



2026:CGHC:4004

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 759 of 2019

Abhishek Tiwari S/o Late Shri Dhanesh Chandra Tiwari Aged About
32 Years R./o Ashok Nagar ,ekta, Colony Post And Police Bilaspur
Chhattisgarh., District : Bilaspur, Chhattisgarh

... **Petitioner**

Versus

1 - State of Chhattisgarh Through Secretary Public Health Engineer
Department Mantralaya Mahanadi Bhawan Atal Nagar District
Raipur Chhattisgarh., District : Raipur, Chhattisgarh

2 - Superintendent Engineer E/m Circle Phe Department District
Raipur Chhattisgarh., District : Raipur, Chhattisgarh

3 - Smt. Kunita Kumbhar D/o Late Shri Ghasiram Bagh Office Of
The E/m Sub Division Phe Department District Raipur
Chhattisgarh., District : Raipur, Chhattisgarh

... **Respondents**

[Cause-title taken from Case Information System (CIS)]

For Petitioner : Mr. S.P. Kale, Advocate

For Respondent-State : Mr. Rahul Tamaskar, Govt. Advocate

Single Bench: Hon'ble Shri Justice Sanjay K. Agrawal

(Order on Board)

21.01.2026

1. In this writ petition filed under Article 226 of the Constitution
of India, the petitioner is challenging the appointment order of
respondent No.03 herein, dated 03.04.2017 (Annexure-P/01), on the
post of Assistant Grade-III (AG-III) on the following factual



backdrop:

1.1 Initially, on 22.03.2006, the petitioner was appointed as Chowkidar on compassionate basis with the respondent-Department and, thereafter, on 17.09.2008 he requested for his appointment on the post of AG-III before the competent authority, which was not considered favourably. However, on 29.12.2016, appointment order was issued in favour of respondent No.03 herein on the post of Peon on compassionate basis, to which, she joined the services on 17.01.2017 and, thereafter, the respondent No.03 was appointed on the post of AG-III vide impugned order dated 03.04.2017 on the ground that there was a bonafide error while appointment order dated 29.12.2016 was issued in favour of the respondent No.03 on the post of Peon, because as per her qualification and policy existed at the relevant time, she ought to have been appointed on the post of AG-III.

1.2 The respondent No.03 was appointed on the post of AG-III vide order dated 03.04.2017, however, the petitioner filed this writ petition before this Court challenging the aforesaid appointment order of respondent No.03 on 30.01.2019 stating that on account of appointment of respondent No.03 on the post of AG-III, he became junior and there cannot be endless compassion.

1.3 Reply has also been filed by the respondent-State, stating that since the respondent No.03 was having requisite qualification for



appointment on the post of AG-III, yet she applied for appointment on the post of Peon and, therefore, vide order dated 29.12.2016, she was initially appointed as Peon, to which, she gave joining on 17.01.2017. However, as per relevant clause of the policy dated 14.06.2013 existed at the relevant point of time, 10% of the post of AG-III can be filled up by compassionate appointment. It has also been stated in the reply that the respondent No.03 was 12th pass and eligible for appointment on the post of AG-III, but due to inadvertence, she was appointed on the post of Peon. As such, acknowledging the mistake of the respondent-Department, the authority concerned *suo moto* granted appointment to the respondent No.03 on the post of AG-III vide impugned order dt. 03.04.2017, as per the policy.

2. Mr. S.P. Kale, learned counsel for the petitioner submits that the respondent-authorities erred in law while making appointment of the respondent No.03 on the post of AG-III, as there cannot be endless compassion. Once the respondent No.03 joined on the post of Peon on 17.01.2017, subsequently, she could not be appointed on the post of AG-III vide order dt. 03.04.2017 as, by which, she became senior to the petitioner. He placed reliance on the decision of this Court rendered in the matter of **Sumit Shalabh Andrews v. State of Chhattisgarh**¹ to support his submissions. As such, the impugned

¹ WPS-5997-2016, decided on 03.11.2016



order dated 03.04.2017 is liable to be set aside.

3. On the other hand, learned counsel for the respondent-State supported the impugned order by submitting that since the respondent No.03 was having requisite qualification for appointment on the post of AG-III and, due to inadvertent mistake, she was appointed on the post of Peon, therefore, rectifying the bonafide error, the respondent No.03 has been appointed on the post of AG-III by impugned order dated 03.04.2017, which the petitioner has challenged by filing this writ petition before this Court on 30.01.2019. He would also rely upon the decision of the Supreme Court in the matter of National Institute of Technology v. U. Dinakar and another² by buttress his submissions. Hence, the present writ petition liable to be dismissed.

4. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the material available on record including the original record with utmost circumspection.

5. In the case at hand, initially, the respondent No.03 was appointed on the post of Peon on 29.12.2016 on compassionate basis, to which, she joined her services on 17.01.2017, but thereafter, it appears from the document (Annexure-R/1 filed alongwith the reply of the State) that without there being any application/request made

² (2014) 13 SCC 180



by the respondent No.03, the respondent-Department rectified its mistake by *suo moto* granting appointment to her on the post of AG-III, as per policy dated 14.06.2013. Even, during the crouse of argument, on the basis of original recorded summoned by this Court, learned State counsel brought to our notice that there was no application made on behalf of the respondent No.03 for her appointment on the post of AG-III and it is the respondent-Department, who by acknowledging its mistake, issued impugned appointment order in favour of the respondent No.03 on the post of AG-III. As such, it is not a case where after grant of compassionate appointment on the post of Peon, on request of the respondent No.03, she has been granted appointment on the higher post of AG-III. Therefore, the decision of this Court in the matter of Sumit Shalabh Andrews (supra) relied upon by the petitioner, is not applicable under the facts and circumstances of the present case. Indeed, the decision relied upon by the learned State counsel in the matter of U. Dinakar (supra) would be applicable, whereby their Lordships of the Supreme Court have clearly held that the competent authority has inherent power to correct the mistake if any committed in the order of appointment after giving proper opportunity to the employee/officer concerned and observed in Para-23 as under:

“23. In the present case, the authority had given notice



to respondent no.1 and brought to his notice that there is a genuine mistake in his letter of appointment and he has been wrongly given a higher pay of scale of Rs.3000-4500. Respondent no.1 submitted his reply and not taken any plea that he has not applied pursuant to the notification of direct recruitment but his case was considered by way of promotion. In that view of the matter we hold that the competent authority has inherent power to correct the mistake if any committed in the order of appointment after giving proper opportunity to the concerned employee/officer.”

[emphasis supplied]

6. In the instant case, since the respondent-Department, rectified its mistake by giving *suo moto* appointment to respondent No.03 on the post of AG-III vide impugned order dt. 03.04.2017, therefore, the contention of the petitioner that the respondent No.03 has been granted appointment on the higher post after giving her compassionate appointment on the post of Peon and it is a case of endless compassion is not borne out from the record. Consequently, I do not find any merit in this petition, it deserves to be and is hereby **dismissed** leaving the parties to bear their own cost.

7. Let a copy of this order alongwith the original record be sent back forthwith to the respondents-authorities concerned.

Sd/-
(Sanjay K. Agrawal)
Judge