

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 141 of 2024**

Vipin Kumar Shrivastava, S/o Late Shri Jagannath Prasad, Aged about 75 years, Retired Superintending Engineer, At O/o Chief Engineer, Mahanadi Godawari Basin, Raipur, District Raipur (CG) Presently R/o E-6, 105, Arera Colony, Bhopal, District Bhopal (MP)

**---- Appellant****Versus**

State of Chhattisgarh, Through The Secretary, Department of Water Resources, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur (CG) now Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District Raipur (CG)

**---- Respondent**

Cause-title taken from Case Information System

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For Appellant : Mr. K. Rohan, Advocate

For Respondent /State : Mr. Y.S.Thakur, Additional Advocate General

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**Hon'ble Shri Ramesh Sinha, Chief Justice****Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****28/03/2024**

1. Heard Mr. K.Rohan, learned counsel for the appellant. Also heard Mr.Y.S.Thakur, learned Additional Advocate General for the respondent/State.
2. The appellant has filed this writ appeal against the order dated 01.02.2024 passed by the learned Single Judge in Writ Petition (S) No. 6194/2011 by which the learned Single Judge has dismissed the writ petition filed by the writ petitioner / appellant herein.

3. Brief facts necessary for disposal of this writ appeal are that the writ petitioner was initially appointed as Junior Engineer in Water Resources Department vide order dated 6.1.1975 and promoted to the post of Assistant Engineer on 23.1.1979 and thereafter, promoted to the post of Executive Engineer vide order dated 17.4.1998. On 9.9.2008 the writ petitioner was lastly promoted to the post of Superintending Engineer and he retired from the said post w.e.f. 30.04.2010. In the gradation list as on 1.4.2009 published by respondent No.1 of the Superintending Engineers, name of the writ petitioner appeared at Sl.No.14 Annexure P/2 of writ petition. However, vide order dated 31.7.2009 one Mr. BL Roy, Superintending Engineer, who was junior to the writ petitioner as his name appears in the gradation list at Sl.No.15, was promoted to the post of Chief Engineer, ignoring the seniority of the writ petitioner in a discriminatory manner. Hence the petitioner filed a writ petition i.e. WPS No.113/2010 in which after issuance of notices, the respondent authorities assured the writ petitioner for consideration of his name for promotion after withdrawal of the writ petition. Therefore, the petitioner withdrew the said petition but even then he was not granted promotion. Thereafter, he has filed the writ petition.
4. By the impugned order, the learned Single Judge has dismissed the writ petition filed by the writ petitioner / appellant herein. Hence, this writ appeal.
5. Mr.K. Rohan, learned counsel for the appellant submits that the learned Single Judge did not appreciate the fact that the appellant / writ petitioner in the writ petition took the specific and categorical

stand that the eligibility criteria for promotion to the post of Chief Engineer from the post of Superintending Engineer, as per the Chhattisgarh Irrigation Engineering and Geological Service (Gazetted) Recruitment Rules, 1968 is five years experience on the post of Superintending Engineer. Learned Single Judge did not appreciate the fact that the appellant / writ petitioner also took a specific plea that two other officers who were holding the substantive post of Superintending Engineer and who were about to superannuate from service were given the charge of the promotional post i.e. Chief Engineer, ignoring the appellant herein. The learned Single Judge did not appreciate the fact that the Chhattisgarh Public Service Promotion Rules, 2003 would be applicable in consideration of the candidates falling in the zone of consideration for promotion from the post of Superintending Engineer to the post of Chief Engineer. He further submits that learned Single Judge did not appreciate the fact that as per the Departmental Promotion Committee (DPC) proceedings, five posts were earmarked for Unreserved Category, one post for Schedule Tribe and one post for Schedule Caste. Thus, there were total 07 posts of Chief Engineer as per the Reservation Roster. The learned Single Judge did not appreciate the fact that the Departmental Promotion Committee specified that the criteria for promotion to the post of Chief Engineer would be merit-cum-seniority and usually the ACR's of last two years out of the five years should be "very good". Thus, from the recommendations of the DPC, it is evident that the appellant and all other officers (except one) were fulfilling and

having the requisite essential criteria and meeting the benchmark as required for promotion to the post of Chief Engineer. He also submits that the learned Single Judge did not appreciate the fact that the date of superannuation for the appellant herein was 30.04.2010 and that is the only reason accorded by the DPC for not considering the case of the appellant herein for promotion to the post of Chief Engineer is that the requisite number of officers to be promoted to the post of Chief Engineer is available, therefore, the appellant's name/candidature is not being considered for being promoted to the post of Chief Engineer. The learned Single Judge did not appreciate the overall tenure of the recommendations made by the DPC wherein the name of the appellant herein was not considered owing to the misconception that the appellant herein would superannuate on 31.05.2009 whereas the actual date of superannuation of the appellant herein would be 30.04.2010. Furthermore, from the overall material brought on record, it is evident that Shri B.L. Rai did not possess the requisite eligibility criteria prescribed for promotion to the post of Chief Engineer and thus, the recommendation made in his favour by the Departmental Promotion Committee was erroneous and thus liable to be quashed and set aside. As such, the writ appeal deserves to be allowed and the impugned order passed by the learned Single Judge deserves to be set aside.

6. On the other hand, Mr.Y.S.Thakur, learned Additional Advocate General appearing for the respondent/State supports the impugned order and submits that the learned Single Judge considering the

material available on record and the documents appended with writ petition has dismissed the writ petition filed by the appellant herein which warrants no interference.

7. We have perused the impugned order and other documents appended with writ appeal.
8. From perusal of the impugned order, it transpires that the learned Single Judge has held that the petitioner's name was not considered due to non-availability of promotional post. It is not the case of the petitioner that any officer junior to him of the unreserved category was promoted to the post of Chief Engineer. Learned Single Judge has further held that it is evident from minutes of the meeting of DPC that there were total seven posts of Chief Engineer (Civil) – five posts for unreserved category, one post for scheduled caste category and one for scheduled tribe category. From S.No.15 of the minutes of DPC, it is apparent that name of Shri SP Sen Gupta, Shri GPS Baghel, Shri ML Bani and Shri SB Soni, who were over and above in seniority to the petitioner, were also not considered due to non-availability of promotional post. Moreover, the petitioner retired on 30.04.2010 whereas he filed writ petition on 14.10.2011 stating that after retirement, he shifted to Bhopal (MP) with his family and on account of illness, he could not come to Bilaspur for filing petition and before retirement, no representation was filed by him for redressal of his grievance.
9. Considering the arguments advanced by the learned counsel for the parties, perusing the pleadings made in this writ appeal, further considering the material available in writ petition and documents

attached with writ petition and also considering the findings recorded by the learned Single Judge, we are of the considered opinion that the learned Single Judge has not committed any illegality, irregularity or jurisdictional error in dismissing the writ petition filed by the writ petitioner / appellant herein warranting interference by this Court.

10. Accordingly, the writ appeal being devoid of merit is liable to be and is hereby dismissed. No cost(s).

Sd/-

**(Ravindra Kumar Agrawal)**  
**Judge**

Sd/-

**(Ramesh Sinha)**  
**Chief Justice**

Chandra