



CGHC010210222026



2026:CGHC:34887-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WA No. 636 of 2026**

Ramesh Kumar Banjare S/o Nand Kumar Banjare Aged About 26 Years
R/o Narra Post- Barhi Thasil District Balod (C.G.)

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

1. State of Chhattisgarh Through Secretary Geology And Mining Department Mantralaya Mahanadi Bhawan Nawa Raipur Atal Nagar District Raipur (Chhattisgarh) District Raipur Chhattisgarh
2. Director Directorate Geology And Mining Department Indrawati Bhawan Nawa Raipur Atal Nagar District Raipur (Chhattisgarh) District Raipur Chhattisgarh
3. Ku. Prerana Sen D/o Niranjana Singh Sen C/o Anupam Jofer Near New Bus Stand Kankalin Para Kanker (Chhattisgarh) District Kanker Chhattisgarh.

...Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Ashok Patil, Advocate.
For Respondent/State	:	Mr. Prasun Bhaduri, Deputy Advocate General.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

10.08.2026

1. Heard Mr. Ashok Patil, learned counsel for the appellant. Also heard Mr. Prasun Bhaduri, learned Deputy Advocate General, appearing for the State/respondents No. 1 & 2.
2. The present intra-Court appeal has been preferred by the appellant/writ petitioner against the order dated **20.04.2026** passed by the learned Single Judge in **WPS No. 1383 of 2021** (***Ramesh Kumar Banjare vs. State of Chhattisgarh & Others***), whereby the writ petition filed by the appellant came to be dismissed.
3. Learned counsel for the appellant submits that the appellant is a citizen of India and had preferred the writ petition challenging the order dated 10.08.2018, whereby respondent No.2, the Recruitment Officer, appointed respondent No.3 to the post of Assistant Chemist. It is submitted that the appointment of respondent No.3 was made in disregard of the terms and conditions of the advertisement dated 30.06.2017 as well as the applicable Recruitment Rules. Learned counsel submits that the advertisement specifically prescribed that, although the requisite qualification for the post of Assistant Chemist was a Post-Graduate Degree in Organic Chemistry or Analytical Chemistry, preference/weightage was to be given to a candidate possessing a

B.Sc. Degree with Geology as a subject. The said condition was also consistent with the Chhattisgarh Geology and Mining, Class III (Ministerial and Non-Ministerial) Service Recruitment Rules, 2008.

4. Learned counsel for the appellant further submits that the appellant possessed the requisite qualifications prescribed in the advertisement, having completed M.Sc. in Organic Science and B.Sc. with Geology as a subject, and accordingly applied for the post of Assistant Chemist. It is submitted that respondent No.3, though possessing an M.Sc. in Analytical Chemistry, did not possess a B.Sc. Degree with Geology as a subject. Therefore, the appellant, being a candidate possessing the additional qualification specifically contemplated in the advertisement and the Recruitment Rules, was entitled to be given the prescribed preference/weightage over respondent No.3 while considering the respective candidatures. He further contended that the Selection Committee prepared the merit list primarily on the basis of marks obtained in Post-Graduation, wherein the appellant was placed at Serial No.10 having secured 75.88 marks, whereas respondent No.3 was placed at Serial No.2 having secured 82.40 marks. However, according to learned counsel, the mere fact that respondent No.3 had secured higher marks in Post-Graduation could not, by itself, justify ignoring the specific preference prescribed in the advertisement and the Recruitment Rules in favour of candidates possessing a B.Sc. Degree with Geology as a subject. It is submitted that the appellant had specifically raised an objection during the recruitment process against consideration of the candidature of

respondent No.3 on the ground that she did not possess the prescribed/preferred qualification of B.Sc. with Geology. However, the said objection was rejected by the competent authority on the ground that respondent No.3 was higher in merit.

5. Learned counsel for the appellant would submit that the approach adopted by the recruiting authority effectively rendered the condition relating to preference for candidates possessing B.Sc. with Geology meaningless. According to learned counsel, once the recruiting authority had issued an advertisement prescribing a particular eligibility condition and preference, the selection process was required to be conducted strictly in accordance with the terms of the advertisement and the applicable statutory Recruitment Rules. The recruiting authority could not subsequently alter, ignore or dilute the prescribed criteria in a manner which materially affected the consideration of the candidates. He also contended that the recruitment process commenced with issuance of the advertisement dated 30.06.2017 and was required to culminate in appointments being made in accordance with the criteria disclosed to all eligible candidates. It is argued that the candidates participated in the selection process on the legitimate expectation that their candidature would be assessed in accordance with the conditions published in the advertisement. Any departure from the notified criteria after commencement of the selection process would amount to an impermissible alteration of the rules of the game after the process had commenced.

6. In support of the aforesaid submission, learned counsel for the appellant places reliance upon the judgment of the Hon'ble Supreme Court in ***Tej Prakash Pathak v. Rajasthan High Court***, reported in ***2024 SCC OnLine SC 3184***, wherein the larger Bench of the Hon'ble Supreme Court considered the question as to whether the criteria governing recruitment can be changed after commencement of the recruitment process. Learned counsel submits that the Hon'ble Supreme Court has reiterated the principle that the selection criteria cannot ordinarily be altered after commencement of the recruitment process, unless such alteration is permissible under the extant statutory rules or is otherwise authorised by the terms of the advertisement, provided that the advertisement itself is consistent with the governing rules. The underlying principle, as submitted by learned counsel, is that the recruitment process must be transparent, predictable and fair to all participating candidates and the authority cannot change the criteria in the midst of the process in a manner that prejudices candidates or confers an unintended advantage upon others.

7. Learned counsel for the appellant also submits that the aforesaid principle squarely applies to the present case because the advertisement dated 30.06.2017 had expressly disclosed the preference to be given to candidates possessing a B.Sc. Degree with Geology as a subject, and the appellant admittedly possessed such qualification. Therefore, the Selection Committee was required to take the said preference into consideration while determining the comparative merit and suitability of the candidates. According to learned

counsel, ignoring such preference merely because respondent No.3 had obtained higher marks in Post-Graduation amounted to departing from the notified selection criteria. He further submits that the action of the respondents is also contrary to the constitutional guarantee of equality of opportunity in matters of public employment under Article 16 of the Constitution of India and the guarantee against arbitrary State action under Article 14. It is argued that public recruitment must not only be fair but must also appear to be fair and transparent. A candidate who participates in a recruitment process on the basis of the conditions contained in the advertisement is entitled to have his candidature considered in accordance with those conditions. Any deviation from the notified criteria, particularly when it affects the comparative consideration of candidates, would offend the principles of fairness, transparency and non-arbitrariness.

8. Learned counsel for the appellant further stated that the principle of equality in public employment also requires that similarly situated candidates be considered in accordance with the same criteria and that no candidate should receive an advantage by reason of departure from the notified conditions. In this regard, reliance is also placed upon ***Bhagwan Dass v. State of Haryana***, reported in **(1987) 3 SCR 714**, wherein the Hon'ble Supreme Court dealt with the constitutional requirement of equality and non-discrimination in matters of public employment. Learned counsel submits that the decision reinforces the broader constitutional principle that State action in the matter of public employment must conform to the requirements of fairness and equality

and cannot be based upon an arbitrary or discriminatory criterion.

9. It is further submitted by the learned counsel for the appellant that the impugned judgment passed by the learned Single Judge has failed to properly appreciate the distinction between the marks obtained in Post-Graduation and the specific preference prescribed under the advertisement and the Recruitment Rules. According to learned counsel, the learned Single Judge has proceeded substantially on the basis of the higher marks obtained by respondent No.3 without examining whether the recruiting authority had correctly applied the notified preference for candidates possessing B.Sc. with Geology. The material question, therefore, was not merely who had secured higher marks in Post-Graduation, but whether the Selection Committee had followed the complete selection criteria prescribed by the advertisement and the applicable Recruitment Rules.

10. Learned counsel for the appellant consequently submits that the appointment of respondent No.3, having been made without giving effect to the preference prescribed for candidates possessing B.Sc. with Geology, cannot be sustained in law. It is submitted that the appellant's objection was based upon a specific condition contained in the advertisement and was not a belated challenge to the recruitment process. The appellant had raised the issue during the recruitment process itself and had consistently asserted that respondent No.3 did not possess the qualification for which preference was specifically contemplated.

11. Learned counsel therefore submits that the impugned judgment and order passed by the learned Single Judge deserves to be set aside, and the respondents ought to be directed to reconsider the candidature of the appellant and respondent No.3 strictly in accordance with the terms of the advertisement dated 30.06.2017 and the applicable Recruitment Rules, particularly the provision relating to preference/weightage for candidates possessing a B.Sc. Degree with Geology as a subject. It is accordingly prayed that the appeal be allowed and appropriate consequential relief be granted in favour of the appellant, along with costs throughout.

12. *Per contra*, learned State counsel submits that the learned Single Judge has committed no error in dismissing the writ petition warranting interference in the present appeal. He would submit that respondent No.3 possessed the essential qualification prescribed for the post of Assistant Chemist, namely, M.Sc. in Analytical Chemistry, and had secured 82.40 marks as against 75.88 marks secured by the appellant. The preference for a candidate possessing B.Sc. Degree with Geology was only a preferential qualification and could not be treated as an overriding preference so as to displace a candidate who was otherwise eligible and higher in merit.

13. Learned State counsel further submits that the selection criteria prescribed in the advertisement dated 30.06.2017 was neither changed nor modified during the recruitment process and, therefore, the reliance placed by the appellant upon **Tej Prakash Pathak** (supra) is misplaced.

He submits that the decisions in ***Maharashtra Public Service Comission vs. Sandeep Shriram Warade & Others***, reported in ***(2019) 6 SCC 362*** and ***State of U.P. & Another vs. Om Prakash & Others***, reported in ***(2000) 6 SCC 474*** clearly lay down that preference cannot mean an en bloc preference irrespective of inter se merit and suitability.

14. Learned State counsel also submits that the appellant has approached this Court after approximately two and a half years from the date of appointment of respondent No.3 and has failed to satisfactorily explain such delay. He, therefore, submits that the learned Single Judge has rightly dismissed the writ petition and the present appeal deserves to be dismissed.

15. We have heard learned counsel for the parties at length and have carefully perused the material available on record.

16. It is not in dispute that the advertisement dated 30.06.2017 prescribed a Post-Graduate Degree in Organic Chemistry or Analytical Chemistry as the essential qualification for the post of Assistant Chemist. It is also not in dispute that preference was to be given to a candidate possessing a B.Sc. Degree with Geology as a subject. The appellant possesses M.Sc. in Organic Science and B.Sc. Degree with Geology as a subject, whereas respondent No.3 possesses M.Sc. in Analytical Chemistry but does not possess B.Sc. Degree with Geology as a subject. It is further not in dispute that the merit list was prepared on the basis of the marks obtained by the candidates in Post-

Graduation and that the appellant secured 75.88 marks, whereas respondent No.3 secured 82.40 marks and was accordingly placed higher in the merit list.

17. The principal question which arises for consideration in the present appeal is as to whether the preference contemplated in the advertisement in favour of a candidate possessing B.Sc. Degree with Geology is required to be treated as an overriding preference, irrespective of the inter se merit of the candidates, or whether such preference can operate only as a tilting factor where the candidates are otherwise equally positioned.

18. The issue relating to the meaning and scope of the expression “preference” in a recruitment advertisement has been considered by the Hon'ble Supreme Court in **Sandeep Shriram Warade** (supra). The Hon'ble Supreme Court has held that a preference clause does not, by itself, confer an overriding right upon a candidate possessing the additional qualification so as to supersede a candidate who otherwise satisfies the essential eligibility requirements and is higher in merit. The preference clause has to be understood in the context in which it is incorporated in the recruitment conditions.

19. Likewise, in **Om Prakash** (supra), the Hon'ble Supreme Court explained that where the advertisement prescribes an essential minimum qualification and provides that preference would be given to candidates possessing an additional qualification, such preference does not amount to an en bloc preference irrespective of inter se merit and

suitability. The additional qualification may operate as a tilting factor when candidates possessing the requisite educational qualification are otherwise equally positioned. The principle emerging from the aforesaid decisions is that a preference clause cannot ordinarily be construed as displacing the comparative merit of candidates who fulfil the essential eligibility criteria, unless the statutory rules or the advertisement expressly provide otherwise.

20. Applying the aforesaid principle to the facts of the present case, it is evident that respondent No.3 possessed the essential qualification prescribed for the post of Assistant Chemist, namely, M.Sc. in Analytical Chemistry. The appellant also possessed the essential qualification. The additional qualification of B.Sc. with Geology possessed by the appellant undoubtedly attracted the preference clause; however, the advertisement did not provide that possession of B.Sc. with Geology would automatically override the inter se merit of candidates irrespective of the marks secured by them. There is also no material on record to demonstrate that the applicable Recruitment Rules contemplated an absolute preference in favour of a candidate possessing B.Sc. with Geology even where such candidate was substantially lower in merit than another eligible candidate.

21. The distinction between “essential qualification” and “preferential qualification” is material. The essential qualification determines the eligibility of a candidate to participate in the selection process, whereas the preferential qualification, unless specifically provided otherwise,

does not render an otherwise eligible and more meritorious candidate ineligible merely because he does not possess such additional qualification. In the present case, respondent No.3 admittedly possessed the essential qualification and secured 82.40 marks as against 75.88 marks secured by the appellant. Thus, respondent No.3 was higher in the merit list by a substantial margin.

22. The contention of the appellant that the preference clause ought to have resulted in his selection merely because he possessed B.Sc. with Geology cannot, therefore, be accepted. Such an interpretation would amount to treating the preference clause as an overriding eligibility condition, whereas the language of the advertisement does not support such construction. If the intention of the recruiting authority had been to make B.Sc. with Geology an essential qualification or to give an absolute preference to such candidates irrespective of comparative merit, the same ought to have been expressly prescribed in the advertisement or the governing statutory rules.

23. The reliance placed by the appellant upon ***Tej Prakash Pathak*** (supra), also does not assist the appellant in the facts of the present case. The principle considered therein relates to the impermissibility of changing the selection criteria after commencement of the recruitment process, particularly where such change is not authorised by the governing rules or the advertisement. In the present case, however, there is no material to establish that the Selection Committee changed or introduced any new criterion after commencement of the recruitment

process. The advertisement itself prescribed the essential qualification and the preference, and the same criteria were applied while preparing the merit list. The controversy in the present case is essentially regarding the interpretation and application of the preference clause and not regarding any subsequent alteration of the selection criteria. The factual foundation necessary for applying the principle laid down in ***Tej Prakash Pathak*** (supra) is, therefore, absent.

24. Similarly, the principle laid down in ***Dr. Krushna Chandra Sahu and others v. State of Orissa and others***, reported in ***(1995) 6 SCC 1***, that a Selection Board or Selection Committee cannot prescribe its own selection criteria unless authorised by the governing rules, is not attracted in the present case. There is nothing on record to establish that the Selection Committee formulated a new criterion or added any qualification of its own. Rather, the Selection Committee proceeded on the basis of the qualification and preference already contained in the advertisement and prepared the merit list on the basis of the marks obtained in Post-Graduation. Thus, the allegation that the respondents changed the rules of the game during the recruitment process cannot be accepted.

25. The contention founded upon Articles 14 and 16 of the Constitution of India also does not advance the case of the appellant. There can be no dispute with the proposition that recruitment to public employment must be fair, transparent and non-arbitrary and that all eligible candidates are entitled to equal opportunity. However, equality

of opportunity does not mean that a candidate possessing an additional preferential qualification must necessarily be placed above another eligible candidate who has secured substantially higher marks, unless the governing rules or the advertisement expressly so provide. The respondents were required to apply the same criteria uniformly to all candidates, and the record does not establish any discriminatory treatment or deviation from the notified criteria.

26. The decision in ***Bhagwan Dass*** (supra), relied upon by learned counsel for the appellant, also lays down the general constitutional principle of fairness and equality in matters of public employment. There can be no quarrel with the said proposition. However, the appellant is required to establish that the impugned selection resulted in hostile discrimination, arbitrariness or unequal treatment. In the present case, the selection of respondent No.3 was based upon her possession of the essential qualification and her higher position in the merit list. Mere non-selection of the appellant, despite his possession of an additional preferential qualification, would not by itself establish violation of Articles 14 or 16 of the Constitution.

27. We also find substance in the submission of learned State counsel with regard to the delay in approaching this Court. The appointment of respondent No.3 was made on 10.08.2018, whereas the challenge to the said appointment was pursued after a lapse of approximately two and a half years. Although delay by itself may not invariably defeat a challenge to an illegal appointment, a person

seeking discretionary relief under Article 226 of the Constitution is required to approach the Court with reasonable promptitude and to satisfactorily explain any substantial delay. In the present case, the appellant has not placed on record any convincing explanation sufficient to justify the delay of approximately two and a half years in assailing the appointment of respondent No.3. This aspect assumes significance particularly because the challenge is directed against an appointment which had already been made and acted upon. The unexplained delay, therefore, constitutes an additional circumstance against grant of discretionary relief in favour of the appellant.

28. Even otherwise, on merits, we are of the considered view that the learned Single Judge has correctly appreciated the scope of the preference clause and the comparative merit of the candidates. Respondent No.3 possessed the essential qualification prescribed for the post and had secured 82.40 marks, whereas the appellant had secured 75.88 marks. In the absence of any provision conferring an overriding preference upon candidates possessing B.Sc. with Geology, the Selection Committee was justified in considering the inter se merit of the eligible candidates. The decision of the competent authority cannot, therefore, be said to be arbitrary, illegal or contrary to the advertisement or the applicable Recruitment Rules.

29. Consequently, we find no error, illegality or perversity in the order passed by the learned Single Judge warranting interference in the present intra-court appeal. The findings recorded by the learned Single

Judge are consistent with the terms of the advertisement, the applicable Recruitment Rules and the principles laid down by the Hon'ble Supreme Court regarding the scope of a preferential qualification. The appellant has also failed to satisfactorily explain the delay of approximately two and a half years in challenging the appointment of respondent No.3.

30. In view of the foregoing discussion, we are of the considered opinion that the learned Single Judge was justified in dismissing the writ petition.

31. The present writ appeal, being devoid of merit, is accordingly **dismissed**.

32. There shall be no order as to costs.

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

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