



2025:CGHC:6942-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1496 of 2022

Order reserved on 31.01.2025

Order delivered on 07.02.2025

1. Bhim Bali Yadav S/o Govind Ram Gopal Aged About 42 Years Working As Staff Car Driver, Honble High Court Of Chhattisgarh, Bilaspur
2. Qutubuddeen S/o Moinuddeen Aged About 46 Years Working As Staff Car Driver, Honble High Court Of Chhattisgarh, Bilaspur
3. Padum Lal Yadav S/o Jethu Ram Yadav Aged About 42 Years Working As Staff Car Driver, Honble High Court Of Chhattisgarh, Bilaspur
4. Ishwar Chandra Yadav S/o Govind Ram Aged About 38 Years Working As Staff Car Driver, Honble High Court Of Chhattisgarh, Bilaspur
5. Sunil Kumar Mishra S/o Late Shri Uma Shankar Mishra Aged About 36 Years Working As Record Supplier, Honble Court Of Chhattisgarh, Bilaspur
6. Ashwani Kumar Dubey S/o Gaukaram Prasad Dubey Aged About 38 Years Working As Record Supplier, Honble High Court Of Chhattisgarh Bilaspur
7. Madan Lal Sahu S/o Late Shri Kishun Ram Sahu Aged About 57 Years Working As Record Supplier, Honble High Court Of Chhattisgarh Bilaspur
8. Raj Kumar S/o Karigir Jogi Aged About 36 Years Working As Peon, Honble High Court Of Chhattisgarh Bilaspur
9. Kavita Patel W/o Suresh Patel Aged About 35 Years Working As Peon, Honble High Court Of Chhattisgarh Bilaspur
10. Mahendra Kumar Dwivedi S/o Ram Prashd Dwivedi Aged About 36 Years Working As Peon, Honble High Court Of Chhattisgarh Bilaspur
11. Sanjeev Kumar Singh S/o Vinod Singh Aged About 25 Years Working As Peon, Honble High Court Of Chhattisgarh Bilaspur

12. Birendra Singh S/o Kok Singh Aged About 36 Years Working As Record Supplier, Honble High Court Of Chhattisgarh Bilaspur

13. Rajesh Kumar Tiwari S/o Ram Ratan Tiwari Aged About 49 Years Working As Record Supplier, Honble High Court Of Chhattisgarh Bilaspur

14. Laxman Yadav S/o Sanguram Yadav Aged About 45 Years Working As Record Supplier, Honble High Court Of Chhattisgarh Bilaspur

15. Awadh Ram Yadav S/o Bhewani Ram Yadav Aged About 50 Years Working As Jamadar, Honble High Court Of Chhattisgarh Bilaspur

... Petitioners

Versus

1. High Court Of Chhattisgarh Through The Registrar General, High Court, District Bilaspur, Chhattisgarh

2. State Of Chhattisgarh, Through Principal Secretary, Law, Mahanadi Bhavan, Raipur, District- Raipur, Chhattisgarh

... Respondents

(Cause title is taken from the Case Information System)

| | |
|---------------------------|---|
| For Petitioners | : Mr. Bidya Nand Mishra, Advocate |
| For Respondents No.1 | : Mr. Manoj Paranjape, Advocate |
| For Respondent No.2/State | : Mr. Shashank Thakur, Dy. Adv. General |

Hon'ble Shri Ramesh Sinha, CJ &
Hon'ble Shri Bibhu Datta Guru, J.

C A V Order

Per Bibhu Datta Guru, J.

1. By the present writ petition, the petitioners are seeking for the following reliefs :-

10.1 That, the Hon'ble court may kindly be pleased to call for the entire records of the case.

10.2 That, the Hon'ble Court may be pleased to pass suitable orders that the rules of promotion of the petitioners as laid down in the relevant Service Rules, 2003 and 2015 be only applicable to consider the promotion of the petitioners.

10.3 That, the Hon'ble Court may be pleased to pass suitable order(s) to quash the amendment in promotion rules criteria notified in 2017 based on which the impugned notice dated 24.02.2022 has been issued.

10.4 That, the Hon'ble Court may be pleased to pass suitable order(s) to quash the impugned notice dated 24.02.2022.

10.5 That, the Hon'ble High Court may be pleased to direct the competent authority to consider and issue promotion order to the petitioner from class-IV to Assistant Grade-III on the basis of experience and qualification criteria as envisaged from Rule 2015 read with Rule 2003.

10.6 Any appropriate writ, direction or order in favour of the petitioner, which this Hon'ble Court deems fit in the circumstances of the case.

2. By way of instant petition, the petitioners, who are the class IV employees of the High Court of Chhattisgarh, are challenging the Notice No.26 (Mis.)/II-14-1/2021(AG-III Pro.) dated 24-02-2022 issued by the respondent No.1 by which it is notified that written test and skill test for promotion against 69 vacant posts of Assistant Grade-III will be conducted on 05.03.2022 from 11.00 A.M. onwards at CSJA, Bodri, Bilaspur. The petitioners are also aggrieved and challenges the amendment brought in Sr.No.11, First Schedule, Class-III to the Chhattisgarh High Court Services (Appointment, Conditions of Service and Conduct) Rules, 2017 (henceforth 'the Rules, 2017') by which the criteria/norms of promotion of the petitioners working as Class-IV employees of the establishment for promotion to Assistant Grade-III has been amended contrary to the provisions of promotion to Grade-III as was mentioned at clause No. 17 of Amendment incorporated vide No.53

(Mis.)/II-15-19/2002 Dated 09-01-2015 of the said Rules read with Rule first made in the year 2003 namely; the Chhattisgarh High Court Establishment (Appointment and Conditions of Service) Rules, 2003 (henceforth 'the Rules, 2003') vide Gazette Notification No.5488/II-15-19/2002 dated 10th December 2003.

3. (i) Learned counsel appearing for the the petitioners would submit that the petitioners were appointed as class-IV employees in the High Court of Chhattisgarh and according to them they have rendered period of 15-20 years service on same pay and posts without any promotion. He would further submit that the Service Rules pertaining to the petitioners were formulated and published through gazette notification in the year 2003 i.e. the Rules, 2003 by which promotion criteria from Class-IV to Assistant Grade-III was prescribed under part-V serial No.7(a). As per the said Rules, the petitioners were entitled to promotion after completion of two years of service in their existing post with educational qualification of either graduate or higher secondary exam pass with Hindi or English Type writing examination. Subsequently, the promotion criteria of class IV employees has been amended vide notification dated 09.01.2015. He would further submit that the same has again been changed pursuant to framing of new rules i.e. the Rules, 2017 by which provision of written test and skill test criteria was inserted with more rigors to qualify.
- (ii) Learned counsel would submit that thereafter, the petitioners made representations to the competent authority of the High Court praying that

the amended criteria of promotion may be withdrawn and their candidature may be considered for promotion on the basis of seniority as was considered in the past. However, without considering the representation of the petitioners, the impugned notice for written test and skill test has been issued. Learned counsel would submit that the old promotion rules i.e. the Rules, 2003 prevailed at the time of appointment of the petitioners ought to be considered for their promotion and any subsequent amendment cannot be given retrospective effect.

(iii) To buttress his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Ajit Singh v State of Punjab*¹, *High Court of Delhi and Anr. v A.K. Mahajan and Ors.*², *Chairman, Railway Board and others v C.R. Rangadhamaiah and others*³, *Y.V. Rangaiah and Others v J. Sreenivasa Rao and Others*⁴.

4. (a) Learned counsel appearing for the respondent No.1, *ex adverso*, would submit that the Rules, 2003 prescribed that 75% posts of Assistant Grade-III shall be filled up by direct recruitment through competitive examination and 25% posts shall be filled up by promotion strictly based on merit-cum-seniority from amongst qualified regular Class-IV or contingency paid employees who have completed minimum 2 years of service in the establishment and the minimum qualification and experience was also prescribed. The said rules were amended in 2015 and 75% has been reduced to 70% and 25% has been reduce to 20% and

1 (1999) 7 SCC 209

2 (2009) 12 SCC 62

3 (1997) 6 SCC 623

4 (1983) 3 SCC 284

10% posts were directed to be filled up by promotion through limited competitive examination strictly on the basis of merit amongst the Class-IV employee having minimum 7 years working experience from the date of appointment. The amendment carried out on 09.01.2015, whereby first time 10% posts of Class-III employees were directed to be filled up by competitive examination strictly on the basis of merit and 7 years experience was also inserted. The said amendment of 2015 were never challenged by the petitioners. Thereafter, the Rule, 2017 were notified on 10.02.2017 and Rules 27 speaks about cessation. Pursuant to the said provision, the Rules, 2003 have been ceased to apply. In the Rules, 2017 75% posts of Assistant Grade-III have been reserved for direct recruitment through competitive examination and 25% posts have been reserved for promotion amongst.

(b) Learned counsel would submit that unless and until the Rules framed by the employer are violative of Article 14, 16 & 21 of Constitution of India, the same cannot be declared as *ultra vires*. Learned counsel would next submit that the petitioners have failed to bring to the notice of this Court that in 2018 some amendment was carried out, vide notification dated 31.07.2018 and notification dated 09.10.2020 and the same have not been challenged by the petitioners, therefore, the petitioners are not entitled for any relief and the petition filed by the petitioners may be dismissed.

(c) Learned counsel would submit that the representation submitted by the employees was considered and amendment with regard to source

and method of appointment and minimum qualification and experience was carried out vide notification dated 09.10.2020. According to the learned counsel, the amendment is not given retrospective effect, but it is given prospective effect, only as the notice was issued calling application, etc. as per the Rules. In fact, the promotion rules prevailed at the time of appointment of the petitioners have lost its efficacy and applicability as the same has been amended and new amendments were incorporated subsequently, which would be made applicable at the time of selection process. He would submit that pursuant to the notice dated 24.02.2022, all the petitioners had applied for the same and appeared in the exam conducted for same on 05.03.2022 and, as such, a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome. By having taken part in the process of selection with full knowledge that the recruitment was being made under the Rules, 2017, the petitioners had waived their right to question the notice impugned.

(d) In respect of the petitioners' contention that they are working on the same post since last 15-20 years that too without any promotion is concerned, learned counsel would submit that some of the petitioners have been given time scale pay after completion of requisite service as per Rules and some of them were also promoted to the next post in accordance with rules, so it cannot be said that all the petitioners are rendering 15 to 20 years services in the same pay and post without any promotion. He would submit that the amendment in the Rules has been carried out looking to the earlier instances and the provision of written

test and skill test has been introduced to assess the eligibility of the candidates for the suitable posts. No case is made out by the petitioners to struck down the amended criteria for promotion carried out in the Rules, 2017.

(e) In support of his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *State of Himachal Pradesh and Others v Raj Kumar and Others*⁵ and would also place reliance upon the decisions rendered by the Division Bench of this Court in the matters of *Praveen Chand Shrivastava v State of Chhattisgarh, through the Secretary, Department of Law & Legislature and Others*⁶ and *Mining Engineers' Welfare Association v State of Chhattisgarh & Others*⁷.

5. We have heard learned counsel appearing for the parties and perused the documents.
6. For the sake of convenience and for proper adjudication of the present petition, it would be relevant to quote the Rules, 2003; notification dated 9-1-2005; and the Rules, 2017, relating to subject post i.e. AG-III, copies of which have been filed by the petitioners along with the instant petition and quoting herewith the same from the said annexures :

The Rules, 2003 :

5 (2023) 3 SCC 773

6 2019 SCC OnLine Chh 27

7 WPS No.2473 of 2022 (decided on 4-8-2023)

PART-V**SOURCE, METHOD AND MINIMUM QUALIFICATION FOR APPOINTMENT TO VARIOUS CLASS III POSTS**

Appointment to the various Class-III posts shall be made as follows: -

| Sl. No | Name of the Post | Source & Method of Appointment | Minimum Qualification & experience |
|--------|---------------------|---|--|
| | | xxx xxx xxx | |
| | | xxx xxx xxx | |
| | | xxx xxx xxx | |
| 7(a) | Assistant Grade-III | <p>1.75% posts shall be filled up by direct recruitment through competitive examination.</p> <p>2. 25% posts shall be filled up by promotion strictly based on merit-cum-seniority from amongst qualified regular Class-IV or contingency paid employees who have completed minimum 2 years service in the establishment.</p> | <p>1. Must be a graduate from any recognized University and;</p> <p>2. Must have passed typewriting examination in English and Hindi languages from any recognized Board of Shorthand and Typewriting examination.</p> <p>3. The class-IV employee should be either graduate or higher secondary examination passed with Hindi or English Typewriting examination.</p> |
| | | xxx xxx xxx | |

Notification dated 9-1-2015 :

17. The entry made in column 3 of entry no. 7 (a), Rule 6 of Part-V, is substituted with the following-

- 1) 70% posts shall be filled up by direct recruitment through competitive examination.
- 2) 20% posts shall be filled up by promotion from amongst the qualified Class-IV employees subject to suitability and strictly on the basis of seniority-cum-fitness.
- 3) 10% posts shall be filled up by promotion through limited competitive examination strictly on the basis of merit amongst the Class-IV employees (including

contingency paid employees) having minimum 7 years working experience from the date of appointment.

The Rules, 2017 :

CLASS-III

| Sl. No | Name of the Post | Existing Sanctioned Strength | Source & Method of Appointment | Minimum Qualification & experience | Scale of Pay/Level in Pay Matrix |
|--------|---------------------|------------------------------|---|---|----------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | | xxx xxx xxx xxx xxx xxx xxx xxx xxx | | |
| 11 | Assistant Grade-III | 231 | <p>1. 75% posts shall be filled up by direct recruitment through competitive examination.</p> <p>2. 25% posts shall be filled up by promotion from amongst regular Class-IV employees of the establishment having 7 years of continuous service (including services rendered as contingency paid employees in the establishment of this High Court). Promotion shall be made in the ratio of 1:3 vis-a-vis Staff Car Drivers and other Class-IV employees. Promotion shall be based on the eligible candidates passing a qualifying test. This test will be of 200 marks and will consist of multiple choice questions of graduation level in the subjects of General Knowledge, Mathematics, English and Hindi and also knowledge of Computer. The minimum pass mark in this test will be 50% and selection shall be made strictly on the basis of</p> | <p>1. For direct recruitment -</p> <p>(a) Must be a graduate from any recognized University and;</p> <p>(b) One year diploma Course in computer from I.T.I. or any equivalent recognized Board/ University.</p> <p>2. For Promotion - Must be a graduate from any recognized University and; must have working knowledge on computer.</p> | 4 (19500-62000) |

| Sl. No | Name of the Post | Existing Sanctioned Strength | Source & Method of Appointment | Minimum Qualification & experience | Scale of Pay/Level in Pay Matrix |
|--------|------------------|------------------------------|---|------------------------------------|----------------------------------|
| | | | seniority from amongst those who qualify the written test irrespective of the merit obtained in the written test. In case suitable candidates are not available for promotion as mentioned above, then the posts shall be filled in by direct recruitment. | | |
| | | | xxx xxx xxx xxx xxx xxx xxx xxx xxx | | |

7. It is an admitted position that the petitioners are working in the High Court Establishment as Class-IV employees. In the instant petition, they called in question the amendment effected to the Rules, 2017, based on which notice dated 24.02.2022, by which examination schedule for promotion to 69 vacant posts of Assistant Grade-III to be conducted on 05.03.2022 from 11.00 A.M. onwards, was notified, as well as the notice dated 24.02.2022. Prayer is also made to consider and issue promotion order to the petitioners from Class-IV to Assistant Grade-III on the basis of experience and qualification in terms of the Rules that was existing in 2015 read with the Rules of 2003.
8. From bare perusal of the pleadings and documents it is manifest that the amendment is not given retrospective effect, but it is given prospective effect only as the notice was issued calling application, etc. as per the existing Rules only. The promotion rules prevailed at the time of

appointment of the petitioners have lost its efficacy and applicability after framing of the Rules, 2017, which would be made applicable at the time of selection process.

9. It is noteworthy to mention here that the present petition was filed by thirty (30) class-IV employees challenging the impugned notice dated 24.2.2022 and thereafter, all the petitioners participated in the selection process on 5.3.2022 pursuant to the said notice and in the said process, fifteen (15) employees were succeeded and, as such, they withdrew the writ petition in their respect.
10. Since the petitioners consciously participated in the selection process, they cannot be allowed to turn around and question the method of selection and its outcome. It is the trite law that by having taken part in the process of selection with full knowledge that the recruitment was being made under the Rules, the candidates had waived their right to question the advertisement or the methodology adopted by the employer for making selection. (See: *Union of India and Others v S. Vinod Kumar and Others*⁸).
11. The Rules, 2017 have been framed in which the provision of written and skill test were introduced for sole purpose of selecting suitable candidates so that the work of Registry may run smoothly and efficiently. Even the amendments in the Rules have been carried out time to time looking to the requirement. No plausible ground has been made by the petitioners to struck down the amended criteria for

8 (2007) 8 SCC 100

promotion carried out in the Rules, 2017 and in the entire petition no ground has been made out or raised to the effect that the amendment is *ultra vires* to any of the provisions of the Constitution of India.

12. The statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned which can take ultimate decision therefor. This Court while exercising the jurisdiction under Article 226 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.
13. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The Court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive rewriting of the advertisement/notification. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement/notification and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement/notification or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in

accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement/notification contrary to the plain language of the same.

14. It is noteworthy to mention here that prescription of educational qualification for a post is the sole prerogative of the employer and merely because a candidate is not having that qualification for the said post and he/she is finding difficult to appear in the selection process for the particular post for want of desired educational qualification, the educational qualification so prescribed in the relevant rules cannot be struck down unless it is manifestly arbitrary or discriminatory or violative to the provisions of the Constitution of India. The petitioners have failed to demonstrate that the impugned notice and the Rules are either violative of the provisions of the Constitution of India or violative of Article 14/16 of the Constitution of India or it suffers from manifest arbitrariness and it has not been shown to be discriminatory.
15. It is a well settled law that if the rules/notifications/amendments are made for general good, causes hardship to an individual, the same could not be a ground for striking down the Rules. The Rules/notification framed are valid and do not suffer from any vice of unreasonableness. (See: *R.N. Goyal v Ashwani Kumar Gupta and Others*⁹).
16. Applying the well settled principles of law and for the reasons mentioned hereinabove, we are of considered opinion that there is no illegality in

9 (2004) 11 SCC 753

the impugned notice (Annexure – P/1) and in the Rules, 2017. The same are just and proper warranting no interference of this Court.

17. *Ex-consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed.
18. There shall be no order as to cost(s).

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Gowri

Head Note

- If the Rules made for general good, causes hardship to an individual, the same could not be a ground for striking down the said Rules.
- यदि नियम जनसाधारण के हित के लिए बनाए जाते हैं और इन नियमों से किसी व्यक्ति विशेष को कठिनाई होती है तो यह उक्त नियमों को निष्प्रभावी करने का आधार नहीं हो सकता ।
- The statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post.
- वैधानिक प्राधिकारी को सेवा के निबंधन एवं शर्तों के साथ-साथ किसी पद विशेष के लिए आवश्यक योग्यताएं करने हेतु वैधानिक नियम बनाने का अधिकार है ।