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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1304 of 2021**

- Ashok Kumar Chouhan S/o Late T.R. Chouhan, Aged About 45 Years Lecturer, Posted At Govt. High School, Stationpara, Sakti, District Janjgir Champa (Chhattisgarh), District : Janjgir-Champa, Chhattisgarh.

---- Petitioner

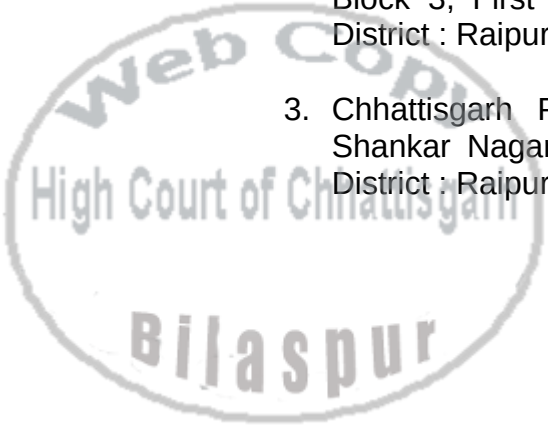
Versus

1. State Of Chhattisgarh Through Principal Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur (Chhattisgarh), District : Raipur, Chhattisgarh.
2. The Directorate Of Public Education, Chhattisgarh, Indrawati Bhawn, Block 3, First Floor, New Raipur, Atal Nagar Raipur Chhattisgarh, District : Raipur, Chhattisgarh.
3. Chhattisgarh Public Service Commission, Through Its Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur (Chhattisgarh), District : Raipur, Chhattisgarh.

---- Respondents

And**WPS No. 1242 of 2023**

1. Durgesh Dewangan S/o Shri Shatrughanlal Dewangan Aged About 40 Years Vikash Khand Shiksha Aadhikari Farasabahr, R/o Gram Farsabahr, Vikashkhand , Farasabahr , Zila Jashpur Chhattisgarh.
2. Adhitya Patanwar S/o L. R. Patanwar Aged About 38 Years Vikash Khand Shiksha Aadhikari Rajpur, Niwas Gram Rajpur, Vikashkhand Rajpur, Zila Balrampur Chhattisgarh.
3. Himanshu Mishra S/o Late Shri S. K. Mishra Aged About 33 Years Vikash Khand Shiksha Aadhikari Dondilohara, Nivasi Gram Dondilohara, Vikashkhand Dondilohara, Zila Balod Chhattisgarh.
4. Naveen Kumar Yadav S/o Shri Bhushan Lal Yadav Aged About 46 Years Vikash Khand Shiksha Aadhikari Gundardehi Niwasi Gram Gundardehi, Vikashkhand Gundardehi, Zila Baloda Chhattisgarh.
5. Ramji Pal S/o Late Shri R. N. Pal Aged About 46 Years Vikash Khand Shiksha Aadhikari Bhatapara Niwasi Gram Bhatapara Vikashkhand Bhatapara Zila Balodabazar Bhatapara Chhattisgarh.
6. Sanjay Kumar Patel S/o Shri Ambalal Patel Aged About 41 Years Vikash Khand Shiksha Aadhikari Manora Niwasi Gram Manora,





Vikashkhand Manora, Zila - Jashpur Chhattisgarh.

7. Shailesh Kumar Dewangan S/o Shri Rajendra Prasad Dewangan Aged About 42 Years Vikash Khand Shiksha Aadhikari Kharshiya Niwasi Gram Kharshiya Vikashkhand, Kharshiya, Zila Raipur Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Dhwarra Avar Sachiv, School Shiksha Vibhag, Chhattisgarh Shasan, Mantralaya Mahanadi Bhawan, Naya Raipur Zila Raipur Chhattisgarh.
2. Sanchalak, Lok Shiksha Sanchanalaya Chhattisgarh Indrawati Bhawan, Naya Raipur Zila Raipur Chhattisgarh.

---- Respondents

And

WPS No. 1400 of 2023

- Shivnath Lahre S/o Shri B.R. Lahre Aged About 53 Years Occupation Government Service, Lecturer, Posted At Govt. Higher Secondary School, Bademudpara, Malkharoda, Sakti, District Sakti Chhattisgarh.

---- Petitioner

Versus

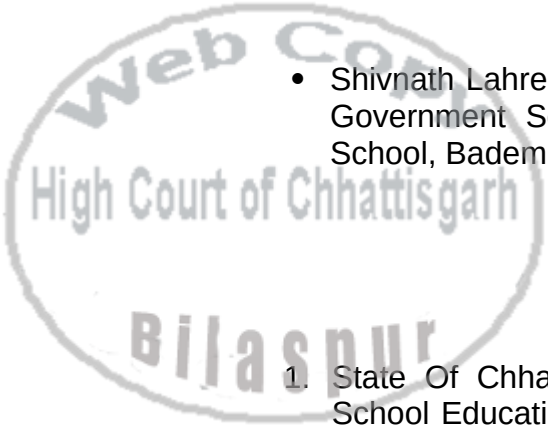
1. State Of Chhattisgarh Through Principal Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur District Raipur Chhattisgarh.
2. The Directorate Of Public Education Chhattisgarh, Indrawati Bhawan, Block 3, First Floor, New Raipur, Atal Nagar Raipur District Raipur Chhattisgarh.

---- Respondents

And

WPS No. 1929 of 2023

1. Prakash Kumar Sen S/o Shri Ramsharan Sen Aged About 41 Years R/o Village - Dargahan, Post, Tahsil And Police Station - Charama, District Kanker Chhattisgarh.
2. Prakash Tiwari S/o Shri Ramesh Kumar Tiwari Aged About 39 Years R/o Village - Majhgao, Nagar Panchayat Lormi, Police Station And Tahsil - Lormi, District Mungeli Chhattisgarh.
3. Bhupendra Kumar Kaushik S/o Shri Laxmi Narayan Kaushik Aged About 42 Years R/o G- 202, Abhilasha Parisar, Tifra, Bilaspur, Police Station - Sirgitti, Tahsil And District Bilaspur Chhattisgarh





4. Dinesh Sharma S/o Shri Surendra Dutt Sharma Aged About 38 Years R/o E - 10, Sale Tax Colony, Raipur, Police Station - Khamardeeh, Tahsil And District Raipur Chhattisgarh.
5. Leeladhar Choudhary S/o Shri Purshottam Singh Choudhary Aged About 40 Years R/o Village And Post - Jalmi, Police Station - Tungao, Tahsil And District - Mahasamund Chhattisgarh.

---- **Petitioners**

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of School Education, Mahanadi Bhawan, Mantralay, Police Station And Post - Rakhi, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.
2. State Of Chhattisgarh Through Its Secretary, Chhattisgarh Public Service Commission, Police Station And Post - Rakhi, Atal Nagar, Nawa Raipur, District Riapur Chhattisgarh.
3. Director Directorate Of Public Instructions, Indravati Bhawan, Police Station And Post - Rakhi, Atal Nagar, Nawa Raipur, District Riapur Chhattisgarh.
4. Ashok Kumar Chouhan Lecturer, Posted At Govt. High School, Station Para, Sakti, Police Station And Tahsil And District Sakti Chhattisgarh.

---- **Respondents**

And

WPS No. 2017 of 2023

- Rajuram Sahu, S/o Shri Yailal Sahu aged about 43 years, R/o Ramnagar Ward No. -8, Ranjandgaon, District Rajnandgaon (C.G.).

---- **Petitioner**

Versus

2. State of Chhattisgarh, Through Principal Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District Raipur, Chhattisgarh.
3. Director, Public Instruction, Indrawati Bhavan, Naya Raipur, District Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission North Block, Sector- 19, Nava Raipur, Atal Nagar, District Raipur, Chhattisgarh.

---- **Respondents**

For Petitioners

: Mr. Neeraj Choubey, Mr. Abdul Wahab Khan, Mr.



Manoj Paranjpe, Mr. B.D. Guru, Hemant Gupta,
Advocates, Mr. Ritesh Giri, Advocate along-with
Mr. Vinod Deshmukh, Advocate

For Respondents/State : Mr. Amrito Das, Additional Adv. General.
For Res. No. 3 : Mr. Shikhar Shukla, Advocate on behalf of
Mr. Anand Mohan Tiwari (in WPS No. 2017 of
-2023)
For intervenors : Mr. Manoj Paranjpe, Mr. Bharat Sharma,
Mr. hobhit Kostha, Mr. Prasoon Agrawal,
Mr. Anurag Singh, Advocates

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

22.03.2023

1. Since the common question of law and fact are involved in all the writ petitions, therefore, they are being heard together and are being disposed of by this common order.
2. For the sake of convenience, W.P. (S) No. 1304 of 2021 would be taken-up as lead case.
3. The Assistant Block Education Officers who have been appointed in the year 2015 and the Dy. Director who have been recently promoted on 03.02.2023 have filed intervention applications contending that by way of present writ petition their interest may get adversely affected, therefore, they may be allowed to object the writ petition. On due consideration, their intervention application is allowed and they are permitted to make submission.
4. The petitioner who is working as lecturer in the Government



School has filed this petition against inaction of State authorities by which his promotion to the post of principal has not been considered for such a long period whereas the promotion from the post of Assistant Block Officer to Block Education Officer is being carried out adversely affecting the right of the petitioner to be considered for promotion to the post of District Education Officer. It has also been contended in the writ petition that if the case of the petitioner is considered for promotion to the post of principal within reasonable time he would be eligible to be considered for further promotion on the post of District Education Officer/ Dy. Director as 75% are promotional posts which are to be filled up from feeder cadre of principal / block education officer. On the above factual matrix the petitioner has claimed following relief:-

1. That, this Hon'ble Court may kindly be pleased to issue writ (s)/order(s)/direction(s) against the respondent's authority by directing them to immediately convene the meeting of the D.P.C. for consideration of the case of the petitioners for promotion on the post of Principal from his due dates and also direct them to grant all the consequential service benefits from its due date, i.e. January, 2016 in accordance with law and further direct the respondents to consider for next promotion on the higher post within due time.
 2. That the Hon'ble court may kindly be pleased to issue appropriate writ's / order's / direction's/ relief's, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case."
5. Thereafter, the petitioner has filed an application (I.A. No. 2 /2023) which is an application for amendment in the writ petition by adding four additional reliefs:
3. That, the Hon'ble court may kindly be pleased to direct the respondent authorities to remove the pay discrepancy and the



petitioner should be given a pay scale of Rs. 156000-39100/- with Grade pay of 5400/- by placing him in pay matrix level 12 from 1st January, 2016 and further be given all the consequential benefits along with interest.

4. That, the Hon'ble court may kindly be pleased to direct the respondent authorities to consider the case of the petitioner for promotion on the post of District Education Officer / Deputy Director / Principal -1 in pay matrix level – 13 by counting the total length of service of the petitioner as lectures by giving the preference to the petitioner over the ABEO.

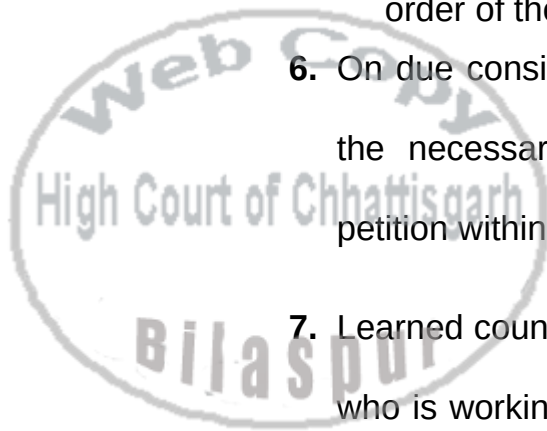
5. That, the Hon'ble court may kindly be pleased to direct the respondent authorities to promote the petitioner on the post of Principal/ BEO since January 2016 and should place the petitioner in the common seniority list of Principal / BEO, over the ABEO those are born in the cadre since 2015.

6. That, the Hon'ble court may kindly be pleased to direct the respondent state to consider the case of the petitioner for promotion to the higher post before issuing the promotion order of the ABEO.

6. On due consideration, the application is allowed today itself. Let the necessary amendment be incorporated in the memo of petition within a period of four days.

7. Learned counsel for the petitioner would submit that the petitioner who is working as Lecturer in the School Education Department, has neither been given the benefit of Time Bound Pay Scale nor given any promotion to the next higher post as Principal, even after completion of 10-13 years of service, which is adversely affecting their service avenues and, therefore, the instant writ petition has been filed questioning the same.

8. Per contra, Mr. Amrito Das, Additional Advocate General would submit that this Court has already protected the interest of the petitioners while passing certain orders. He would refer to the order dated 19.07.2022 passed by this Court in Writ Petition (S) No. 721/2021. Relevant paragraph No. 7 of the said order is





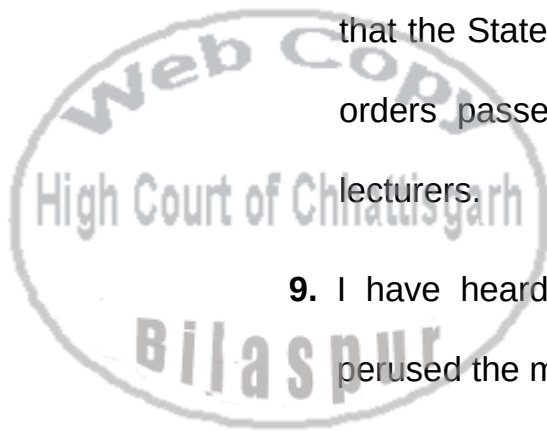
extracted below for ready reference :-

“7. It is also pertinent to mention here that as per Chhattisgarh Service Rules, the petitioners are also fulfilling the qualifying services. Considering this aspect of the matter with regard to petitioners' right, the respondent authorities are directed to convene DPC for promotion on the post from Lecturer to Principal expeditiously, in accordance with the law.”

Therefore, nothing is required to be adjudicated in the instant writ petitions. He would further submit that in pursuance of the direction issued by this Court, the respondent authorities have already taken steps for promotion of Lecturers to the post of Principals and also referred to certain documents to demonstrate that the State Authorities shall strictly proceed to comply with the orders passed by this Court with regard to promotion of the lecturers.

9. I have heard learned counsel, appearing for the parties, and perused the material available on record with utmost satisfaction.

10. Be that as it may, it is not in dispute that the petitioners, who have been appointed on the posts of Lecturer in the year 2011 and more than 10-12 years of services have been rendered by them, they have not been extended either Time Bound Pay Scale or Promotion to the next higher posts. It is well settled position of law that petitioners cannot claim promotion as a matter of right but only consideration for promotion is a fundamental right of an employee as held by the Hon'ble Supreme Court in case of **Ajay Kumar Shukla vs. Arvind Rai and Others (2021 SCC Online SC 1195)** which is reads as under:-





36. It is also admitted by the parties that the next promotion of Junior Engineers in the higher grade is to the post of Assistant Engineer. In the cadre of Assistant Engineer, there are no separate streams but only one cadre of Assistant Engineers. It is the seniority list of the cadre of Junior Engineers which would be the feeder cadre for the post of Assistant Engineers. The Junior Engineers of Agricultural stream of the selection of the year 2001, would have direct march over the Junior Engineers selected in the same selection of the Mechanical and Civil streams, even though the overall merit of some or many of Agricultural stream Junior Engineers could be lower than some or many of the Engineers of the Mechanical and Civil streams. The appointing authority ought to have prepared a combined merit list based upon the performance or the proficiency on the basis of the marks received in the selection test as prepared by the Commission. Otherwise, it would amount to denial of the right of consideration for promotion to a more meritorious candidate as against a candidate having lesser merit. Right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right.

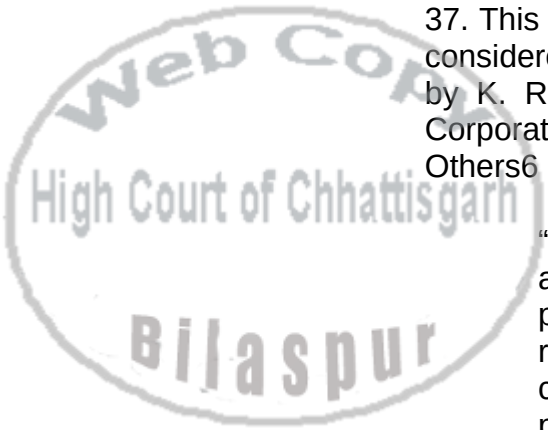
37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd. and Others vs. Pravat Kiran Mohanty and Others⁶ in paragraph 4 of the report which is reproduced below:

“4... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent/writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified.”

38. A Constitution Bench in case of Ajit Singh vs. State of Punjab⁷, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and (1991) 2 SCC 295 (1999) 7 SCC 209 Anand, CJI., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paragraphs 21 and 22 and 27:

“21: Articles 14 and 16(1): is right to be considered for promotion a fundamental right

22: Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command





that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1) xxxx xxxx xxxx xxxx xxxx

27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guarantee to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950."

39. This Court in Major General H.M. Singh, VSM vs. UOI and Another 8 , again reiterated the legal position, i.e. right to be considered for promotion as a fundamental right enshrined under Article 14 and Article 16 of the Constitution of India. The relevant extract from paragraph 28 is reproduced below:

"28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The





factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.”

- 11.** Considering these aspects of the matter, the respondent authorities are directed to proceed with the proceedings relating to promotion of the lecturers initiated by them in pursuance of the directions issued by this Court. In addition to it, it is further directed that if the petitioners or other similarly placed employees are not eligible to be considered for promotion presently, their case for time bound pay scale be considered as per the prevailing policy.
- 12.** Let this exercise be carried out within a period of six months from the date of receipt of a certified copy of this order. This Court





hope & trusts and trust that the State authorities shall make an endeavour to proceed with the matter and complete this exercise within stipulated period given by this Court.

13.With the aforesaid observations and directions, all the writ petitions stand disposed of.

14.Consequently, Interim relief granted earlier in all the bunch of writ petitions if any, stands vacated.

15.The petitioners in WPS No. 1242/2023, WPS No. 1929/2023 and WPS No. 2017/2023 are Assistant Block Education Officer whose promotion to the post of Block Education Officer/Dy. Director has been stayed by the State in view of interim order passed by this Court in WPS No. 1304/2021 on 24.03.2021.

16.Since interim order passed by this Court in Writ Petition (S) No. 1304 / 2021 stands vacated by this Court, therefore, the order dated 3.2.2023 passed by the respondent State is quashed. Accordingly, the petitioners relating to **WPS No. 1242/2023, WPS No. 1929/2023 and WPS No. 2017/2023** are allowed to discharge their duties on the promoted posts, as they have already been promoted.

17.In view of above, Writ Petitions stand disposed of.

Sd/-

(Narendra Kumar Vyas)

Judge