



2026:CGHC:4105-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3004 of 2025

Bhaypal Singh Kanwar S/o Shri Keshav Singh Kanwar Aged About 38 Years Working As Tracer And Posted At Municipal Corporation Raipur, District Raipur Chhattisgarh

... **Petitioner**

versus

1 - State Of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur, District Raipur (C.G.)

2 - Director Directorate Of Urban Administration And Development Department, Atal Nagar, Raipur District Raipur Chhattisgarh

3 - Commissioner Municipal Corporation Raipur District Raipur Chhattisgarh

... **Respondent(s)**

For Petitioner(s)	: Mr. Ajay Shrivastava, Advocate.
For Respondent(s)	: Mr. Prasun Bhaduri, Deputy Advocate General
For Respondent No. 3	: Ms. Preeti Yadav, Advocate, holding the brief of Mr. Pankaj Agrawal, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

23/01/2026

1. Heard Mr. Ajay Shrivastava, learned counsel for the petitioner. Also heard Mr. Prasun Bhaduri, learned Deputy Advocate General for the

State/respondent No. 1 and 2 as well as Ms. Preeti Yadav, learned counsel for the respondent No. 3/Municipal Corporation.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks for the following relief(s):

“ (i) That, this Hon'ble Court may kindly be pleased to held schedule-I and schedule-IV of Chhattisgarh Municipal Corporation (Appointment and Condition of Service of Officers and Servants) Rules 2018 as ultra vires to the extent it eliminates post and promotional channel for Tracer.

(ii) That this Honble Court may kindly issue direction for inserting the promotional avenue in schedule-IV as was earlier in Rules 2007 or otherwise providing channel of promotion for tracer working in the Municipal Corporation and also by inserting the remaining post of Tracer in schedule-I, in the interest of justice.

(ii) Any other relief which may be suitable in the facts and circumstances of the case, may also be granted in the interest of justice.”

3. The facts, in brief, as projected by the petitioners are that the petitioner was initially appointed on the post of Tracer by order dated 10.05.2013. The petitioner successfully completed the probation period and was confirmed by order of order dated dated 07.07.2016. At the time of appointment, the petitioner's service was governed by the Chhattisgarh Municipal Corporation (Appointment Condition of Service of Officers and Servants) and Rules 2007 (for short, the Rules of 2007). As per Rules of 2007, there was provision for promotion from the post of Tracer to the post of Assistant Draftsman under schedule III, at Sr. No. 23.
4. Mr. Ajay Shrivastava, learned counsel for the petitioner submits that the State Government issued a Notification dated 03.11.2014 amending the

Rules of 2007 and providing that the 5% post of Sub Engineer (Civil, Electrical, Mechanical) will be filled from promotion by departmental examination from Tracer/Assistant Draftsman who have completed 5 years of service. In the setup issued by State Government for Municipal Corporation also there is post of Tracer. Subsequently new recruitment and condition of service Rules, namely Chhattisgarh Municipal Corporation (Appointment Condition of Service of Officers and Servants) Rules 2018 (*for short, the Rules of 2018*) was notified, in which, the post of Tracer was not mentioned and thus, its promotion channel was also absent depriving the tracer from any promotion avenue. For the post of Sub Engineer, Time Keeper and Works Assistant have been kept in the feeder cadre which is mentioned in Schedule -IV at Sr. No. 20 and for the post of Time keeper qualification of Diploma in Tracer is necessary but the Tracer are deprived from promotion and they have not kept the feeder cadre, neither there is any promotional channel as it was earlier given to them under Rules of 2007.

5. Mr. Shrivastava submits that the petitioner has made representation for the promotion and the same has been rejected on 24.02.2025 mentioning that there is no channel of promotion of Tracer and existing post of Tracer has been held as supernumerary. At the time of appointment in the prevailing rules, channel of promotion was there then in subsequent rules, the same can not be taken away. The Hon'ble Apex Court, in catena of decisions has held that the employee cannot be left without promotion and they should have proper promotional avenue in the service career to avoid any stagnation. Hence Schedule-I and Schedule-IV of Chhattisgarh Municipal Corporation (Appointment and Condition of Service of Officers and Servants) Rules 2018 may be declared ultra vires to the extent it eliminates post of Tracer and

promotional channel for Tracer and direction may be issued for providing promotional channel for Tracer as was in earlier Rules of 2007.

6. Mr. Prasun Bhaduri, learned Deputy Advocate General appearing for the State/respondent No. 1 and 2 submits that the contentions advanced by the petitioner are without sum and substance and the petition is devoid of merits and liable to be dismissed. It is a settled principle laid down by catena of judgments passed by the Hon'ble Supreme Court, that the Rules made under the proviso to Article 309 of the Constitution of India being legislative in character cannot be struck down merely because the Courts think that they are not reasonable, they can be struck down only on the grounds upon which a legislative measure can be struck down. The only test that that such Rule has to pass is that of Articles 14 and 16 of the Constitution of India. Further, it has been held that in a situation of manifest arbitrariness only, a Rule can be held to be ultra vires. The Rules of 2018 have been framed by the competent authority in exercise of its delegated legislative powers, after due deliberation and consultation with all relevant stakeholders. The rules are statutory in nature and carry the presumption of constitutionality, which cannot be rebutted merely on the basis of individual inconvenience or career stagnation. It is quite important to mention here that there exist the strong presumption of constitutionality in favour of legislation which cannot be disturbed unless some strong violation of fundamental or legal rights as shown. In the present case the petitioner has assailed the non-grant of promotion on the ground that the applicable rules do not prescribe the eligibility in his favour. The challenge to the said rules is misconceived, baseless and devoid of any legal foundation. The grievance of the petitioner stems solely from his ineligibility for promotion under the existing statutory framework, which by itself does not constitute a

violation of any fundamental or legal right. It is trite law that the promotion is not a fundamental right, and the petitioner cannot claim promotion as a matter of right contrary to the applicable service rules.

7. Mr. Bhaduri submits that the appointment of the petitioner on the post of Tracer was made in accordance with the Rules of 2007. According to the Rules of 2007, the post of Tracer was 100% direct recruitment post. As per the Rules of 2018, no promotional avenue has been prescribed for the post of Tracer and as per the order dated 12.09.2016 (Annexure P/7) issued by the State Government, Department of Urban Administration and Development, the setup for Municipal Corporation, Raipur has been sanctioned, where, one supernumerary post of Tracer has been sanctioned, where, the appointment of the petitioner was made. It would be pertinent to submit here that the petitioner has been granted the benefit of time pay scale by the respondent authority. It is settled law of the land that making of service conditions to its employee and ladder for promotions in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department, is the prerogative of the employer mostly pertaining to the policy making field. Further, the Hon'ble Supreme Court has held that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds, viz. (a) Lack of legislative competence to make the subordinate legislation; (b) Violation of fundamental rights guaranteed under the Constitution of India; (c) Violation of any provision of the Constitution of India; (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act; (e) Repugnancy to the laws of the land, that is, any enactment, and; (f)

Manifest arbitrariness/ unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules). The case of the petitioner does not come any of the category therefore he is not entitled for any relief. The petitioner has failed to point out that any vested right under Article 14 and 16 of the Constitution of India has been violated by the new set of rules.

8. Ms. Preeti Yadav, learned counsel appearing for the respondent No. 3/Municipal Corporation, while making similar submissions as has been advanced by learned State counsel, submits that the petitioner is challenging the Rules of 2018, primarily on the ground that the said Rules have curtailed or closed the promotional avenues available to him. The sanctioned set-up dated 12.09.2016, which clearly reflects that the post of Tracer has been reclassified as a Statistical post. In view of this reclassification, the petitioner cannot claim promotion to the post of Sub Engineer or any other technical post, as such promotion would be contrary to the existing structure and classification. The principal ground of challenge in the writ petition pertains to the constitutional validity of the aforesaid Rules of 2018. In this context, it is submitted that the said Rules have been framed by the competent authority in exercise of its delegated legislative powers, after due deliberation and consultation with all relevant stakeholders. The rules are statutory in nature and carry the presumption of constitutionality, which cannot be rebutted merely on the basis of individual inconvenience or career stagnation. The petitioner has failed to demonstrate any arbitrariness, illegality, or violation of constitutional or legal rights in the framing or implementation of the Rules of 2018. The challenge is based merely on individual hardship and loss of promotional opportunity, which does not render the Rules unconstitutional. It is settled law that a statutory provision cannot be

struck down solely on the ground that it operates to the disadvantage of a particular employee. The petitioner's grievance, being rooted in personal dissatisfaction and not supported by any infringement of legal or fundamental rights, does not warrant interference by this Hon'ble Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India. Hence, she prays that this petition may be dismissed.

- 9.** In response, relying on the rejoinder filed, Mr. Shrivastava further submits that the petitioner was appointed on the post of tracer by order dated 10.05.2013 under the Rules of 2007 and as per this Rules, there was provision of promotion from the post of Tracer to the post of Assistant Draftsman and further State Government has issued notification on dated 03.11.2014 amending the Rules of 2007 providing that 5% post of Sub Engineer will be filled from Departmental promotion from post of Tracer/Assistant Draftsmen. Subsequently new recruitment rules i.e. Rules of 2018 has been notified in which the post of Tracer has been abolished and the petitioner has been totally deprived from consideration for promotion, which is contrary to the judgment of Hon'ble Supreme Court and also violative of Articles 14 of the Constitution of India.
- 10.** We have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
- 11.** The limited issue that arises for consideration before this Court is whether the complete absence of any promotional avenue for the post of Tracer under the Rules of 2018, resulting in total career stagnation of the petitioner, warrants interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.
- 12.** It is well settled that although promotion is not a fundamental right, an employee has a right to be considered for promotion in accordance with

the applicable rules and cannot be subjected to absolute stagnation for the entire length of service. The Hon'ble Supreme Court, in a catena of decisions, has consistently held that complete denial of promotional avenues is arbitrary and violative of Article 14 of the Constitution of India.

- 13.** In the present case, it is not in dispute that at the time of appointment of the petitioner on the post of Tracer under the Rules of 2007, a clear promotional channel was available, first to the post of Assistant Draftsman and thereafter to the post of Sub Engineer by way of amendment dated 03.11.2014. It is also not in dispute that by virtue of the Rules of 2018, the post of Tracer has neither been included in Schedule-I nor provided any feeder cadre status under Schedule-IV, thereby leaving the petitioner with no avenue of promotion whatsoever. Granting the petitioner time pay scale would only grant him financial benefit but no upliftment in service career. While it is true that the rule-making authority has the power to frame, amend or repeal service rules, such power cannot be exercised in a manner which results in complete stagnation of an employee without any promotional prospects for the entire span of service. The respondents have failed to justify as to how similarly situated employees possessing technical qualifications are provided promotional avenues, whereas the petitioner has been totally excluded from consideration.
- 14.** This Court is conscious of the settled legal position that policy decisions ordinarily do not warrant judicial interference. However, where such policy results in manifest arbitrariness and hostile discrimination, the constitutional Courts are duty bound to step in to ensure fairness and equality in public employment.
- 15.** Considering the totality of facts and circumstances of the case, this Court

is of the considered opinion that the petitioner cannot be left remediless and subjected to perpetual stagnation merely due to omission of the post of Tracer in the Rules of 2018. At the same time, besides holding *Schedule-I and Schedule-IV of the Rules of 2018 to the extent it eliminates post and promotional channel for Tracer, as ultra vires*, ends of justice would be met by issuing appropriate directions to the respondent authorities to consider framing suitable rules or policy providing promotional avenues to the similarly situated employees holding the post of Tracer, as that of the petitioner.

16. The respondent authorities are directed to examine the grievance of the petitioner and take appropriate steps to frame suitable rules/policy or provide an alternative promotional avenues within a period of six months from the date of receipt of a copy of this order.
17. Accordingly, the writ petition is **allowed** to the extent indicated hereinabove. No order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

Ordinarily, in matters relating to policy decision, the Courts do not interfere. However, where such policy results in manifest arbitrariness and hostile discrimination, the constitutional Courts are duty bound to step in to ensure fairness and equality in public employment.

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