submitted that the post of Psychiatric Social Worker at Gwalior Mansik Arogya Shala Gwalior (Madhya Pradesh) and at Rajya Mansik Chikitsalaya Sendari, District – Bilaspur (CG) are same in all aspect like eligibility work but there is difference in Classification and pay scale. It is submitted that the act of the respondent / State is arbitrary and discriminatory. It is prayed that the petitioners may be granted their first, second and third time pay scale and may be granted all the consequential benefits as per provisions. He further submitted that the respondents may be directed to grant pay scale pay band and Grade Pay to the petitioners as are given in Gwalior Mansik Arogya Shala, Gwalior (M.P.) i.e. Rs.15600-39100+7000 from their date of joining.

5. On the other hand, learned State counsel submits that there cannot be any parity on the post which the petitioners are holding to the post as existing in Mansik Arogya Shala, Gwalior. He submits that the parity has been claimed against the post of Assistant Professor Psychiatrist whereas the petitioners are Psychiatric (Social Worker). He further submits that the impugned Rules of 2013 have been framed in exercise of powers conferred under Article 309 of the Constitution of India. Therefore, there is no force in the submission of learned counsel for the petitioners and the petition deserves to be dismissed. He further submitted that the respondents be directed to grant pay scale pay band and Grade Pay to the petitioner as given in Gwalior Mansik Arogya

Shala, Gwalior (M.P.) i.e. Rs.15600-39100+7000 from their date of joining.

6. We have heard learned counsel for the parties, considered their rival submissions and perused the record.

7. The main thrust of argument of learned counsel for the petitioners is that serial No.35 of Schedule–I of the Rules of 2013 showing the classification of post of Psychiatric Social Worker has Class -III is ultra vires may in conflict to the Article 14 and 16 of the Constitution of India whereas it is prayed that the post of Psychiatric Social Worker be upgraded / classified as Class-II from Class -III and the petitioners be treated as Class-II employees from the date of joining.

8. In the case of **Shayara Bano v. Union of India and others (Ministry of Women and Child Development Secretary and others), (2017) 9 SCC 1,** it has been held by the Hon'ble Supreme Court that the legislation can be struck down if it is found to be manifestly arbitrary and it is a ground to struck down the legislation. Following is observed by the Hon'ble Supreme Court -

> "101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India8 stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate

legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.

9. In the case of **Dr. Jaya Thakur v. Union of India and others, 2023 SCC OnLine SC 813**, it has been held as under -

"68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits."

Further, relying upon their earlier judgment in the matter of **Binoy Viswam v. Union of India and others**, (2017) 7 SCC 59, it has been further observed as under -

“70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a

provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the

legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment."

10. There is always a presumption of Constitutionality or validity of a subordinate legislation as held by the Hon'ble Supreme Court in the case of **Dental Council of India v. Biyani Shikshan Samiti and another, (2022) 6 SCC 65,** which is quoted as below -

"27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.

28. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court

considers relevant."

11. Certain guidelines have been laid down by the Hon'ble Supreme Court in the case of **PGF Limited and others v. Union of India and another, (2015) 13 SCC 50** which are quoted as under -

"37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it

calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time-bound basis, so that the legal position is settled one way or the other."

12. Hon'ble Supreme Court in the case of State of **Tamil Nadu v. P. Krishnamurthy (2006) 4 SCC 517** in paragraph 15 has held as under -

"15. There is a presumption in favour of constitutionality or validity of a sub-ordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds :-

a) Lack of legislative competence to make the sub-ordinate legislation.

b) Violation of Fundamental Rights guaranteed under the Constitution of India.

c) Violation of any provision of the Constitution of India.

d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

e) Repugnancy to the laws of the land, that is, any enactment.

f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that legislature never intended to give authority to make such Rules)."

13. Hon'ble Supreme Court in case of **State of Madhya Pradesh Vs. R.D. Sharma reported in (2022) 13 SCC 320** held in paragraph 17 as under:-

"17. It may be noted that this court has consistently held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. A beneficial reference of the observations made in this regard in case of *Secretary, Finance Department Vs. West Bengal Registration Service Association and Ors. 1993 Supl. (1) SCC 153* be made. As held in *State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal Staff Association 2002 (06) SCC 72* "equal pay for equal work" is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government."

14. The Rules of 2013 has been enacted by the State Government in exercise of powers conferred by the proviso to Article 309 of the Constitution of

India. The rules which have been framed cannot be said to be without legislative competence of the State. The State is empowered under Article 309 of the Constitution of India to frame rules with regard to service conditions of its employees. State in its wisdom has put the post of Psychiatric Social Worker as Class – III. From the record it appears that the petitioners joined the services in year 2013 and they have worked throughout these years. The record does not reflect that the parimateria post which the petitioners are holding is Class II post in the Mansik Arogya Shala, Gwalior. A copy of Schedule-I is appended as Annexure P/5 in which Assistant Professor Psychiatric Social Worker is mentioned for which the parity is being claimed. Even otherwise, it is reiterated that such parity cannot be claimed because the State is empowered to frame rules with regard to service conditions of its employees. It is well settled that legislation may be declared ultra vires if it is enacted beyond the legislative competence is ultra vires to the Constitution or manifestly arbitrary. After hearing learned counsel for the parties in the light of the above mentioned authorities, this Court is of the considered opinion that the petitioners were not able to show any of the grounds enumerated above. The petition is accordingly dismissed at the admission stage.

Sd/-
(Sachin Singh Rajput)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Deepti

WPS No. 2274 of 2024

Head Note

The State is empowered to frame rules with regard to service conditions of its employees and legislation may be declared ultra vires if it is enacted beyond the legislative competence is ultra vires to the Constitution or manifestly arbitrary. There is a presumption of validity of statute.