2025:CGHC:46690-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 93 of 2022

1 - Dr. Shashikala Kosam W/o Ashish Kumar Kosam Aged About 46 Years R/o Government Medical College, Mahasamund, District- Mahasamund, Chhattisgarh

2 - Dr. Narendra Prasad Narsing S/o Late C.L. Narsing Aged About 45 Years R/o Government Medical College, Mahasamund, District- Mahasamund, Chhattisgarh

3 - Dr. Onkar Kashyap S/o Late Shri Bodhram Kashyap Aged About 43 Years R/o Government Medical College, Mahasamund, District- Mahasamund, Chhattisgarh

4 - Dr. Tabish S.M. Ahmed D/o S.M. Ahmed Aged About 38 Years R/o Late Shri Lakhiram Agrawal Memorial Medical College, Raigarh, District- Raigarh, Chhattisgarh

--- **Petitioners**

versus

1 - State Of Chhattisgarh Through- Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

2 - Director, Medical Education, Directorate Old Nurses Hostel, DKS Bhawan Campus, Raipur, District- Raipur, Chhattisgarh

3 - Deputy Secretary, Medical Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District- Raipur, Chhattisgarh

4 - Chhattisgarh Public Service Commission, Through Its Secretary, Chhattisgarh Public Service Commission, North Block Sector 19, Atal Nagar, Nawa Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

5 - National Medical Commission, Through Its Secretary General, Pocket- 14, Sector- 8, Dwarka, Phase-1, New Delhi, Pin Code-110077, District : New Delhi, Delhi

--- **Respondents**

WPS No. 436 of 2022

1 - Dr. Jayanti Chandrakar W/o Dr. Jyotirmaya Chandrakar, Aged About 45 Years Working As Associate Professor (Pathology), Chhattisgarh Institute Of Medical Science, Raipur Chhattisgarh.

2 - Dr. Rashmi Gupta D/o Dr. Sharad Chandra Gupta Aged About 48 Years Working As Associate Professor (Pathology), Chhattisgarh Institute Of Medical Science, Bilaspur Chhattisgarh.

3 – Dr. Shubhra Agrawal W/o Shri Balmiki Agrawal Aged About 43 Years Working As Associate Professor (Community Medicine), Chhattisgarh Institute Of Medical Science, Raipur Chhattisgarh.

4 – Dr. K.L. Azad, S/o Shri S.R. Azad Aged About 49 Years Working As Associate Professor (Pathology), Late Baliram Kashyap Memorial Medical College Dimrapal Jagdalpur Chhattisgarh.

5 - Dr. Shiksha Jangde W/o Dr. Sanjay Rai Aged About 48 Years Working As Associate Professor (Anatomy), Chhattisgarh Institute Of Medical Science, Bilaspur, Chhattisgarh.

6 - Dr. Ashish Sinha S/o Shri D.S. Sinha Aged About 44 Years Working As Associate Professor (Community Medicine), Pt. J.N.M. Medical College Raipur Chhattisgarh.

7 - Dr. Bimla Banjare W/o Shri D.S. Chandel Aged About 55 Years Working As Associate Professor (Pathology), Pt. J.N.M. Medical College, Raipur Chhattisgarh.

8 - Dr. Sameer Kumar Painkra, S/o Shri Laxman Ram Jhanp Aged About 38 Years Working As Associate Professor (Community

Medicine), Chhattisgarh Institute Of Medical Science, Bilaspur Chhattisgarh.

9 - Dr. Keshav Kashyap S/o Late Dr. R.L. Kashyap Aged About 40 Years Working As Associate Professor (Pathology), Chhattisgarh Institute Of Medical Science, Bilaspur Chhattisgarh.

10 - Dr. Amit Kumar S/o Late D.P. Shrivastava Aged About 41 Years Working As Associate Professor (Anatomy), Chhattisgarh Institute Of Medical Science, Bilaspur Chhattisgarh.

11 - Dr. Vivek Sharma S/o Shri S.P. Sharma Aged About 40 Years Working As Associate Professor (Community Medicine), Chhattisgarh Institute Of Medical Science, Bilaspur Chhattisgarh.

12 – Dr. Superna Ganguly D/o Late Mr. A.K. Ganguly, Aged About 49 Years Working As Associate Professor (Pathology), Chhattisgarh Institute Of Medical Science, Raipur Chhattisgarh.

13 - Dr. Rekha Barapatre D/o Late Shri K.T. Brapatre, Aged About 49 Years Working As Associate Professor (Microbiology), Chhattisgarh Institute Of Medical Science, Bilaspur Chhattisgarh.

14 - Dr. Jandel Singh Thakur S/o Lt. Shri Kuwar Raj Singh Aged About 46 Years Working As Associate Professor (Dentistry), Chhattisgarh Institute Of Medical Science, Raipur Chhattisgarh.

15 - Dr. Diwakar Dhurandhar S/o Shri P.S. Aged About 37 Years Working As Associate Professor (Anatomy), Chhattisgarh Institute Of Medical Science, Raipur Chhattisgarh.

16 - Dr. Yamini Bhendia W/o Dr. Subhash Rawate, Aged About 39 Years Working As Associate Professor (Opthalmology), Chhattisgarh Institute Of Medical Science, Bilaspur Chhattisgarh.

17 - Dr. Mini Sharma W/o Shri Jaiprakash Aged About 43 Years Working As Associate Professor (Community Medicine), Pt. J.N.M. Medical College, Raipur Chhattisgarh. Raipur Chhattisgarh.

18 - Dr. Neha Shrivastav D/o Shri R.K. Shrivastava Aged About 40 Years Working As Associate Professor (Community Medicine), Pt. J.N.M.Medical College, Raipur Chhattisgarh

19 - Dr. Smita Verma W/o Shri Bhagwati Prasad Verma Aged About 39 Years Working As Associate Professor (Community Medicine), Pt. J.N.M. Medical College, Raipur Chhattisgarh

20 - Dr. Anil Pandey S/o Shri Mohan Lal Pandey, Aged About 44 Years Working As Associate Professor (Pediatric And Preventive Dentistry), Government Dental College And Hospital, Raipur District Raipur Chhattisgarh

---**Petitioners**

Versus

1 - State Of Chhattisgarh Through The Principal Secretary, Department Of Health And Family Welfare, Mhanadi Bhawan, Nava Raipur Atal Nagr, Raipur District Raipur Chhattisgarh.

2 - The Director, Directorate Of Medical Education (Dme), Indravati Bhawan, Nava Raipur Atal Nagar, Raipur, District Raipur Chhattisgarh.

3 - Public Service Commission, Through The Secretary, Public Service Commission, Shankar Nagar, Raipur, District Raipur Chhattisgarh.

4 - National Medical Commission, Through Its Secretary General, Pocket-14, Sector-8, Dwarka Phase-I, New Delhi, Pin Code-110077

--- **Respondents**

WPS No. 7799 of 2022

1 - Vandana Chawhan D/o Late Shri M. Chawhan Aged About 59 Years Presently Posted As Associate Professor, Government College Of Nursing Durg, R/o - Street 03, Block 18B, Sector 02, Bhilai Nagar, Durg, Chhattisgarh

2 - Vandana Chansoria, W/o Sunil Chansoria Aged About 56 Years Presently Posted As Associate Professor, Government College Of Nursing, Raipur, R/o Behind Haribhoomi Press, Tkrapara, Raipur, Chhattisgarh

3 - Neetu Tripathi W/o Mr. Vinay Tripathi, Aged About 48 Years Presently Posted As Associate Professor, Government College Of Nursing, Raipur, R/o - 413, Block B, Ashoka Impression, Mowa, Raipur, Chhattisgarh

---**Petitioners**

Versus

1 - State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, Tahsil And District- Raipur, Chhattisgarh

2 - Director Medical Education, Directorate Old Nurses Hostel, Dks Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, Chhattisgarh

3 - Deputy Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, Tahsil And District- Raipur, Chhattisgarh

4 - Chhattisgarh Public Service Commission, Through The Secretary, Chhattisgarh Public Service Commission, North Block Sector 19 Atal Nagar, Nawa Raipur, Chhattisgarh

5 - Indian Nursing Counsel Through The President 8th Floor, NBCC Center, Plot No. 2 Community Center, Okhla Phase-1, New Delhi - 110020

--- **Respondents**

WPS No. 114 of 2022

1 - Dr. Arunabh Mukharjee S/o Late A.N. Mukharjee, Aged About 39 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

2 - Dr. K.B. Patel, S/o. Kala Chand Patel, Aged About 37 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

3 - Dr. Tripti Badariya, W/o. Vikas Badariya, Aged About 35 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

4 - Dr. Niza Monga, W/o. Rajat Banchhor, Aged About 33 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

5 - Dr. Rajat Banchhor, S/o R.K. Banchhor, Aged About 34 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

6 - Dr. Bhawani Bhagat, W/o. Dr. Kameshwar Singh, Aged About 34 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

7 - Dr. Usha Armo, D/o. Dr. Y.S. Surotiya, Aged About 39 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

8 - Dr. Kajal Chandrakar, W/o Dr. Roshan Lal Verma, Aged About 33 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

9 - Dr. Pratima, D/o. Santram Koshewara, Aged About 34 Years R/o. Government Medical College, Mahasamund, District Mahasamund Chhattisgarh

10 - Dr. Arti Bhagat, D/o. Late Shri J.R. Bhagat, Aged About 31 Years R/o. Government Medical College, Mahasamund, District Mahasamund (Chhattisgarh)

11 - Dr. Manik Lal Neti, S/o Umend Singh Neti, Aged About 34 Years R/o. Government Medical College, Mahasamund, District Mahasamund (Chhattiisgarh)

---**Petitioner(s)**

Versus

1 - State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

2 - Director, Medical Education, Directorate Old Nurses Hostel, Dks Bhawan Campus, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

3 - Deputy Secretary, Medical Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

4 - Chhattisgarh Public Service Commission, Through Its Secretary, Chhattisgarh Public Service Commission, North Block Sector 19, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

5 - National Medical Commission, Through Its Secretary General, Pocket-14, Sector-8, Dwarka, Phase- I, New Delhi, Pin Code 110077, District : New Delhi, Delhi

--- **Respondent(s)**

WPS No. 232 of 2022

1 - Mrs. Veena Verma D/o Shri R.P. Verma Aged About 40 Years Posted As Assistant Professor (Medical Surgucal Nursing), Government College Of Nursing, Raipur, District- Raipur, Chhattisgarh

2 - Mrs. Vartika Gouraha W/o Mr. Gouraw Gouraha Aged About 42 Years Posted At Assistant Professor (Psychiatric Nursing), Government Nursing College, Bilaspur, District-Bilaspur, Chhattisgarh

3 - Mrs. Tripti Soni W/o Mr. Nand Kumar Soni Aged About 40 Years Posted As Assistant Professor (Obstetrics And Gynaecology Nursing), Government College Of Nursing, Ambikapur, District- Sarguja, Chhattisgarh

4 - Mrs. Shraddha Chandrakar W/o Vikaschandrakar Aged About 36 Years Posted As Assistant Professor (Medical Surgical Nursing), Government Nursing College Ambikapur, District-Sarguja, Chhattisgarh

5 - Mrs. Fagani Bai W/o Khilendra Kumar Aged About 36 Years Posted As Assistant Professor (Community Health Nursing), Government Nursing College, Ambikapur, District- Sarguja, Chhattisgarh

---**Petitioner(s)**

Versus

1 - State Of Chhattisgarh Through- The Principal Secretary, Department Of Helath And Family Welfare, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

2 - The Director, Directorate Of Medical Education (Dme), Indravati Bhawan, Nava Raipur, Atal Nagar, Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

3 - Public Service Commission, Through The Secretary, Public Service Commission, Shankar Nagar, Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

--- **Respondent(s)**

WPS No. 1342 of 2022

1 - Mamta Shashi Sahu W/o Mr. Shashikant Sahu Aged About 38 Years Presently Posted As Assistant Professor, Government College Of Nursing Durg (C.G.) Q.No. Npa Street, Sector-9, Bhilai District Durg (C.G.)

2 - Rama Rajesh, W/o Mr. Rajesh Deepak, Aged About 38 Years Presently Posted As Assistant Professor, Government College Of Nursing Durg (C.G.) Plot No 195/59, Street 1b, Sec-B, Panchseel Nagar, Borsi Durg (C.G.)

3 - Sunita Verma, W/o Mr. Lalchand Verma Aged About 38 Years Presently 4. Posted As Assistant Professor, Government College Of Nursing Durg (C.G.) Vill. Harduwa, H. No. 184 Post Ghumka, Dist-Rajnandgaon

4 - Mamta Kapoor, W/o Mr. Jasbir Singh Kapoor, Aged About 39 Years Presently Posted As Assistant Professor, Government College Of Nursing Durg (C.G.) Q.No. 6 St No -9, Shastri Nagar, Bhilai District Durg (C.G.)

5 - Deepika Kumar, W/o Mr Amit Kumar, Aged About 41 Years Presently Posted As Assistant Professor, Government College Of Nursing Durg (C.G.) Al 6, Aasma City Homes Sakri, Bilaspur (C.G.)

6 - Shweta Sendur, D/o Mr. Reman Samuel, Aged About 41 Years Presently Posted As Assistant Professor, Government College Of Nursing Durg (C.G.) Q.No. A/1 Street-6, Sector-A, Phs Bosri Durg (C.G.)

7 - Kalpana Bhushan Joshi W/o Mr Bhushan Avinash Joshi Aged About 38 Years Presently Posted As Assistant Professor, Government College Of Nursing Durg (C.G.) Q.No. 16/B, Street Avenue B,, Sector-1, Bhilai District Durg (C.G.)

---**Petitioner(s)**

Versus

1 - State Of Chhattisgarh Through Secretary, Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur, Tahsil And District- Raipur (C.G.) Pin 492002

2 - Director Medical Education Directorate Old Nurses Hostel, Dks Bhawan, Parisar, Raipur (C.G.)

3 - Deputy Secretary, Health And Family Welfare Department Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur Tahsil And District- Raipur (C.G.) Pin 492002

4 - Chhattisgarh Public Service Commission Through It's Secretary, Chhattisgarh Public Service Commission, North Block Sector 19, Atal Nagar, Nawa Raipur, Chhattisgarh

5 - National Medical Commission Through It's Secretary General, Pocket-14 Sector-8 Dwarka Phase -1, New Delhi, Pin - 110077

--- **Respondent(s)**

For Petitioners	:	Mr.Manoj Paranjape, Senior Advocate assisted by Mr.Shubhank Tiwari, Advocate in WPS Nos.93/2022 & 114/2022
For Petitioners	:	Mr.Vikas Dubey, Advocate in WPS Nos.232/2022 and 436/2022
For Petitioners	:	Mr.Himanshu Pandey, Advocate in WPS No.1342/2022
For Petitioners	:	Mr.Ghanshyam Kashyap, Advocate in WPS No.7799/2022
For Respondent-State	:	Mr.Sanghrash Pandey, Government Advocate
For Respondent-CGPSC	:	Dr.Sudeep Agrawal and Mr.Anand Mohan Tiwari, Advocates
For Respondent-UOI	:	Ms.Anmol Sharma and Mr.Rishabh Dev Singh, Central Government Counsel

For Respondent-National Medical Commission	:	Mr.Venketesh Pandey, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

***Per* Ramesh Sinha, Chief Justice**

12.09.2025

1. Heard Mr.Manoj Paranjape, learned Senior Advocate assisted by Mr.Shubhank Tiwari, learned counsel for the petitioners in WPS Nos.93/2022 & 114/2022, Mr.Vikas Dubey, learned counsel for the petitioners in WPS Nos.232/2022 and 436/2022, Mr.Himanshu Pandey, learned counsel for the petitioners in WPS No.1342/2022, Mr.Ghanshyam Kashyap, learned counsel for the petitioners in WPS No.7799/2022, Mr.Sanghrash Pandey, learned Government Advocate appearing for the respondent-State, Dr.Sudeep Agrawal & Mr.Anand Mohan Tiwari, learned counsel appearing for the respondent-CGPSC, Ms.Anmol Sharma & Mr.Rishabh Dev Singh, learned Central Government Counsel of the respondent-Union of India and Mr.Venketesh Pandey, learned counsel appearing for the respondent-National Medical Commission.
2. Since common question of law and fact are involved in these writ petitions, they were clubbed and heard together and being disposed of by this common order. Leading case is **WPS No.93/2022**.

3. By way of this writ petition, the petitioners have prayed for following reliefs:-

> *"1] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, direction/directions, order/orders quashing the notification dated 10.12.2021 (Annex.P/1) issued by the Deputy Secretary, Medical Education Department and the respondent authorities may further be directed to fillup the vacant posts of Professors Medical Colleges of the State of Chhattisgarh only in accordance with Rule 6, Schedule II of the Rules of 2013.*
>
> *2] That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case."*

4. Facts of the case are that the petitioners are serving as Associate Professors in various medical colleges across the State of Chhattisgarh. Initially they were appointed as Assistant Professors and later on promoted as Associate Professors. Their grievance is identical and arises from a common cause of action, leading to the filing of this joint petition. The petitioners challenge the notification dated 10.12.2021 issued by respondent No.3, which provides a one-time relaxation for filling vacant posts of Professor through direct recruitment, contrary to the established recruitment procedure.

5. The State Government while exercising the powers conferred by proviso to Article 309 of the Constitution of India has notified/made the Rules relating to the regularization of recruitment into Chhattisgarh Medical Education (Gazetted) Services and Service

Conditions of Directorate Health Services, Health and Family Welfare Department, known as Chhattisgarh Medical Education (Gazetted) Service Recruitment Rules, 2013 (hereinafter called as 'Rules of 2013').

6. The recruitment Rules of 2013 clearly provides that the post of Professor can be filled up only by 100% promotion. It is admitted position that neither the Rules of 2013 have been amended or any amendment has been carried out to that effect, even no executive instructions have been issued by the State Government amending either Rule 6 or Schedule II of the Rules of 2013.

7. Respondent No.3 has issued the notification dated 10.12.2021 (Annexure P-1), whereby one time relaxation has been provided for filling up the vacant posts of Professors, by direct recruitment. No such amendment can be carried out under Article 309 of the Constitution of India. The State Government cannot issue a notification to overcome from the substantive rule. No amendment can be introduced or carried out to supersede the substantive Rules of 2013. The Deputy Secretary, Medical Education Department has no jurisdiction to amend the rules of 2013 by providing one time relaxation just to amend the substantive rule. The action on the part of respondent No.3 in granting relaxation is not only arbitrary, but also contrary to the Rules of 2013. Hence, this petition.

8. Mr.Manoj Paranjape, learned Senior Advocate assisted by Mr.Shubhank Tiwari, learned counsel for the petitioners in WPS

Nos.93/2022 and 114/2022 submits that the notification dated 10.12.2021 issued by respondent No.3/Deputy Secretary, Medical Education Department, permitting a one-time relaxation for direct recruitment to the post of Professor, is illegal, arbitrary and wholly without jurisdiction. The power of relaxation contained in Rule 22 of the Rules of 2013 extends only to conditions of service and not to the fields of recruitment or promotion, as settled by the Full Bench decision of the Gujarat High Court in **A.J. Patel v. State of Gujarat, AIR 1965 Guj 23**. It is a well-established principle that no amendment can be introduced by way of relaxation to override or supersede a substantive rule. He further submits that the petitioners emphasize that Rule 6 of the Rules of 2013 categorically mandates that the post of Professor shall be filled only by 100% promotion. This rule has neither been amended nor modified and therefore, cannot be nullified through an executive notification or a so-called one time relaxation. No legitimate object is sought to be achieved by such relaxation, which finds no place in the recruitment framework. The impugned notification is thus contrary not only to the Rules of 2013, but also to the constitutional guarantees under Articles 14 and 16 of the Constitution of India. He also submits that as substantive Associate Professors, the petitioners are fully eligible for promotion to the post of Professor. The settled law is that when a statute prescribes a particular manner for doing an act, it must be done in that manner alone and in no other. Since the recruitment

rules specifically stipulate 100% promotion from the cadre of Associate Professor, any deviation through a one-time relaxation is impermissible. He contended that the State Government cannot exercise Rule 22 of the Rules of 2013 to modify the substantive Rule 6 Schedule II of the Rules of 2013. The power of relaxation cannot be exercised to defeat or dilute substantive rules, nor can it be stretched to permit an amendment in disguise. If the department is allowed to proceed with direct recruitment, the petitioners' fundamental rights under Articles 14 and 16 of the Constitution of India will be directly infringed. Moreover, the impugned notification was issued under proviso to Article 309 of the Constitution of India without obtaining the concurrence of the Legislative Assembly and without placing the amendment before the House, rendering the exercise constitutionally defective. For all these reasons, the notification dated 10.12.2021 (Annexure P-1) is liable to be quashed as ultra vires, unconstitutional, and violative of the recruitment scheme framed under the Rules of 2013.

9. Mr.Vikas Dubey, learned counsel for the petitioners in WPS Nos.232/2022 and 436/2022, Mr.Himanshu Pandey, learned counsel for the petitioners in WPS No.1342/2022 and Mr.Ghanshyam Kashyap, learned counsel for the petitioners in WPS No.7799/2022 adopted the arguments advanced by Mr.Manoj Paranjape, learned Senior Advocate.

10. On the other hand, Mr.Sanghrash Pandey, learned Government

Advocate appearing for the respondent-State opposes the submissions made by learned Senior Advocate for the petitioners and submits that the writ petition seeking to quash the impugned notification dated 10.12.2021 is misconceived and devoid of merit. The petitioners, who are Associate Professors, contend that Rule 6 of the Rules of 2013 mandates 100% promotion to the post of Professor and that the impugned notification, granting a one time relaxation for direct recruitment, violates their right to be considered for promotion. The State clarifies that the notification was issued under proviso to Article 309 of the Constitution of India, the same constitutional power under which the Rules of 2013 were framed. It was necessitated by the creation of new government medical colleges and a substantial increase in sanctioned posts—242 Professors and 396 Associate Professors far exceeding the available eligible promotees. Without immediate recruitment, a severe shortage of Professors and Associate Professors would jeopardize the National Medical Commission recognition and disrupt medical education. He further submits that Rule 22 of the Rules of 2013 expressly empowers the Governor to relax or modify rules “as may appear just and proper,” which includes recruitment and promotion provisions. The petitioners’ chance of promotion remains intact; they became Associate Professors only in March 2021 and must complete three years’ service before eligibility for Professor, by which time adequate vacancies will still exist. The notification was duly approved by the

State Cabinet and constitutes a valid one time relaxation, not an impermissible amendment. All allegations of arbitrariness or lack of jurisdiction are categorically denied. The impugned notification is legal, necessary, and within the legislative competence of the State. Accordingly, the writ petition deserves to be dismissed.

11. We have heard learned counsel for the parties, perused the impugned notification and other documents appended with petition.

12. The impugned notification dated 10.12.2021 states as under:-

चिकित्सा शिक्षा विभाग
मंत्रालय, महानदी भवन, नवा रायपुर अटल नगर
अटल नगर, दिनांक 10 दिसम्बर 2021
अधिसूचना

क्रमांक एफ 3-71/2021/55.- भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य शासन, एतद्द्वारा छत्तीसगढ़ चिकित्सा शिक्षा (राजपत्रित) सेवा नर्ती नियम, 2013 में नियमों में एक बार के लिये शिथिलीकरण करते हुए निम्नानुसार उपबंध किया जाता है, भविष्य में इसे पूर्व उदाहरण नहीं बनाया जायेगा, अर्थात् :-

1. चिकित्सा शिक्षा विभाग के अधीन समस्त शासकीय चिकित्सा महाविद्यालय, शासकीय दंत महाविद्यालय, शासकीय नर्सिंग महाविद्यालय एवं शासकीय फिजियोथेरेपी महाविद्यालय में सह प्राध्यापक एवं प्राध्यापक के रिक्त पदोन्नति के पदों को छत्तीसगढ़ लोक सेवा आयोग के माध्यम से सीधी भरती से भरने हेतु एक बार की छूट प्रदान की जाती है।

2. जिन शिक्षकों ने प्रदेश के शासकीय चिकित्सा महाविद्यालय, शासकीय दंत महाविद्यालय, शासकीय नर्सिंग महाविद्यालय एवं शासकीय फिजियोथेरेपी महाविद्यालयों में संविदा पर शैक्षणिक कार्य किया है, तो उसे कार्य के प्रत्येक पूर्ण वर्ष के लिये 01 वर्ष एवं अधिकतम 10 वर्ष की छूट आयु सीमा प्रदान की जाती है।

3. प्रदेश के शासकीय चिकित्सा महाविद्यालय, शासकीय दंत महाविद्यालय, शासकीय नर्सिंग महाविद्यालय एवं शासकीय फिजियोथेरेपी महाविद्यालयों में शैक्षणिक कार्य करने के लिए प्रत्येक पूर्ण वर्ष के अनुभव के लिए 02 बोनस अंक दिये जायेंगे, किन्तु बोनस

अंकों की अधिकतम सीमा 10 अंक होगी।

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
सी.आर. प्रसन्ना, उप-सचिव

13. The core issues are:

1. Whether Rule 22 of the Rules of 2013 empowers the State to relax the method of recruitment prescribed in Rule 6 Schedule II.

2. Whether the impugned notification dated 10.12.2021 is legally sustainable.

14. Rule 6 of the Rules of 2013 states as under:-

"**6. Method of Recruitment**.- (1) Recruitment to the service, after the commencement of these rules, shall be made by the following procedure, namely;-

(a) By Direct recruitment through selection (Competitive Examination and/or Interview);

(b) By Promotion of members specified in column (2) of Schedule-IV to posts specified in column (3) of the said Schedule;

(c) By Transfer/ Deputation of persons, who hold in a substantive or 4 officiating capacity such posts in such services, as may be specified in this behalf, by the State Government.

(1) The number of persons recruited under clause (b) or clause (c) of sub-rule (1) shall not at any time exceed the percentage shown in Schedule-II of the number of duty posts as specified in Schedule-I.

(2) Subject to the provisions of these rules, the method or methods o recruitment to be adopted for the purposes of filling any particular post o posts in the

service, as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method, shall be determined on each occasion by the Government in consultation with the Commission.

(3) Notwithstanding anything contained in sub-rule (1), if in the opinion of the Government, the exigencies of the service so require, the Government may adopt such method of recruitment to the service, other than those specified in the said sub-rule, as it may, by order issued in this behalf, prescribe.

(4) At the time of recruitment to the provisions of the Chhattisgarh Lok Sewa (Anusuchit Jation, Anusuchit Janjation Aur Anya Pichhde Vargon ke Liye Arakshan) Adhiniyam, 1994 and directions (as amended) issued by the General Administration Department from time to time, shall be applicable."

15. From bare perusal of Rule 6(1)(b) of the Rules of 2013 and Schedule II, it is abundantly clear that the post of Professor will be filled up by 100% promotion (please see entry/serial No.50 of Schedule II Rule 6).

16. Rule 22 of the Rules of 2013 empowers the Governor to relax rules "in such manner as may appear just and proper", provided the case is not dealt with less favourably to the person concerned. Rule 22 of the Rules of 2013 deals with the relaxation which is quoted below for ready reference:-

"**Rule 22 Relaxation**.- Nothing contained in these rules shall be construed to limit or abridge the powers of the governor to deal with the case of any person to whom these rules apply, in such manner as many

appears the Governor to be just and proper;

Provided that, the case shall not be dealt with in any manner less favorable to him that provided in these rules."

From bare perusal of Rule 22 of the Rules of 2013, it is abundantly clear that Rule 22 cannot be stretch to the extent of superseding the substantive rules i.e. Rule 6, Schedule II.

17. The petitioners are Associate Professors and would be entitled to be considered for promotion on the post of Professor. It is well settled that consideration for promotion is a fundamental right of the employee envisaged under Article 16 of the Constitution of India.

18. The Hon'ble Supreme Court in the matter of **Union of India and another v. Hemraj Singh Chauhan and others, 2010 (4) SCC 290** held as under:-

"35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

19. If the vacant posts of Professors would be filed up by direct recruitment, the right of the petitioners to consider for promotion on the post of Professors would be deteriorated. The recruitment rules provides that the post of Professors can be filled up by 100% promotion, then no other mode can be adopted to fill up the said vacant posts by another mode that to by one time relaxation. No relaxation has been provided under the rules to modify the substantive Rule 6 Schedule II of the Rules of 2013.

20. The Supreme Court in the matter of **R.N. Nanjundappa v. T. Thimmiah and another, (1972) 1 SCC 409** reiterated that conditions of recruitment cannot be altered by executive instructions or relaxation contrary to statutory rules. Para 23 and 24 of the judgment states as under:-

> “23. It was contended on behalf of the State that under Article 309 of the Constitution the State has power to make a rule regularising the appointment. Shelter was taken behind Article 162 of the Constitution and the power of the Government to appoint. No one can deny the power of the Government to appoint. If it were a case of direct appointment or if it were a case of appointment of a candidate by competitive examination or if it were a case of appointment by selection recourse to rule under Article 309 for regularisation would not be necessary. Assume that Rules under Article 309 could be made in respect of appointment of one man but there are two limitations. Article 309 speaks of rules for appointment and general conditions of service. Regularisation of appointment by stating that notwithstanding any rules the appointment is

regularised strikes at the root of the rules and if the effect of the regularisation is to nullify the operation and effectiveness of the rules, the rule itself is open to criticism on the ground that it is in violation of current rules. Therefore the relevant rules at the material time as to promotion and appointment are infringed and the impeached rule cannot be permitted to stand to operate as a regularisation of appointment of one person in utter defiance of rules requiring consideration of seniority and merit in the case of promotion and consideration of appointment by selection or by competitive examination.

24. It was contended on behalf of the State that Rule 3 of the Mysore State Civil Services Rules, 1957 spoke of method of recruitment to be by competitive examination, or by selection, or by promotion. The method of recruitment and qualifications for each State Civil Service were to be set forth in the rules of recruitment but there were no rules until the year 1964. In 1964 the rule spoke of the Principal of School of Mines to be Class I and the method of recruitment for the Principal of School of Mines was to fill up the post by promotion from the cadre of Heads of Sections or by direct recruitment. It was said on behalf of the respondent that he was the only eligible candidate in 1964, and, therefore, his appointment was valid. This is opposed to facts. It is not a case of direct recruitment in the year 1958 or at any time. The State made rules in the year 1967 to regularise the appointment from the month of February, 1958. Again, if it were a case of direct recruitment one would expect proper materials for the direct recruitment. There should be advertisements for the post. Candidates have to be

> selected. Their respective merits would have to be considered. To say that the appellant was the only eligible candidate is to deny the rights of others to apply for such eligibility tests."

21. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See **paras 15 to 17 of Union of India and others v. Mahendra Singh [CIVIL APPEAL NO. 4807 OF 2022], decided on 25.07.2022 by the Supreme Court**) and **para 13 of Noor Mohammed v. Khurram Pasha [SLP (Criminal) No.2872 of 2022] decided on 2.8.2022**).

22. The impugned notification, by opening direct recruitment, directly infringes the petitioners' right to be considered for promotion under Article 16 of the Constitution of India. While the State may frame or amend service rules under proviso to Article 309 of the Constitution of India, such amendment must follow the procedure of framing a rule, not by issuing a mere "one-time relaxation" notification that defeats existing rules. No formal amendment to the Rules of 2013 has been made or placed before the Legislature.

23. The impugned notification dated 10.12.2021 is ultra vires the Constitution and the Rules of 2013. The State's power of relaxation under Rule 22 of the Rules of 2013 cannot override the substantive mandate of 100% promotion in Rule 6 Schedule II. Thus, Rule 22 cannot be stretched to substitute direct recruitment

in place of the mandated 100% promotion.

24. The impugned notification dated 10.12.2021, is ultra vires the Constitution and the Rules of 2013. The State's authority to grant relaxation under Rule 22 of the Rules of 2013 cannot supersede the statutory mandate of 100% promotion as stipulated in Rule 6 of Schedule II. Consequently, Rule 22 cannot be interpreted to permit direct recruitment in lieu of the prescribed 100% promotion, as this would be contrary to the explicit statutory requirement.

25. For the foregoing reasons, all the writ petitions deserve to be and are hereby **allowed** and the impugned Notification No.F-3-71/2021/55 dated 10.12.2021 (Annexure P-1) issued by respondent No.3/Deputy Secretary, Medical Education Department is hereby quashed/set-aside. The respondents are directed to fill up the posts of Professor strictly in accordance with the Rules of 2013, by promotion from eligible Associate Professors. No order as to costs.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Bablu

Head-note

The power of relaxation under Rule 22 of the Chhattisgarh Medical Education (Gazetted) Services and Service Conditions of Directorate Health Services, Health and Family Welfare Department, known as Chhattisgarh Medical Education (Gazetted) Service Recruitment Rules, 2013 is confined to conditions of service and cannot override or amend a substantive recruitment provision. An executive notification cannot defeat a statutory mandate requiring 100% promotion.