



2025:CGHC:57155-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3214 of 2024

1. Dr. Om Prakash Sharma S/o Late Nemi Chand Sharma Aged About 59 Years Labotrary Technician (Teaching Staff) Government Kamla Devi Rathi P.G. Mahila Mahavidyaliya, Rajnandgaon, District Rajnandgaon (C.G.)
2. S.N. Singh S/o Late Shri Banbihari Singh Aged About 59 Years Labotrary Technician, Government RBR NES College, Jashpur District Jashpur (C.G.)
3. Dr. Dharmendra Mahilang S/o Bihari Lal Mahilang Aged About 45 Years Laboratory Technician, Government J.P. Verma College, Bilaspur District Bilaspur (C.G.)
4. Sunil Kumar Nag S/o Late Kripa Ram Nag Aged About 45 Years Laboratory Technician, Government College, Bhanpuri, Bastar (C.G.)
5. Amit Ranjan Tigga S/o Shri Placidius Tigga Aged About 32 Years Laboratory Technician, Government Girls College, Ambikapur, District Surguja (C.G.)
6. Dileshwar Kshetriya S/o Balbhadra Kshetriya Aged About 46 Years Laboratory Technician, Government Navin College Manora, Jashpur, District Jashpur (C.G.)

... Petitioner(s)

versus

1. The State Of Chhattisgarh Through The Secretary, Higher Education Department, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur (C.G.)
2. The Commissioner, Directorate Higher Education Department, Indravati Bhawan, Naya Raipur, Atal Nagar, Nawa Raipur, District Raipur (C.G.)
3. University Grants Commission Bahadur Shah Zafar Marg, New Delhi 110002.

... Respondent(s)

For Petitioners	:	Mr. Somkant Verma and Rishi Kant Mahobia, Advocates
For Respondents No.1 : & 2/State	:	Mr. S.S. Baghel, Deputy Government Advocate
For Respondent No. 3 :	:	Mr. Dhiraj Wankhede, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

25.11.2025

1. Heard Mr. Somkant Verma and Mr. Rishi Kant Mahobia, learned counsel for the petitioners. Also heard Mr. S.S. Baghel, learned Deputy Government Advocate, appearing for the respondent No. 1 & 2/State and Mr. Dhiraj Wankhede, learned counsel, appearing for the respondent No. 3/UGC.
2. The present petition has been filed by the petitioners with the following prayers :

“10.1 That, this Hon'ble Court may kindly be pleased to issues necessary Direction/ Writ in the nature of mandamus to the respondent authorities to amend the M.P. Class III Service Recruitment and Promotion (Mahavidhyala Shakha) Rules 1974 and to create promotional avenues for the post of Laboratory Technicians within some stipulated period.

10.2 Any other relief deem fit in the present

facts and circumstances of this case may also be awarded to the petitioners alongwith the cost of the petition throughout.”

3. Brief facts of the case are that the petitioners are Laboratory Technicians working in different Colleges of the State of Chhattisgarh. They are governed by the M.P. Class III Service Recruitment and Promotion (Mahavidhyala Shakha) Rules, 1974. Petitioner No. 1 was first appointed as a Laboratory Assistant (Psychology) in Govt. Kamla Devi Mahila Mahavidyalaya, Rajnandgaon, vide order dated 07.01.1985, on a temporary ad hoc basis for a period of 89 days. Likewise, the other petitioners were also appointed as Laboratory Technicians in their respective Colleges and have been working in the said posts for the last 22–25 years on a single-cadre post. Petitioner No. 1 joined service on 07.01.1985 itself, Petitioner No. 2 joined on 11.06.1984, and Petitioner No. 6 joined on 02.07.2013. Out of a total of 146 Technicians who were regularised, most of them have retired from service without any promotion. They continued in their jobs until the year 1989, and vide order dated 31.08.1989, their services were regularised and a fresh appointment order was issued. They were regularised as Laboratory Technicians in the pay scale of 1200-40-1440-1800 and were posted in the same institutions. Since the date of regularisation, the petitioners have been working in their respective institutions as Laboratory Technicians without any dispute.

4. On 06.03.1997, the State Government issued Memo No. 18/40/95/38/2 declaring that the post of Laboratory Technician under the Higher Education Department shall be treated as a Teaching Post and the age of superannuation for these employees would be 60 years instead of 58 years. Another circular dated 19.05.1997 was also issued, declaring that the post of Laboratory Technicians would be treated as a Teaching Post, and therefore, they were entitled to vacations similar to teachers working in the institution. These facts demonstrate that the petitioners were initially appointed as Laboratory Assistants and were regularised as Laboratory Technicians in 1989, and that the State Government subsequently treated the said post as a Teaching Post.
5. Petitioner No. 1 completed his Master's Degree in Commerce in 1987. He further completed the Test of Arts in Psychology in 1991, securing First Division with 8th position in the University. He also undertook research work, and on the basis of his thesis submitted to Pt. Ravishankar Shukla University, Raipur, he was awarded a Ph.D. in Psychology on 01.08.2000. In 2008, he passed M.A. in Clinical Psychology as an additional subject.
6. The rules governing appointment to the post of Assistant Professor are the Chhattisgarh Shaikshanik Sewa (Mahavidyalayin Shakha) Bharti Niyam, 1967 (hereinafter referred to as "the Rules"). According to these Rules, the post of Assistant Professor can be filled either by direct appointment or by

promotion. The criteria for promotion are defined in Sub-rule 3 of Rule 7. Thus, the post of Assistant Professor is to be filled through both methods, and it cannot be said that the post cannot be filled by promotion.

7. While almost all levels of employees working in colleges have avenues for promotion, Laboratory Technicians have remained deprived of promotional opportunities throughout their service career. The Department has taken the stand that there is no provision for promotion of Laboratory Technicians in the Recruitment Rules, and no amendment has ever been made to provide such promotional opportunities. Even though the 1967 Rules allow for promotion, the Higher Education Department has made no effort to promote Laboratory Technicians in the last 40 years. In 1990, new Rules were framed for recruitment of Assistant Professors, due to which eligible employees were deprived of promotion.
8. On the basis of the educational qualifications mentioned above, Petitioner No. 1 is fully eligible for promotion or appointment to the post of Assistant Professor. However, their cases were never considered by the authorities. Petitioner No. 1 made a representation dated 26.04.1999 before the State of M.P., but the authorities rejected it on the ground that Assistant Professors are appointed through the Public Service Commission, that the post is Class II while Laboratory Technician is Class III, and that there is no provision for promotion from Class III to Class II.

9. It is noteworthy that the post of Laboratory Technician (pay scale 1200-1800) was above the post of Assistant Librarian (pay scale 975-1650), and Assistant Librarians are being promoted to Librarian (Class III to Class II), which contradicts the stand taken by the State.
10. The above contentions of the authorities are incorrect. As per the petitioners' knowledge, the post of Assistant Professor can be filled by promotion under the Rules. Secondly, there is no legal prohibition against promotion from Class III to Class II. The State Government has also framed the Madhya Pradesh Civil Sewa (Padonnati Ke Adhar Par Nirdharan) Niyam, 1998, which provides for such promotions.
11. After the reorganisation of the State and creation of Chhattisgarh, the petitioners submitted several representations requesting the creation of promotional avenues. However, no action was taken. Instead, vide memo dated 25.01.2002, the State informed the petitioners that there was no provision for promotion to the post of Assistant Professor, as the said post is filled by direct recruitment through the Public Service Commission. The Higher Education Department had initially recognised Laboratory Technicians as Teaching Posts. However, unlike the School Education Department—which amended its Rules to recognise equivalent posts of Lab Assistant as Teaching Posts and allowed them promotional benefits—the Higher Education Department made no such amendments.

12. If the authorities' stand is accepted, the post of Laboratory Technician becomes a non-promotional dead-end post, compelling employees to retire at the same post even after more than 40 years of service. Currently, the retirement age for Lab Technicians in Chhattisgarh is 62 years.
13. In the State of Chhattisgarh, particularly under the Higher Education Department, Laboratory Technicians have previously been promoted to the post of Accountant after passing the Account Examination, and subsequently to Chief Clerk and Registrar. Petitioner No. 1, having completed his Master's Degree (M.Com.) in 1987, possesses the highest qualification for the post of Accountant, and is therefore eligible for promotion to that post. Yet, no promotion has been granted.
14. In a welfare State, it is necessary to maintain an efficient public service system, and the State is obligated to provide promotional avenues for every category of employees. If the stand of the State is upheld, Laboratory Technicians will have no promotional avenue and will be forced to retire on the same post after 40 years of service. The petitioners submit that if a higher grade is to be given, it should be that of the next higher post, which in their case is Assistant Professor, as they perform duties akin to teaching assignments. Many technicians have also qualified NET, SET, and Ph.D.
15. The petitioners are not demanding that they be directly appointed as Assistant Professors; rather, they seek amendment of the M.P.

Class III Service Recruitment and Promotion (Mahavidhyala Shakha) Rules, 1974, to create a promotional avenue for Laboratory Technicians. Due to lack of such a provision, even Laboratory Attendants are adversely affected, as they can be promoted to Laboratory Technician only on the retirement of existing Technicians. Thus, the absence of promotional avenues for Technicians affects both Technicians and Attendants.

16. The Rules of 1974 do not contain any promotional avenue for Laboratory Technicians, due to which they have been working in the same post for the last 39 years, effectively eliminating their promotional rights. A copy of the Rules of 1974 is filed as Annexure P/15. As per the Promotion Rules, 50% of Laboratory Attendants can be promoted to the post of Laboratory Technician, but since the 1974 Rules contain no further promotional hierarchy, Laboratory Attendants also cannot benefit.
17. Petitioner No. 1 earlier filed a representation dated 06.11.2017 seeking promotion to any higher post. When the representation was not decided, he filed WPS No. 1333/2018, in which this Hon'ble Court directed the authorities to consider and decide the representation within four months.
18. In compliance with the order, the representation was rejected on 19.07.2018 on the ground that there is no provision for promotion to the post of Assistant Professor. Even thereafter, the petitioner submitted further representations dated 13.07.2022 and 11.01.2024 requesting creation of promotional avenues. However,

no action was taken. The petitioners, therefore, have no other alternative remedy but to file the present petition. Hence, this writ petition.

19. Mr. Somkant Verma, learned counsel for the petitioners submits that the petitioners adopt the averments contained in Paragraphs 8.1 to 8.31 of the petition as the grounds in support of this writ petition. In addition, it is urged that the impugned action of the State is arbitrary, malafide and violative of Articles 14 and 16 of the Constitution of India. It is contended that promotion is a normal incidence and condition of service, essential to maintain efficiency in public employment, whereas stagnation adversely affects the efficacy of the service. An employee enters service not for a mere job but for a career, and therefore, the State, being an employer under Article 12, is constitutionally obligated to create reasonable promotional avenues. The petitioners submit that although they have been extended higher pay scales, the same is merely an upgradation without change of post and therefore does not amount to promotion in law. He further submits that in a welfare State, failure to provide promotional avenues violates the legal and fundamental rights of employees. The petitioners, who have been serving as Laboratory Technicians for decades on a single-cadre post, are compelled to retire without any career progression. In contrast, in States such as West Bengal, Jharkhand and Bihar, Laboratory Technicians (designated as Demonstrators) are eligible for promotion to Lecturer or Assistant

Professor upon fulfilling prescribed qualifications. He also submits that the M.P./C.G. Class III Service Recruitment and Promotion (Mahavidyalaya Shakha) Rules, 1974 are unconstitutional to the extent that they provide no promotional channel for Laboratory Technicians, resulting in complete career stagnation for nearly four decades. Judicial precedents of the Hon'ble Supreme Court and various High Courts have consistently held that the employer is under an obligation to provide promotional avenues, particularly for employees working on isolated single-cadre posts. It is further urged that experienced employees with long years of service should be afforded an opportunity for advancement rather than being superseded by newly appointed persons with lesser experience. Promotion being a normal feature of service cannot be wholly denied. Despite repeated representations by the petitioners seeking creation of promotional avenues, the authorities have not taken any steps to amend the Rules. While almost all other categories of employees in the Higher Education Department enjoy promotional prospects, Laboratory Technicians remain deprived throughout their service. The non-existence of promotional avenues not only prejudices the petitioners but also obstructs the promotional prospects of Laboratory Attendants, who can advance only upon the creation of higher posts. He contended that the failure of the State to amend the 1974 Rules for nearly four decades, coupled with the continued stagnation of Laboratory Technicians, is arbitrary, discriminatory and violative of

constitutional guarantees. The petitioners do not seek promotion to the post of Assistant Professor; they merely seek framing or amendment of rules to provide a legitimate promotional channel to a higher post, in conformity with established constitutional and service law principles.

20. On the other hand, learned Deputy Government Advocate appearing for respondents No.1 and 2/State opposes the submissions made by learned counsel for the petitioners and submits that it is a well-settled legal position that matters relating to creation or abolition of posts, structuring or restructuring of cadres, determination of sources and modes of recruitment, and prescription of qualifications and criteria of selection fall exclusively within the domain of the employer. He further submits that the judicial forum cannot direct the creation of posts, nor can it compel the executive to amend service rules so as to provide promotional avenues. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Official Liquidator v. Dayanand and others, (2008) 10 SCC 1**, wherein a three-Judge Bench categorically held that creation and abolition of posts and restructuring of cadres lie within the exclusive executive domain. Similarly, in **Divisional Manager, Aravali Golf Club and another v. Chander Hass and another, (2008) 1 SCC 683**, the Supreme Court reiterated that the power to create posts is legislative or executive in nature and cannot be exercised by the courts. The Court expressly held that creation or sanction of posts involves

economic and administrative considerations and that courts cannot assume such powers. In view of this settled principle, the petitioners are not entitled to the relief sought, namely, a direction to the State to amend the M.P./C.G. Class III Service Recruitment and Promotion (Mahavidyalaya Shakha) Rules, 1974. It is further submitted that the grievance raised by the petitioners is fundamentally misconceived, as no financial or monetary loss has been caused to them by the alleged absence of promotional avenues. In lieu of promotion, the petitioners have been extended the benefit of time-bound higher pay scales. To substantiate this, documents evidencing the grant of time-scale benefits are annexed as **Annexure R/1** collectively. The petitioners were granted the first higher pay scale on 01.09.2001, the second on 01.09.2009, and the third on 01.09.2019. Thus, the petitioners have continued to receive financial progression throughout their service in accordance with applicable rules. As such, the writ petition deserves to be dismissed.

21. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

22. The Supreme Court in **Aravali Golf Club** (supra) considered the issue relating to creation of posts and held as under:

"15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court

cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside."

23. The principal relief sought in the present writ petition is a direction to the State Government to amend the M.P./C.G. Class III Service Recruitment and Promotion (Mahavidyalaya Shakha) Rules, 1974, so as to create promotional avenues for the post of Laboratory Technician, on the ground that the absence of such avenues has resulted in stagnation of the petitioners for more than four decades.

24. Applying the above-stated authoritative pronouncements of the Supreme Court, it becomes evident that the prayer of the petitioners seeking a mandamus to the State to amend the 1974 Rules so as to provide a promotional avenue is legally untenable. This Court cannot compel the State to create or sanction posts, nor can it mandate amendments to the statutory recruitment rules to introduce new promotional hierarchies.

25. It is further pertinent that the petitioners have not suffered any

financial loss, as the State has extended to them the benefits of time-bound higher pay scales at periodic intervals. The record demonstrates that the petitioners were granted the first higher pay scale in 2001, the second in 2009, and the third in 2019. In service jurisprudence, financial progression through higher pay scales, even in the absence of promotion, is recognised as a legitimate method adopted by the employer to address stagnation. Thus, the petitioners' assertion that they have been left without any advancement is factually incorrect.

26. While it is true that the petitioners have served for long durations in a single-cadre post, the mere absence of a promotional avenue cannot, by itself, confer a legal right to seek judicial intervention compelling the State to create new posts or modify service rules. Service jurisprudence is settled that unless the rule itself is unconstitutional on its face which has not been demonstrated here the Court cannot interfere with policy matters within the executive domain.

27. The petitioners' reliance on alleged promotional practices in other States such as West Bengal, Jharkhand, and Bihar cannot assist them, as inter-State variations in service structures do not confer enforceable rights, nor can they be used to direct this State to adopt similar structures.

28. The petitioners also rely on several representations made to the authorities. However, repeated representations cannot create a legal entitlement that is otherwise contrary to binding

constitutional and judicial principles regarding separation of powers and executive discretion in matters of cadre management.

29. Considering the above discussion, in light of the binding precedents of the Supreme Court, this Court finds no legal justification to issue any direction to the State to amend the 1974 Rules or to create promotional avenues for the petitioners.

30. Accordingly, the writ petition fails and is hereby **dismissed**. No order as to costs.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Head-note

The Court has no jurisdiction to direct the State to create or sanction posts, provide promotional avenues, or amend statutory service rules. Creation of posts, structuring of cadres, and amendment of recruitment rules fall exclusively within the executive and legislative domain.