



2025:CGHC:51286-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WA No. 743 of 2025**

Shailendra Soni S/o Shri Manharan Lal Soni Aged About 51 Years At Present Working As Section Officer, In Translation Cell (Reportable Judgments) High Court Of Chhattisgarh, R/o R.K. Lane Near Nandu Garage, Telipara, Bilaspur, District - Bilaspur (Chhattisgarh)

... Appellant**versus**

1 - High Court of Chhattisgarh at Bilaspur, Through Registrar General Raipur Road, Bodari, District - Bilaspur Chhattisgarh

2 - Registrar General High Court of Chhattisgarh At Bilaspur, District - Bilaspur Chhattisgarh

3 - Shri Vijay Kumar Minz S/o Shri Fardint Minz Aged About 40 Years Presently Working As Assistant Editor ILR (Posted as A.G.I at the time of filing Writ Petition) High Court of Chhattisgarh, District - Bilaspur (C.G.)

... Respondents

For Appellant	:	Mr. Sanjay Patel, Advocate
For Respondents/High Court	:	Mr. Anurag Dayal Shrivastava, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****15.10.2025**

1. Heard Mr. Sanjay Patel, learned counsel for the appellant as well as Mr. Anurag Dayal Shrivastava, learned counsel, appearing for the respondents-High Court of Chhattisgarh.

2. By way of present writ appeal under Section 2 of Sub-Section (1) of the Chhattisgarh High Court (Appeal to Division Bench Act, 2006, the appellant, who was writ petitioner in the writ petition has challenged the order dated 16.07.2025 passed by learned Single Judge in WPS No.4152 of 2015 (***Shailendra Soni Vs. High Court of Chhattisgarh & Others***), by which the writ petition filed by the appellant / writ petitioner has been dismissed by the learned Single Judge.
3. Brief facts necessary for disposal of this appeal are that the High Court published an advertisement for the post of Translator and the petitioner alongwith other candidates has applied for the said post. After passing the examination, petitioner and respondent No. 3 were appointed on 29.02.2012 on the post of Translator for probation period of two years and he joined the services on 03.03.2012. The respondent No. 3 was confirmed on the post of Translator with effect from 07.03.2014 on completion of 2 years service and he was promoted on the post of Assistant Grade-I on 27.01.2015 though he was junior to the petitioner which is contrary to the rules. It has also been contended that in view of well settled position of law that every entry in the Annual Confidential Report (in short "ACR") of a public servant must be communicated to him within a reasonable period, but till extension of probation period the ACR of the petitioner was not communicated to him without any rhyme and reason. It has also been contended that ACR of the year 2013-14 was provided to

him on 31.02.2013 and from perusal of his ACR, it demonstrates that there is no adverse remark against the petitioner to deprive the petitioner from confirmation and promotion. There is neither any adverse entry in the ACR of the petitioner nor any complaint or enquiry is pending against him and even no adverse remark had ever been communicated to the petitioner by the respondent No. 2 to deprive him from promotion and confirmation. It was also the case of the petitioner that the petitioner has submitted his detailed representation on 29.04.2015 to the respondent No. 2 to confirm him and grant promotion maintaining his seniority above the respondent No. 3, but they have passed the order on 07.09.2015 confirming the petitioner on the post of Translator with immediate effect stating that the period of services beyond the probation period of two years is treated as deemed extension without considering the grievance of the petitioner raised in his representation.

4. On above factual matrix, the writ petition has filed a writ petition being WPS No. 4152 of 2015 under Article 226 of the Constitution of India for quashing the order dated 09.09.2015 passed by the respondent No.2 to the extent of extension of probation period and delayed confirmation on the post of Translator with effect from 09.07.2015 in place of 28.02.2014.
5. The High Court filed its return mainly contending that the petitioner joined his service on 03.03.2012 and on completion of

two years of probation on 02.03.2014 his case alongwith respondent No. 3 and other employees were considered, but at the relevant time ACR of the petitioner was not available as he was appointed in the month of February-March, 2012, therefore, work and conduct report was called from concerned reporting authority which was found not good and average, accordingly, the competent authority deferred the matter relating to his confirmation. It has also been contended that again work and conduct report was sought from the reporting authority who reported vide its memo dated 01.07.2015 to be good and he may be confirmed to the post of Translator and accordingly the order dated 09.09.2015 was issued which is legal, justified and in accordance with Chhattisgarh High Court Establishment (Appointment and Conditions of Service) Rules, 2003 (in short "Rules of 2003"), as such the same is not liable to be interfered by this Court. So far as promotion to the post of Assistant Grade-I with effect from 27.01.2015 is concerned, it is quite vivid that the petitioner was confirmed on the post of Translator on 09.09.2015, therefore, he was not qualified for promotion on the post of Assistant Grade-I. Therefore, his case cannot be considered. It has also been contended that the ACR of the year 2013-14 was communicated to the petitioner on 30.03.2015 which is within the time period prescribed under the administrative instruction. It has been further contended that the petitioner's representation dated 03.10.2015 has been rejected on 02.12.2015 which has not been

challenged by the petitioner, therefore, the writ petition is not maintainable and same is liable to be dismissed.

6. After considering the rival submissions advanced by learned counsel for the parties and on the basis of materials available on record, the learned Single Judge has dismissed the writ petition filed by the writ petitioner vide impugned order dated 16.07.2025. Hence, this appeal.
7. Learned counsel for the appellant vehemently argued that impugned order passed by the learned Single Judge is unjust and against the settled principles of law, therefore, deserves to be set-aside. He further argued that the finding of the learned Single Judge that in the appointment order itself, it is specifically mentioned that the probation will be extended for one year unless and until he is confirmed, he will be remained in probation only. This finding of the learned Single Judge giving preference to the condition of appointment order over the Rules, is against the settled principles of law that statutory rules override individual appointment conditions and any clause in an appointment letter that is inconsistent with applicable service rules is void to the extent of inconsistency. He also argued that the learned Single Judge rejected the submission of the appellant in para-13 that if Work & Conduct Report of the appellant was an alternate of ACR in such case any adverse remark must have been communicated so that he would have submitted representation against the

adverse remark made against him on the ground that as the ACR is a formal document which evaluates the performance, conduct, and capabilities of a government employee over a specific period, usually a year whereas work and conduct means a work report is essential for tracking activities, time and productivity, as such, both work in different sphere but have common object to assess suitability of the employee by its employer. This finding of the learned Single Judge that ACR and Work & Conduct Reports are separate and therefore adverse remarks in work & conduct report need not be communicated is legally flawed. To substantiate his submission he has referred to the judgment of Hon'ble Supreme Court in case of ***Devi Dutta vs Union of India reported in 2008 (8) SCC 725*** and ***Sukhdev Singh vs. Union of India and Others reported in 2013 (9) SCC 566***.

8. Learned counsel for the appellant further contended that the learned Single Judge in para-12 has given finding that the Appellant's work and conduct report was not good and average which is essential for assessing the suitability of the Appellant for confirmation. This finding of the Learned Single Judge is not legally sustainable and it is flawed on both procedural and substantive grounds. This finding is incorrect because there is no legal basis for using "Work and Conduct Report" as the test for confirmation. If there is no Rule, Regulation, Circular or Order authorizing the use of a "Work and Conduct Report" as the determinative factor for confirmation then using it to defer

confirmation is unlawful. This fact has been admitted by the Registry in Annexure-P/10 filed with Rejoinder. Even more so when confirmation is governed by ACRs or probation rules, as is usually the case in government service. Administrative decisions affecting service rights must be backed by statutory rules or executive instructions. It has been held that "where statutory rules exist, the Government cannot act outside those rules." Thus, the finding of the learned Single Judge relying on a non-existing and unauthorized tool treating informal inputs as formal evaluation in disregard of binding legal precedent to justify denial of confirmation has no legal foundation and is arbitrary.

9. Learned counsel for the appellant submitted that the finding of learned Single Judge in para-16 that though the Appellant was awarded good grade in the ACR yet his work and conduct report was average and not good, he was not found fit for confirmation is also against the facts and law because the Competent Authority was having the Work and Conduct Report, even though called for the ACR as it is apparent from the extract of the minutes of the Committee dated 27.06.2014 filed as page No.23 of the Rejoinder, which indicates that the work and conduct report alone was not relied upon for making the decision to defer confirmation. It has been further submitted that the learned Single Judge has failed to appreciate that the competent authority deferred the Appellant's confirmation without assigning any reasons, which is in clear violation of the principles of natural justice and

constitutional guarantees under Articles 14 & 16 of the Constitution of India. The law requires that any administrative action affecting service rights must be reasoned and non-arbitrary. To substantiate his submission, he placed reliance upon the judgement passed by the Hon'ble Supreme Court in ***Kranti Associates Pvt. Ltd. Vs Masood Ahmed Khan, (2010) 9 SCC 496*** and ***State of Orissa Vs Dr. Binapani Dei, AIR 1967 SC 1269***.

10. Learned counsel for the appellant also contended that the learned Single Judge in para-4 of the judgment has wrongly recorded the submission of the Appellant that "Appellant has been deferred for confirmation, but one Sharad Kumar Yadav was confirmed even though his ACR was not available", this argument is contrary to the pleadings of the appellant, whereas, in fact, it has been pleaded by the Appellant that the work and conduct report of Shri Sharad Kumar Yadav was also available just like the Appellant but the competent Authority called for his ACR as well as the ACR of the Appellant and confirmed only Shri Sharad Kumar Yadav but the matter of the Appellant was deferred without assigning any reason despite similar records. The learned Single Judge has recorded a factually incorrect version of the Appellant's pleading. It attributes a submission that Appellant never made, thereby distorting the core argument of Appellant and derailing judicial appreciation of discrimination. Both the Appellant and Shri Sharad Kumar Yadav had similar status as their work and conduct reports

were available and the Competent Authority called for the ACR latter on, but one was confirmed and the other was deferred without reason, which is clear case of discrimination in violation of Article-14 of the Constitution of India.

11. On the other hand, learned counsel, appearing for the respondents-Department opposed the submission made by learned counsel for the appellant and submitted that the learned Single Judge, after considering all the aspects of the matter, has rightly dismissed the writ petition, in which no interference is called for.
12. We have heard learned counsel for the parties and perused the impugned order and other documents appended with writ appeal.
13. So far as the contention advanced by learned counsel for the appellant that the finding of the learned Single Judge giving preference to the condition of appointment order over the Rules, is against the settled principles of law that statutory rules override individual appointment conditions and any clause in an appointment letter that is inconsistent with applicable service rules is void to the extent of inconsistency is concerned, the said submission deserves to be rejected as in the appointment order itself, it is specifically mentioned that the probation period will be extended for one year unless and until he is confirmed he will be remained in probation only. Rule 10(2) of Chhattisgarh High Court Establishment (Appointment and Conditions of Service)

Rules, 2003 (in short “Rules of 2003”), also provides that on completion of probation period of officiation as the case may be, the probationer or the promotee, if there is a permanent post available shall be confirmed in the service and if no permanent post is available a certificate should be issued that he would have been confirmed. This rule clearly establishes that there will be no deemed for confirmation and the employee should first complete the probation period successfully and the permanent post should be available, as such, it cannot be said that appellant is deemed to have been confirmed on the post. The completion of probation period successfully indicates that the appellant’s work and conduct should be good then only he can be qualified after completion of probation period successfully. In the present case, appellant’s work and conduct was not good and it was reported to be ‘average’ which is essential for assessing the suitability of the petitioner for confirmation. Accordingly, we do not find any illegality in the said finding.

14. So far as contention raised by the appellant that the finding of the learned Single Judge that ACR and Work & Conduct Reports are separate and therefore adverse remarks in work & conduct report need not be communicated is legally flawed is concerned, the learned Single Judge has held that as the ACR is a formal document which evaluates the performance, conduct and capabilities of a government employee over a specific period, usually a year whereas work and conduct means a work report is

essential for tracking activities, time and productivity, as such both work in different sphere but have common object to assess suitability of the employee by its employer. It is not in dispute that the appellant was appointed on 29.02.2012 and ACR for the period from 03.03.2012-31.03.2013 was good and he was graded "B" in the ACR, as such, it is not required for the respondent to communicate the same, therefore, the judgment of Hon'ble Supreme Court in case of **Dev Dutt** (Supra) and **Sukhdev Singh** (Supra) does not give any assistance to the petitioner. We do not find any illegality of infirmity in the said finding, accordingly, the said submission is also rejected by this Court.

15. From perusal of the impugned order and the materials available on record, it transpires that the appointment order dated 29.02.2012 (Annexure R/1) expressly stipulated that on successful completion of the probation or till the time the employee is not confirmed, he shall be deemed to be on probation. The relevant clause of appointment order dated 29.02.2012 is reproduced below:

"परीवीक्षा अवधि सफलता पूर्वक पूर्ण न होने पर परीवीक्षा अवधि एक वर्ष तक और बढ़ायी जा सकेगी और जब तक स्थायी न कर दिया जाए तब तक उन्हें परीवीक्षा पर माना जायेगा।"

16. The aforesaid clause clearly stipulates that until an order of confirmation is passed employee would be deemed to be on probation. The appellant joined his services on 03.03.2012 and on

completion of the initial two years of probation on 02.03.2014, his case was processed for confirmation along with other employees, including respondent No. 3 who had completed two years of date of joining in the service. At the relevant time ACRs were not available because appointments were made in February-March, 2012, therefore, work and conduct reports of the appellant as well as respondent No. 3 were called from the concerned Reporting Authority. The Reporting Authority reported appellant's work and conduct to be 'not good and Average'. Accordingly, the Competent Authority resolved to defer the matter relating to his confirmation. Thereafter, the work and conduct of the appellant was further observed and report was again called from the Reporting Authority, who reported vide memo dated 01.07.2015 the work and conduct of the appellant "Good and he may be confirmed to the post of Translator". The work and conduct report of the appellant was placed before the Competent Authority along with the representation made by him. Accordingly, the appellant was confirmed in terms of Rule 10(2) of Rules of 2003, w.e.f. 09.09.2015, as such there is no illegality in the order dated 09.09.2015.

17. The employer is within its jurisdiction and authority to adjudge the work, conduct and performance of the probationer before confirmation. There being no dispute regarding work and conduct report given by the Reporting Authority, the challenge to the confirmation order is not amenable to challenge. As far as the

claim of the appellant for promotion to the post of Assistant Grade-I w.e.f. 27.01.2015 is concerned, it is not maintainable because the appellant has been confirmed on the post of Translator w.e.f. 09.09.2015 and he was not qualified for promotion from 27.01.2015 to the post of Assistant Grade-I, criteria of which is strictly Merit Cum Seniority from the post of (Sic) translator. There is no parity between the case of the appellant and Respondent No. 3 who was confirmed on successful completion of probation w.e.f. 07.03.2014 and consequentially has been promoted to the next higher post on fulfilling the requisite criteria under the rules and as such, we are of the considered opinion that the learned Single Judge has not committed any illegality, irregularity or jurisdictional error in the impugned order warranting interference by this Court.

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

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice