



2025:CGHC:8625-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WA No. 124 of 2025**

Sailesh Sharma S/o. Prahlad Sharma

... Appellant(s)**versus**

1. State of Chhattisgarh Through The Secretary, Urban Administration
And Development Department, Mantralaya,

2. Chairman Chhattisgarh Professional Examination Board,

...Respondent(s)

For Appellant	:	Mr. Rajeev Kumar Dubey and Ms. Maya Chaturvijani, Advocates.
For Respondent/State	:	Mr. S.S. Baghel, Deputy Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****19.02.2025**

1. Heard Mr. Rajeev Kumar Dubey, learned counsel for the appellant along with Ms. Maya Chaturvijani, learned counsel. Also heard Mr. S.S. Baghel, learned Deputy Government Advocate, appearing for the State.

2. The present intra Court appeal has been filed by the appellant against the order dated **29.08.2024** passed by the learned Single Judge in **WPS No. 3709 of 2019 (*Shailesh Sharma vs. State of Chhattisgarh & Another*)**, whereby the learned Single Judge has dismissed the writ petition filed by the appellant/writ petitioner herein.

3. Brief facts of the case are that an advertisement for 57 posts of Sanitary Inspector was issued by the Directorate, Urban Administration Department, Chhattisgarh on 16.02.2018 pursuant to the Chhattisgarh Nagar Palik Nigam (Adhikariyon Aur Karmchariyon ki Niyukti tatha Sewa ke Nibandhan evam Shartein) Niyam, 2018 (for short, 'Rules of 2018'); Chhattisgarh Nagarpalika Sewa (Vetanman evam Bhatta) Niyam, 1967 (for short, 'Rules of 1967'); Chhattisgarh Nagarpalika Karmchari (Bharti tatha Sewa Shartein) Niyam, 1968 (for short, 'Rules of 1968') and subsequent circulars and instructions issued from time to time. The last date for submission of the online application form was 07.03.2018. The appellant was participated in the written examination conducted by the Chhattisgarh Professional Examination Board on 17.09.2018. A provisional select list was published by respondent No. 1 on 05.10.2018 and thereafter, Model Code of Conduct for State Assembly elections came into force from 06.10.2018 till 24.12.2018. Chief Election Officer vide order dated 22.11.2018 granted permission to the State to fill up the posts of Sanitary Inspector during the currency of Model Code of Conduct. Respondents called candidates for verification of documents and thereafter, a list of eligible and ineligible candidates was published. Respondent No. 1 vide order dated 08.01.2019 stayed the selection process for the posts of Accountant, Sanitary Inspector & Revenue

Inspector. WPS No. 2403 of 2019 was filed before this Court which was disposed off on 03.04.2019 and respondents therein were directed to complete the selection process within 90 days from the date of receipt of a copy of such order. On 07.05.2019, a decision was taken to issue appointment orders to the selected candidates within 30 days. The department issued appointment orders in favour of Ajay Barik and Durgesh Kumar Sahu on 31.05.2019 & 02.08.2019, respectively. Name of the petitioner was not in the select list and no waiting list was prepared by the department, but the petitioner is claiming appointment to the post of Sanitary Inspector on the ground that out of a total of 57 posts, 55 posts are still lying vacant.

4. Learned counsel for the appellant submits that as the 55 candidates were declared ineligible for the appointment, the respondent-State should have to proceed to for the document verification from the list of eligible candidates who have clear the written-test and were fully eligible for consideration of their candidature for the process of document verification at least to the tune of 1:2 ratio as the Rules of 2018 and thereon. He also submits that the respondent-Department had refused to recruit the petitioner into the said post inspite of the fact that the merit list was alive and valid. According to the advertisement, the validity of selection list was for the one year which was further extended for the period of 06 months upto 10.04.2020. Being aggrieved by the said fact, the petitioner had approached this Court by way of filing writ petition bearing WPS No. 3709 of 2019 and on 29.08.2024, the learned Single Judge dismissed the said petition on the ground that as there is no provision to prepare waiting list in the relevant recruitment rules governing the appointment of the

petitioner, therefore, the petitioner has no vested right to be appointed into the said post of Sanitary Inspector.

5. It is further submitted by the learned counsel for the appellant that the learned Single Judge in the instant case has based the finding on the fact that there is no vested right for the person in waiting list to get appointment, however, the case remains that the person who were reflected in the selection list were not having the requisite qualification to get appointed, therefore, the duty was upon the respondent authority to include the person having the requisite qualification into the select list. Therefore, the action of the respondent authorities is totally illegal and perverse which requires intervention of this Court. He would submit that the learned Single Judge while considering the case has failed to consider various relevant points. The department and respondent authorities acted in total contravention of law governing the field and the appellant cannot be made liable to suffer for fault on part of the respondent State authorities.

6. Learned counsel for the appellant states that for appointment of Sanitary Inspector, the respondent have committed grave error by sending name of candidates as per order of merit of marks obtained and not by verifying the eligible candidates in compliance of mandate under the Rules of 1968 and Rules of 2018. Thus, the fallacy has resulted in debarring and ousting of eligible candidates by keeping in list the ineligible candidates. He further states that the Rules of 1968 as amended by notification dated 10.03.2017 mandates sending the name of selected candidates. Thereby in total of 23 post for Municipal Council and Nagar Panchayat only one appointment was made and despite the appellant

being eligible the remaining 22 posts are lying vacant. Similarly for recruitment in Municipal Corporation as per the governing Rules of 2018 which mandates sending names twice the number of vacancy which also has not been complied with.

7. It is further contended by the learned counsel for the appellant that the learned Single Judge ought to have considered the fact that the person who were having the requisite qualification can only be placed into the final selection list and it is not open for the respondent authorities to arbitrarily place the persons into final selection list according to their whims and fancies. He also contended that the learned Single Judge has failed to consider the judgment rendered by the Hon'ble Supreme Court in ***Mukul Kumar Tyagi vs. State of U.P.***, reported in ***(2020) 4 SCC 86***, whereby the Hon'ble Supreme Court in paragraph 68 held as under:

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Therefore, from the reading of above judgment it is very much clear that the employer has duty to scrutinize that whether the candidates have required qualification before putting them into the selection list.

8. Learned counsel for the appellant would submit that the appellant has the requisite qualification, therefore, he must has been placed in the waiting list at the first place and he can only be replaced by the person having the requisite qualification. He further submits that the appellant where meritorious and eligible for appointment to the post of Sanitary Inspector and he ought to has been appointed looking to his overall merit and rank in his particular category. He also submits that no waiting list was prepared which is contrary to Chhattisgarh Municipal (Executive/Engineering/Health) Services, Recruitment & Conditions of Service of Rules, 2017 (for short, 'Rules of 2017') which deals with the procedure of recruitment. He argues that Rule 12 of the Rules of 2017 deals with a list of candidates recommended by the Committee. Sub-Rule (4) expressly states that “,

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.” He further argues that there were 57 posts of Sanitary Inspector, but only 02 candidates were appointed by respondent No. 1 and no waiting list was prepared. He also argues that according to the Rules of 2017, a select list of 114 candidates ought to have been prepared by the respondents. He contends that the appellant in the overall merit list as well as the category-wise merit list, therefore, the authorities should have considered his claim for appointment. Hence, the order passed by the learned Single Judge dated 29.08.2024 is untenable in the eyes of law and deserves to be quashed.

9. On the other hand, learned State counsel submits that the learned Single Judge after considering all the aspects of the matter has rightly dismissed the writ petition filed by the appellant/writ petitioner, in which no interference is called for. He further submits that the advertisement dated 16.02.2018 was specifically issued in terms of Rules of 2018; Rules of 1967 and Rules of 1968 and there is no mention in the Rules of 2017 as relied on by the appellant. He would submit that there were a total of 57 posts of Sanitary Inspector in various Municipal Corporations and Municipalities out of which 38 posts were reserved for the UR category; 11 posts for the ST category; 3 posts for the SC category and 5 posts for the OBC category. He also submits that the reservation for women was as follows: 1 post under the UR category and 1 post under the ST category. He argues that the appellant was not in a position to secure appointment

as his position in the overall merit list was much below. He further argues that according to the Rules of 2018, there is no provision to prepare a waiting list. He has referred to the judgment rendered by the Hon'ble Supreme Court in the matter of ***Vallampati Sathish Babu vs. State of Andhra Pradesh & Ors.***, reported in ***(2022) 13 SCC 193*** before the learned Single Judge, wherein Hon'ble Supreme Court held that if there is no such provision in the rules, there is no need to prepare wait list.

10. We have heard learned counsel for the parties and perused the impugned judgment and materials available on record.

11. In the present case, there were 57 posts of Sanitary Inspector according to the advertisement dated 16.02.2018 and number of vacancies for each category has already been mentioned in the above paras. The position of the appellant is also described above. In the Rules of 2017, cited by appellant, there is a provision to prepare a wait list according to Rule 12(4) of the Rules of 2017. But, the advertisement was not issued according to those rules and the same is evident from the advertisement. The advertisement was issued according to the Rules of 2018, Rules of 1967 and the Rules of 1968, therefore, the contention made by the learned counsel for the appellant regarding the preparation of the wait list is misconceived.

12. The learned Single Judge also relied on the judgment passed by the Hon'ble Supreme Court in the matter of ***Vallampati Sathish Babu*** (supra), in which Hon'ble Supreme Court had categorically held that in the absence of any provision for the preparation of a wait list, a candidate claiming to be next on the merit list cannot be granted appointment.

Relevant paras of the aforementioned judgment are reproduced herein below:-

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13. While passing the impugned order learned Single Judge held that the name of the appellant where not in the select list and further the fact that the no wait list was prepared as there is no provision under the Rules and further considering the law laid down by the Hon'ble Supreme Court

in the matter of ***Vallampati Sathish Babu*** (supra), learned Single Judge has rightly dismissed the writ petition.

14. The judgment relied by the learned counsel for the appellant is not applicable in the present case.

15. Considering the pleadings made in writ appeal, submissions advanced by the learned counsel appearing for the parties and also considering the findings recorded by the learned Single Judge while dismissing the writ petition filed by the appellant/writ petitioner, we are of the considered opinion that the learned Single Judge has not committed any illegality, irregularity or jurisdictional error warranting interference by this Court.

16. Accordingly, the present writ appeal being devoid of merit is liable to be and is hereby **dismissed**.

**Sd/-
(Ravindra Kumar Agrawal)
Judge**

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