



(Cause-title taken from Case Information System)

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For Petitioners : Shri Kishore Bhaduri, Sr. Advocate with Shri Vivek Verma and Shri Santosh Bharat, Advocates.  
For Respondent Nos.1 & 2 : Shri HS Ahluwalia, Deputy Advocate General.  
For Respondent No.3 in WPS No.2711/2016 : Shri Animesh Tiwari, Advocate.  
For Respondent No.3 to 12 in WPS No.4190/2016 and Respondent Nos.4 to 13 in WPS Nos.887/2012 and 2711/2016 : Shri Akhand Pratap Pandey, Advocate.

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Date of Hearing : 16/08/2022  
Date of Judgment : 02/09/2022

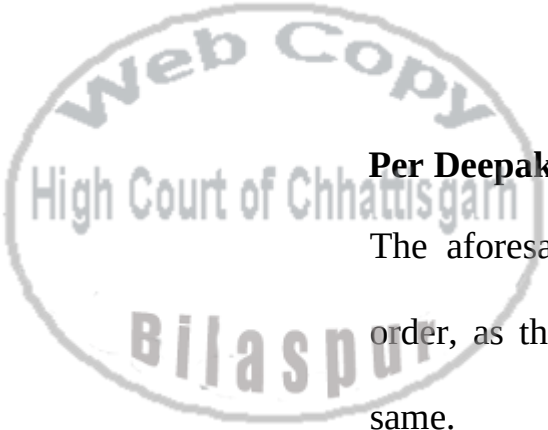
**Hon'ble Shri Arup Kumar Goswami, CJ &**  
**Hon'ble Shri Deepak Kumar Tiwari, J**

**C A V ORDER**

**Per Deepak Kumar Tiwari, J.**

The aforesaid writ petitions are being disposed of by this common order, as the genesis involved in all the writ petitions is one and the same.

2. WP(S) No.4190/2016 has been filed by the petitioners (Vidya Bhushan & Others) seeking quashment of the notification dated 21.6.2016 whereby the State Government has amended the Chhattisgarh Secretariat Service Recruitment Rules, 2012 (Henceforth 'the Rules') and added a new Clause-(6) in Rule 13 of the said Rules, whereby relaxation of minimum length of service has been prescribed in promotion from AG-II to AG-I, only for the calendar year 2016.
3. WP(S) No.887/2012 (Vidya Bhushan & Others) and WP(S) No.2711/2016 (Gautam Kumar Bansod & Others) have been preferred





seeking quashment of the gradation list with effect from 1.4.2011 and also seeking direction to consider their cases and grant seniority from the date of their joining,

4. The Department of General Administration had issued an advertisement for the posts of AG-III on 24.8.2005. Total number of posts for AG-III was 100. The petitioners had applied for the said post and appeared in the examination conducted by the Chhattisgarh Madhyamik Shiksha Mandal and all the petitioners succeeded in the written examination. Thereafter, the petitioners were called for the Skill Test in which they appeared.

5. The respondent No.2 vide order dated 8.5.2007 had issued appointment orders to all the 97 selected candidates for the post of AG-III on adhoc basis in the pay scale of Rs.3050-75-3950-80-4590/- on certain terms and conditions and on fixed pay of Rs.3050 per month + other allowances till passing of the departmental examination of Hindi Typing and knowledge of Computer, as stipulated in the appointment letter. Paras-1 & 2 of the appointment letters would read thus:-

“(1) उपर्युक्त उम्मीदवारों को कार्यभार ग्रहण करने के दिनांक से 02 वर्ष की अवधि में इस विभाग द्वारा निर्धारित हिन्दी मुद्रलेखन की विभागीय परीक्षा 25 शब्द प्रतिमिनट की गति से एवं कम्प्यूटर ज्ञान की विभागीय परीक्षा उत्तीर्ण करनी होगी। जब तक वे हिन्दी मुद्रलेखन एवं कम्प्यूटर ज्ञान की विभागीय परीक्षा उत्तीर्ण नहीं करेंगे तब तक उन्हें सहायक ग्रेड-3 के पद के वेतनमान की निम्नतम वेतन तथा भत्ते प्राप्त होंगे।

(2) यदि वे उपर्युक्त हिन्दी मुद्रलेखन एवं कम्प्यूटर ज्ञान की विहित परीक्षा निर्धारित अवधि में उत्तीर्ण कर लेंगे तो उन्हें विभागीय परीक्षा उत्तीर्ण करने के दूसरे दिन से सहायक ग्रेड-3 के पद पर दो वर्ष की परिविक्षा पर नियुक्त किया जावेगा। साथ ही इनकी वरिष्ठता नियमित वेतनमान में नियुक्ति दिनांक से निर्धारित की जावेगी।”

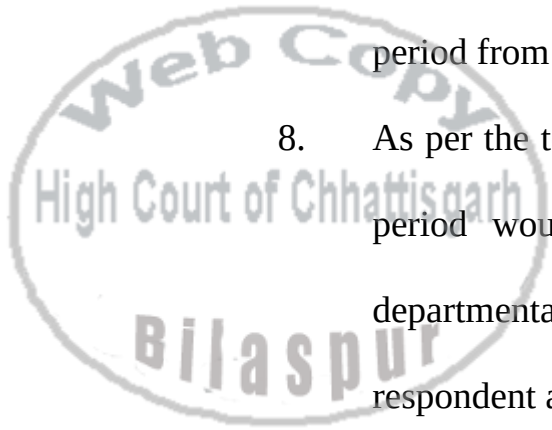
6. The General Administration Department of the State of Chhattisgarh vide order dated 30.6.1981 prescribed the qualifications for the post of



Typist and Lower Division Clerk and all the Departments of the State were directed to follow the prescribed qualification and the Department of General Administration amended the qualification for the post of AG-III from time to time and extended the educational qualification for the post of AG-III.

7. As per the terms and conditions of the appointment letter, all the selected 97 candidates appeared in the departmental examination. As per the conditions, the probation period would commence from the next date of passing of the departmental examination, but the respondent authorities in case of some other candidates commenced the probation period from the date of their joining.

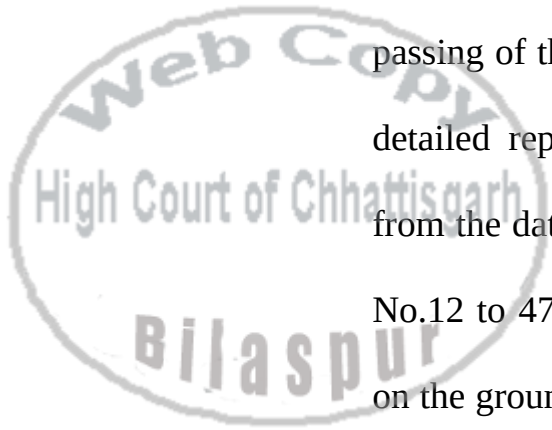
8. As per the terms and conditions of the selection process, the probation period would commence from the next date of passing of the departmental examination, however, in case of some candidates, the respondent authorities commenced the probation period from the date of their joining, which has caused dissatisfaction and the gradation list has also been affected. Respondent No.2 vide order dated 23.1.2012 published a seniority list of the candidates for the post of AG-III w.e.f. 1.4.2011 and as per the seniority list, seniority of the petitioner No.1 was counted from 1.5.2008, seniority of petitioners No.2 to 5 was counted from 15.6.2008 and seniority of petitioner No.6 was counted from 22.3.2009, seniority of petitioner No.7 & 8 was also counted from 22.3.2009, in case of petitioner No.9 & 10 seniority was counted from 9.8.2009 and in respect of petitioner No.11 & 12, seniority was counted from 13.12.2009 i.e. from the next date of passing of the departmental





examination.

9. In the gradation list issued by the respondent authorities, though common appointment letter dated 8.5.2007 was issued in respect of the candidates at Sr. No.12 to 47 and subsequently, they appeared in the departmental examination along with the petitioners, but the respondents commenced the probation period of the said candidates from the date of their joining. It is noteworthy to mention here that all the candidates appeared in the departmental examination and passed the said examination, but the probation period of the candidates at Sr. No.12 to 47 was counted from the date of their joining and not from the date of passing of the departmental examination. Thus, the petitioners made a detailed representation to the competent authority seeking seniority from the date of appointment, which was given to the candidates at Sr. No.12 to 47. The said representation was rejected by the respondents on the ground that candidates at Sr. No.12 to 47 had already passed the examination and possessed the requisite qualification as required in the appointment order and the conditions mentioned in the appointment order are not applicable in case of candidates at Sr. No.12 to 47.
10. The petitioners herein have also challenged the said gradation list by way of a writ petition viz. WPS No.887/2012 & WPS No.2711/2016. Petitioners No.1 to 5 were appointed on 14<sup>th</sup> May, 2007 and their seniority was counted from the next date of passing of the departmental examination instead of date of initial appointment. Therefore, their names were placed below their juniors in the gradation list w.e.f. 1.4.2011 and they were promoted to the post of AG-II from AG-III on





26.6.2013 and petitioners No.6 to 12 were promoted to the post of AG-II on 13.9.2014. On 21.6.2016, the State Government introduced amendment in the subject Rules providing one year relaxation for promotion from AG-II to AG-I, for the calendar year 2016. On account of said amendment, petitioners may lose their seniority and the juniors to the petitioners may supersede them. Thus the subject amendment is arbitrary, illegal and unconstitutional.

11. Learned counsel for the petitioners would submit that all the selected 97 candidates, as per the conditions stipulated in the appointment order, appeared in the Computer Skill and Hindi Typing examination held on various dates i.e. 29.5.2008, 24.6.2008 and 17.12.2008 and as per the appointment order, their probation period would commence from the next date of passing of the examination, but in the final gradation list, seniority of some of the candidates was mentioned from the date of their joining, which violates Article 14 of the Constitution of India. Learned counsel would further submit that the impugned notification dated 21.6.2016 provides relaxation only for one year, which is also illegal and arbitrary. So learned counsel prays to quash the impugned notification and the gradation list w.e.f. 1.4.2011.
12. On the other hand, learned State Counsel would submit that no discrimination was made and seniority of the candidates was also not affected in any manner. The petitioners have passed only written examination, however, they did not succeed in the examination with respect to Hindi Typing and Computer Skill test. 61 candidates including the petitioners could not clear the aforesaid examination





whereas other candidates had passed the aforesaid tests in the very first instance during the time of their initial appointment. Therefore, such candidates were treated as appointed from the date of issuance of appointment order, and the petitioners and other candidates who have passed the Skill test subsequently were placed below the other candidates, who have already cleared the aforesaid tests. After coming to know the conditions stipulated in the appointment order dated 8.5.2007, the General Administration Department has issued a clarification on 2.5.2011 and thereafter final gradation list was published on 23.1.2012 for AG-III. The Department has duly considered the objection and rejected the same vide order dated 20.1.2012.

13. Learned State Counsel would further submit that the impugned notification relating to relaxation in the length of service for granting promotion to any post is under the executive power of the State to regulate the service conditions of the employees vested under Article 162 and 309 of the Constitution of India. He would further submit that the petitioners have not even arrayed the candidates as party respondents who are affecting the promotional chances of the petitioners. Therefore, the writ petitions suffer from the non-joinder of the necessary party. So, the writ petitions deserve to be dismissed on this score also.
14. We have heard learned counsel for the parties at length and perused the record with utmost circumspection.
15. As per the conditions stipulated in the advertisement dated 24.8.2005





for recruitment to the post of AG-III, a candidate has to pass the skill test in Computer and Hindi Typing examination. It is admitted position that the Department had issued appointment order for 97 candidates, on fixed pay, on adhoc basis and two years time was granted to clear the skill test. The said period was made applicable in pursuance of the notification issued by the General Administration Department on 30.6.1981. When the discrepancy in the appointment order dated 8.5.2007 about the conditions mentioned for all the 97 candidates came to the fore, it was found that 61 candidates did not clear the Hindi Typing and Computer Skill test, and such condition was made applicable only for the candidates who have not acquired the certificates of both the tests i.e. Hindi Typing and Computer Skill test at the time of appointment and not passed the test at the first instance. And the candidates who had already passed the aforesaid tests from the date of issuance of appointment order, conditions No.1 & 2 regarding confirmation of appointment was not applicable for them. So, a clarificatory order was issued on 2.5.2011 and accordingly, the gradation list was issued on 1.4.2011 and the candidates who had acquired the proficiency on the initial date of appointment have been given seniority from the date of initial appointment, and the petitioners and other candidates, total 61 in number, were placed below according to the conditions of the appointment order. Thus, this Court does not find any error in fixing the seniority of the candidates, as the petitioners have not passed both the tests and the candidates who were qualified at the first instance were placed above them.





16. It is settled law that no employee has a right to get promotion, but only has a right to be considered for promotion. It is also well settled that the employer has power to change its policy in giving promotion to its employees.
17. In the matter of **Hardev Singh v. Union of India & Anr.**<sup>1</sup>, the following was observed at paras-25 & 26:-

“25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court In *Virender S. Hooda v. State of Haryana* [(1999) 3 SCC 696 : 1999 SCC (L&S) 824] where this Court had held in para 4 of the judgment that: (SCC p. 699) “4. ... When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.

26. Similarly, in *Balco Employees' Union v. Union of India* [(2002) 2 SCC 333] it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition.”

18. In the matter of **Rajendra Kumar Agrawal v. State of U.P.**<sup>2</sup>, the issue relates to power of relaxation for filling up the posts by promotion. The following was observed at para-24:-

“24. So far as the present case is concerned we do not find any material to show that the State Government or the Parishad resorted to exercise of power under Regulation 20 for some unauthorised or oblique

1 (2011) 10 SCC 121

2 (2015) 1 SCC 642







purpose. The allegation that it was only to benefit Rajendra Kumar Agrawal is ex facie incorrect because relaxation was beneficial for three officers who all were senior to Narsingh Prasad. There is no material to support the allegation that Rajendra Kumar Agrawal was responsible for the decision taken by the State Government or the Parishad on account of any political or other influence over any person. To us, the exercise of power of relaxation appears to be in the interest of the Parishad because the post of Chief Engineer, as held by this Court in earlier proceeding, is a single post of considerable importance. The enlargement of zone of consideration with addition of relatively senior persons would only benefit the public cause by enabling selection of the most meritorious person from a larger group of eligible persons. Hence in the facts of the case, we are of the considered view that the High Court erred in inferring that the relaxation was for some dubious reasons or to benefit Rajendra Kumar Agrawal.”

Emphasis supplied

19. Rule 20 of the Rules provides power of relaxation which is as under:-

**“20. Relaxation :-** Nothing in this rules shall be construed to limit or abridge the power of the Governor to deal with the case of any person to whom these rules apply in such manner, as may appear to it to be just and proper:

Provided that the case shall not be dealt with in any manner less favourable to him than that provided in these rules.”

In the aforesaid Rules, promotions are being made in accordance with the provisions of Chhattisgarh Public Service (Promotion) Rules, 2003 and determination of promotion is prescribed in Rule 4 of the said Rules, which reads thus:-

**“4. Determination of basis of promotion. - (1)** Promotion from Class IV to higher pay scale of Class IV, Class IV to Class III, Class III to higher pay scale of Class III, Class III to Class II, Class II to higher





pay scale of Class II and Class II to Class I posts shall be made on the basis of "seniority subject to fitness".

(2) Promotion from Class I to higher pay scale of Class I posts shall be made on the basis of "merit-cum-seniority".

20. In the matter of **State of UP Vs. Vikash Kumar Singh**<sup>3</sup>, in para-7, it was observed that it was the power of the State if rules enables to grant relaxation in qualifying service and the following was observed in the said para:-

“7.....Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because the Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service.....”

21. In view of the above settled legal position, this Court is of the view that the petitioners have utterly failed to demonstrate that the impugned notification dated 21.6.2016, whereby the State Government has amended the subject Rules by adding new clause (6) in Rule 13 whereby one time relaxation for the year 2016 was given in the matter of promotion from AG-II to AG-I, was issued by the State with an oblique or unauthorized purpose, which shows any arbitrariness on the part of the State. The Court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the Court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition. The power of



relaxation is within the exclusive domain of the State Government and, therefore, the impugned notification cannot be held to be bad in law.

22. In the case at hand, the petitioners have also not arrayed all the selected candidates as party respondent. In such situation, this Court is of the view that the writ petitions suffer from non-joinder of the necessary party, as all the selected candidates were not impleaded as party in the writ petitions and no relief can be granted to them, as admittedly no step had been taken in terms of Order 1 Rule 8 of the CPC or the principles analogous thereto, and the Writ Petitions deserve to be dismissed on this score also. [See : **Km. Rashmi Mishra Vs. MP Public Service Commission and Others** {(2006) 12 SCC 724}.

23. In this regard, in the matter of **State of Uttaranchal v. Madan Mohan Joshi**<sup>4</sup>, the following was held at para-17:-

“17. A three-Judge Bench of this Court in *Prabodh Verma v. State of U.P.* [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] stated the law as under : (SCC pp. 273-74, para 28)

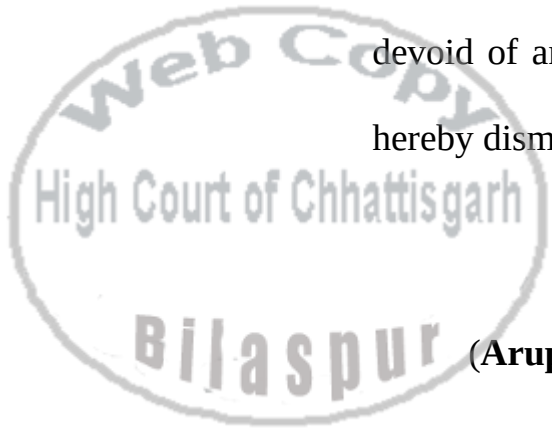
“28. ... A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

24. From the aforesaid discussion, it is explicit that there is no specific



avermment made about malafide exercise of powers for extending relaxation by the impugned notification nor there was any occasion to issue conditional appointment order to such candidates who have not passed the Skill test and to give them two years time to pass the aforesaid tests. As 36 candidates had fulfilled the requisite conditions earlier, therefore, they were placed above the petitioners in the gradation list. There is no material to show that the State Government has exercised the power for granting relaxation with an oblique or unauthorized purpose.

25. For the foregoing, this Court is of the opinion that the Writ Petitions are devoid of any substance. Resultantly, the same deserve to be and are hereby dismissed.



Sd/-  
**(Arup Kumar Goswami)**  
Chief Justice

Sd/-  
**(Deepak Kumar Tiwari)**  
Judge



**HEADLINES**

A court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition

