



2024:CGHC:44340-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WA No. 41 of 2024**

Rupesh Gurudiwan S/o Shri J.P. Gurudiwan Aged About 50 Years R/o  
Devnandan Nagar Phase I, Chatidih, Bilaspur, District Bilaspur (C.G.)

**... Appellant**

**versus**

- 1- State of Chhattisgarh Through The Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
- 2- Chhattisgarh Professional Examination Board Through The Secretary, Pension Bada, Raipur, District Raipur (C.G.)
- 3- Priyanka Dewangan Naib Tahsildar, Dongargarh, District Rajnandgaon (C.G.)
- 4- Mamta Towri Naib Tahsildar Abhanpur, District Raipur (C.G.)
- 5- Sandhya Namdev Naib Tahsildar, Tahsil Chowki, District Rajnandgaon (C.G.)

**... Respondents**

Cause-title taken from Case Information System

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For Appellants : Mr. Prateek Sharma, Advocate  
For Respondent No.1 / State : Mr. Sangharsh Pandey, Govt. Advocate  
For Respondent Nos.3 to 5 : Mr. C. Jayant K. Rao, Advocate

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**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**Hon'ble Shri Amitendra Kishore Prasad, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**13.11.2024**

1. Heard Mr. Prateek Sharma, learned counsel for the appellant. Also heard Mr. Sangharsh Pandey, learned Government Advocate,

appearing for the State /respondents No.1 and Mr. C. Jayant K. Rao, learned counsel, appearing for respondent Nos. 3 to 5.

2. The appellant has filed this intra-Court appeal against the order dated 04.01.2024 passed by the learned Single Judge in Writ Petition (S) No. 201 of 2016 (***Rupesh Gurudiwan Vs. State of Chhattisgarh & Others***) by which the learned Single Judge has dismissed the writ petition filed by the writ petitioner / appellant.
3. Brief facts necessary for disposal of the appeal are that the respondent issued an advertisement on 07.03.2014, for promotion through limited competitive examination from the In-Service candidates including Patwari, Revenue Officer & Clerk, with certain conditions, for promotion in the post of total 57 posts of Naib Tehsildar, in accordance with C.G. Junior Administrative Service Recruitment Rules 1980. The written examination was conducted on 20.07.2014. The selection process is for promotion in the post of Naib Tehsildar through limited departmental competitive examination, therefore no horizontal reservation was provided or applied in the aforementioned posts, according to the Rules 1980. As per the selection process, after written examination Departmental Promotion Committee has to assess the annual service report of the candidates and decide the suitability of the candidate, then only the promotion on the basis of merit was to be given, which clearly reveals that the process is for promotion, which is otherwise evident from the schedule-II of the

Rules 1980 amended from time to time and annexed herewith, clearly prescribing in the column no. (5) of Schedule II, under heading percentage of posts to be filled by way of promotion and the instant selection is conducted for the posts falls in that category. The petitioner being duly eligible applied for promotion and after participation obtained 10<sup>th</sup> position in the final result, whereas the respondent No. 3 obtained 12<sup>th</sup>, respondent No.4 obtained 14<sup>th</sup> and respondent no. 5 obtained 16<sup>th</sup> position in final merit list and are placed below petitioner in unreserved category. Out of total 57 posts, total 28 posts are to be filled by way of promotion from the post of Patwari/Revenue Inspector, which is further bifurcated into 12 unreserved posts, 9 Scheduled Tribes, 4 Schedule Caste and 3 Other Backward Caste category posts. No reservation at all is prescribed in advertisement for the women or disabled category. Out of total 12 unreserved posts till date, only 11 posts have been filled bearing 4 women category candidates and out of 4 women candidates, one has got the post by virtue of her merit, whereas the other 3 respondents have got the promotion on the basis of women reservation.

4. Similarly, no disabled category candidate is available, nor applied, in the entire list of Patwari/Revenue category, but one post is kept vacant for unreserved disabled category candidate, despite the fact that no reservation is available for disabled category persons in the post of Patwari, as per prescribed procedures and rules of the respondent State. No column is prescribed in the application

form for searching the candidate belonging to disabled category. Applying the above defected reservation policy, changing the rule of game at the end of selection process, the petitioner is denied promotion despite securing 10<sup>th</sup> position in the final result and respondents No. 3 to 5 were promoted by the impugned order dated 24.06.2015. By passing the merit of petitioner granting benefit of women reservation and one post kept deliberately vacant for disabled category candidate, though not a single Patwari is available in the entire state of Chhattisgarh, from disabled category, promoted in the post of Patwari.

5. The petitioner made several representations, but to no avail and the promotions were made by the respondent State and respondent No. 3 to 5 joined their service also taking benefit of above illegal reservation policy, hence the petitioner has filed WP(S) No. 201 of 2016 before this Court, which was dismissed by the learned Single Judge vide impugned order dated 04.01.2024. Hence, this appeal.
6. Mr. Prateek Sharma, learned counsel for the appellant submitted that the impugned order dated 04.01.2024 passed by the learned Single Judge in WPS No. 201 of 2016 is bad in law, therefore, liable to be set aside. He further submitted that the impugned undated final result and promotion order dated 24.06.2015 are arbitrary, unreasonable, unauthorized, unwarranted, illegal, unjust and discriminatory & malafide, therefore, hit by the postulates of

Article 14, 15 & 16 of the Constitution of India. He also submitted that the appellant is duly eligible, qualified and meritorious for promotion in the post of Naib Tahsildar from Patwari/Revenue Inspector cadre. He contended that out of total 57 posts, 28 posts were allocated to the Patwari/R.I. cadre for filling by way of promotion, which is further bifurcated into 12 Unreserved posts (9 Scheduled Tribes, 4 Scheduled Caste and 3 Other Backward Caste category posts). Though no horizontal reservation at all is prescribed in advertisement for the women or disabled category, but changing the game of rule of selection in the midst of selection process, the horizontal reservation was applied for women and disabled persons after written examination and before the declaration of final result although the issue is already settled by the Hon'ble Supreme Court in judgment cited in ***P. Mohanan Pillai Vs. State of Kerala & Others***, reported in ***AIR 2007 SC 2840*** and ***Prakash Chand Meena & Others Vs. State of Rajasthan & Others***, reported in ***(2015) 8 SCC 484***. He further contended that as the selection process is for promotion in the post of Naib Tahsildar from Patwari/R.I, therefore, no horizontal reservation either women or disabled category are applicable. The horizontal reservation for women and disabled person category is applied only against the direct recruitment in any post. Article 15 bars gender reservation therefore no reservation can be granted to the women category only on the basis of gender. Benefit of reservation cannot be extended to disabled category person in the

post of Patwari, therefore reserving one post for Naib Tahsildar for disabled category candidate is unreasonable and arbitrary. Prescribed procedure and rules of State prohibits application of reservation for disabled category person in the post of Patwari.

7. Mr. Sharma also contended that out of 12 unreserved post under Patwari/R.I. cadre, one post is still lying vacant and the appellant is placed at serial no.10 in the final result as unreserved category candidate however till date no promotion is given to the appellant in the post of Naib Tahsildar. Applying wrong reservation policy the respondent No. 3 to 5 have been granted promotion in the post of Naib Tahsildar bypassing the merit of the appellant, by impugned order dated 24.06.2015. The appellant had made representations in this regard but to no avail and only assurances have been given to the appellant. The game of rule of selection process cannot be changed in the midst of selection process. The horizontal reservation for women and disabled person category is not provided in the Rules 1980. From a bare perusal of column (5) of Schedule II of Rules 1980, it is clearly evident that the present selection is for promotion in the post of Naib Tahsildar and not the direct appointment.
8. It has also been submitted by Mr. Sharma that the learned Single Judge has failed to appreciate instant petition was directed against only those candidates who are granted promotion by illegally granting benefit of women reservation and not against all

meritorious candidates, therefore, all of them are not required to be made as party respondent and affected women category candidates have already been arrayed as party respondent in the writ petition and as such, the judgment dated 27.10.2018 passed by this Court in the case of Mathura Prasad Kashyap & Another Vs. State of Chhattisgarh & Another is not applicable in the instant case. In support of his contention, counsel for the appellant placed reliance on the judgment passed by the Hon'ble Apex Court in the case of "**Ganga Vishan Gujrati and others v. State of Rajasthan and others**", reported in **(2019) 16 SCC 28** and this Court's order dated 10.02.2023 passed in **WPS No. 4296/2014 (Smt. Parvati Verma v. State of Chhattisgarh and others)**. He lastly submitted that the appellant has already preferred a representation (Annexure-P/7) stating therein that as one Ramnarayan Sahu, who was selected by the respondents, has not joined on the promotional post and his selection was cancelled by the respondents, therefore, the appellant is entitled for promotion on the said vacant post, but the respondents did not consider the representation of the appellant.

9. On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State/respondent No.1 opposed the submissions made by the learned counsel for the appellant and submitted that the learned Single Judge after considering all the aspects of the matter has rightly dismissed the writ petition filed by the writ petitioner/ appellant, in which no interference is called for.

He further submitted that in the advertisement dated 04.03.2014 (Annexure A/2) around 28 posts of Naib Tehsildar were advertised to be filled by way of limited competitive examination from the cadre of Revenue Inspectors/Patwaris. Out of the said 28 posts, 12 posts were belonging to un-reserved category, 4 posts were reserved for Scheduled Caste category, 9 posts were reserved for Scheduled Tribe category and 3 posts were reserved for Other Backward class. It is submitted that out of the 12 posts belonging to un-reserved category, 7 posts were required to be filled up from open category, 4 posts were to be filled up from women category and 1 post was required to be filled up from a candidate belonging to disabled category. He also submitted that the contention of the appellant was that, one Ramnarayan Sahu who belongs to unreserved category did not join the services, therefore his appointment was cancelled and in such a case the appellant is entitled for appointment being next in the merit list. In this regard; it is respectfully submitted that; in place of Ramnarayan Sahu another person namely one Neelkanth has been appointed. Copy of the merit list is being filed and annexed herewith as ANNEXURE R-1. From the bare perusal of the said merit list, it would be clear that the person named Neelkanth (SC) has secured 247.22 marks and his name appears at Sl.No.9 of the merit list, whereas the appellant namely Rupesh Kumar Gurudiwan has secured 247.15 marks and his name appears at Sl.No. 10 of the merit list. Thus, when the person named



Ramnarayan Sahu did not join the services; Neelkanth being next in the merit list was placed in place of Ramnarayan Sahu. Thus, 7 selections have been made in the un-reserved open category and the person named Neelkanth has rightly been given posting in place of Ramnarayan Sahu. It is submitted that from the bare perusal of advertisement dated 04.03.2014 (Annexure A-2) makes it clear that the selections and recruitment process has been conducted in accordance with the Chhattisgarh Junior Administrative Services Recruitment Rules, 1980. It is further submitted that in exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the Governor of Chhattisgarh made further amendments in the Chhattisgarh Junior Administrative Services Recruitment Rules, 1980 vide notification dated 22.02.2011. Copy of the Notification dated 22.02.2011 is filed herewith as ANNEXURE R-2. It is submitted that by way of said amendment it has been prescribed in column No.5 of schedule II that 20% posts will be filled by the limited competitive examination selection in which 10% posts will be from clerks and 10% posts from Patwaris and Revenue Inspectors shall be substituted. Hence, it is submitted that the post of Naib Tehsildars has been filled up by way of direct recruitment through limited competitive examination from Patwaris and Revenue Inspectors.

10. Mr. Pandey further submitted that out of the 12 posts belonging to unreserved category, 4 posts were required to be filled up from female candidates wherein Miss Meena Sahu, Miss Sandhya

Namdeo, Miss Priyanka Dewangan and Kumari Mamta Tawri have been appointed in the female category. It is further submitted that one Mr. Lakheshwar Prasad Kiran has been appointed in the disabled category. Thus, all the 12 posts belonging to unreserved category has been filled up in accordance with law keeping in view the merit list as well as the rules and circulars regarding providing reservation to women and disabled candidates. It is respectfully submitted that the reservation to the women and disabled persons have been given by the State Government in accordance with the circulars dated 10.02.1997 and 30.05.1997. Copy of the circular dated 10.02.1997 and 30.05.1997 are filed and annexed herewith collectively as ANNEXURE R-3.

11. Mr. Pandey also submitted that the person named Neelkanth has secured more marks than the present petitioner/appellant namely Rupesh Gurudiwan. Therefore, Neelkanth has rightly been given appointment in place of said Ramnarayan Sahu. However it would be pertinent to mention that the person named Neelkanth is belonging to scheduled caste category and earlier he was selected in the schedule caste category; however when Ramnarayan Sahu did not join the post, a review was done by the Departmental Selection Committee and the review meeting of the Departmental Selection Committee took place on 06.11.2015, wherein it was mentioned that the said Ramnarayan Sahu did not join, pursuant to his selection and therefore his selection is cancelled and as a result; the person who will find his place next in the merit list would

be selected on the basis of merit. It is submitted that as the person named Neelkanth had secured more marks than the present appellant; therefore he was given appointment in the unreserved category as he was found eligible for the same in accordance with the merit list. Copy of the relevant part of the meeting of the Departmental Selection Committee dated 06.11.2015 is filed and annexed herewith as ANNEXURE R-4. Here, it would be pertinent to mention that in place of Neelkanth; one Shri Babulal Kurre has been given appointment in the scheduled caste category. Thus, it is respectfully submitted that the respondent authorities have acted in accordance with the law and claim made by the petitioner/ appellant that as the said Ramnarayan Sahu did not join the services and therefore the appellant was entitled for appointment is baseless and the present Writ Appeal being devoid of merit and substance is liable to be dismissed.

12. Mr. C. Jayant K. Rao, learned counsel, appearing for respondent Nos. 3 to 5 submitted that the learned Single Judge in para 13 clearly held that initially in the advertisement, the reservation for woman and disabled persons has not been given despite already there being 30% reservation for woman category and 6% reservation for disabled person and 3% reservation for ex-defense personal etc. and therefore, during the selection procedure and before declaring final result/select list, the reservation to woman category and disabled persons has been given. As there is provision for 30% reservation in total vacancy for only woman

candidate and therefore out of 12 posts kept for unreserved category candidates, 4 posts have been reserved for woman unreserved category as per the circular dated 10.02.1997 (Annexure R-1). He further submitted that the petitioner/appellant herein filed the writ petition for setting aside the order dated 24.06.2015 and in the above order dated 24.06.2015, 27 candidates were promoted from Revenue Inspector/Patwari category and 24 candidates were promoted from Clerk cadre and the petitioner/appellant except respondent Nos. 3 to 5 not impleaded the other selected candidates, accordingly the order passed by the learned Single Judge not needs any interference and the same has to be confirmed. He also submitted that respondent Nos. 3 to 5 were selected on their category reserved for them by the State Government and there is no illegality in their promotion.

13. We have heard learned counsel for the parties and perused the impugned order and other documents appended with writ appeal.
14. From perusal of the impugned order, it transpires that the learned Single Judge has dismissed the writ petition only on the ground that the writ petitioner has not impleaded all the promotees as party respondent, but from perusal of the prayers and pleadings made in the writ petition, it is apparent that the instant petition was directed against only those candidates who were granted promotion by illegally granting benefit of women reservation and

not against all meritorious candidates, therefore, all of them are not required to be made as party respondent and affected women category candidates have already been arrayed as party respondent in the writ petition and in view of the aforesaid facts and circumstances of the case, the judgment relied by the learned Single Judge in WPS No. 1889/2014 (Mathura Prasad Kashyap & another Vs. State of Chhattisgarh & another) and other connected matters decided on 27.10.2018 is not applicable in the instant case. The said observation made by the learned Single Judge is patently illegal as such, we are of the opinion that the learned Single Judge has committed grave illegality in passing the impugned order, which deserves to be set aside.

15. After going through the records and submissions made by the learned counsel for the parties, it is apparent that vide order dated 24.06.2015 out of total 28 posts of Naib Tahsildar required to be filled from the category of Revenue Inspector and Patwari cadre, only 27 posts were filled up and the said list includes the names of one Ram Narayan Sahu at S.No.7 and Neelkanth at S.No. 9. Later on Ramnarayan Sahu did not join the post and his appointment was cancelled vide order dated 19.10.2015 and in affidavit dated 12.07.2024 the respondent State submitted that Neelkanth was appointed but no where it is mentioned that who is appointed in place of Ram Narayan Sahu, whereas name of Neelkanth is already find place in order dated 24.10.2015, therefore, after non-joining of Ram Narayan Sahu, total two posts

are lying vacant in unreserved category and admittedly the appellant is placed next in the merit list at Sl.No.10. The respondent State failed to justify that when two posts were lying vacant and the appellant was next in the merit list then why the appellant has not been given appointment. It is also evident from the list that both the two posts were lying vacant from unreserved category and appellant belongs to unreserved category. It is also informed by learned counsel for the appellant that no further appointment is made by the respondent State in the post of Naib Tahsildar from quota of Patwari therefore various posts are lying vacant.

16. In view of the aforesaid facts and circumstances, the instant appeal is **allowed** and the impugned order dated 04.01.2024 passed by the learned Single Judge in WP(S) No. 201 of 2016 is hereby set aside. The respondents are directed to give appointment to the appellant in the post of Naib Tahsildar from 24.06.2015 with all consequential benefits. However, the appellant will be entitled for notional financial benefits till his joining in the post of Naib Tahsildar.

Sd/-  
**(Amitendra Kishore Prasad)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice