

(2010) 03 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3437 of 2008

C.L. Chandrakar and Others

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Citation : (2010) 3 CGLJ 344

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Manoj Paranjpe, for the Appellant; M.P.S. Bhatia, Deputy G.A., for the Respondent

Judgement

Satish K. Agnihotri, J.—The Petitioners, by this petition, seek a direction to the Respondents to absorb the Petitioners in the School Education Department in accordance with the policy decision taken in the year 1995 (Annexure P/1 to P/5) and accordingly, they may be granted seniority and promotion on the higher posts and their names may be included in the gradation list of Assistant Teachers/ Upper Division Teachers.

2. Facts in brief, as projected by the Petitioners are that the Petitioners were initially appointed in the Tribal Welfare Department and subsequently in accordance with the policy decision, all the schools run by the Tribal Welfare Department were transferred to the School Education Department and the staff working in these schools was transferred on deputation to the School Education Department. Pursuant to the order dated 15.5.1995 (Annexure P/7), the Petitioners were sent on deputation to the School Education Department and since then they have been working on the respective posts i.e. Upper Division Teacher/Head Master/Assistant Teacher. In accordance with the memo dated 13.01.1995 (Annexure - P/2) and memo dated 18.03.1995 (Annexure P/1) all the 174 schools, situated in Tribal Blocks run by the School Education Department were transferred to the Tribal Department and likewise 285 schools, situated in non-Tribal blocks run by the Tribal Department were transferred to

the School Education Department. According to the Petitioners, since they were working in various schools run by the Tribal Department situated in non-Tribal blocks, their schools were transferred to the School Education Department and the services of the staff working in those schools, including the Petitioners were sent on deputation to the School Education Department. Thereafter, necessary required steps were taken by letters, memos dated 29.09.2000 (Annexure P/3), 28.6.2001 (Annexure P/4) and 23.01.2006 (Annexure P/5).

3. Shri Manoj Paranjpe, learned Counsel appearing for the Petitioners would submit that after sending the Petitioners on deputation from the Tribal Department to the School Education Department, the Petitioners have been absorbed in the School Education Department and their seniority etc. are maintained in the new department, as is evident from the gradation lists (Annexure P/8 and P/ 9), showing the position as on 01.04.2004 and 01.04.2008. But in the subsequent gradation list (Annexure P/10) the names of the Petitioners were not included as the Petitioners are not treated as employees of the School Education Department, Learned Counsel would further submit that the apprehension of the Petitioners get support from the fact that in the Tribal Department, some of the Upper Division Teachers, who were sent on deputation from the School Education Department, earlier whose names were included in the gradation list 01.04.20003 (Annexure P/11) but in the subsequent gradation list 31.12.2003 (Annexure P/12) their names were deleted. The action of the Respondents is contrary to their own memos, orders and guidelines. The Petitioners were given time bound promotion (Annexure P/14) in the School Education Department, which shows that the Petitioners are employees of the School Education Department. Thus, the Petitioners are entitled to seniority from the date of their initial appointments and further entitled to promotion on the next higher posts. Being aggrieved, the Petitioners made representations (Annexure P/16) but of no avail.

4. On the other hand, Shri M.P.S. Bhatia, learned Deputy Government Advocate appearing for the State/Respondents would submit that the State of Chhattisgarh has issued a clear guidelines/instructions on 09.02.2010 (Annexure A/1 filed by the Respondents/State on 22.02.2010, alongwith I.A. No. 7) in regard to the absorption, promotion, seniority, regularization, pension etc. of the employees who were transferred to the School Education Department from the Tribal Welfare Department or vice-versa, pursuant to the order dated 13.01.1995 (Annexure P/2). Learned Counsel would further submit that the Petitioners are required to submit the option form, attached with the order dated 09.02.2010 (Annexure A/1) and thereafter, the concerned authorities would pass appropriate orders.

5. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. It is apparent that the Petitioners have not projected the chronological events in clear terms. However, it is evident that by order dated 15.05.1995 (Annexure

P/7) which was passed pursuant to the order dated 13.01.1995 (Annexure P/2), the Petitioners were sent on deputation from the Tribal Department to the School Education Department and since then they are discharging their duties on the respective places and posts in the School Education Department. In order to finally settle the grievance of the Petitioners and other similarly situated employees in both the departments i.e. the Tribal Department and the School Education Department, the State of Chhattisgarh has passed the order dated 09.02.2010 (Annexure A/1), issuing guidelines/instructions to deal with the matters involving the issue on hand.

7. Pursuant to the memo dated 18.03.1995 (Annexure P/1), on the basis of location of the educational institutions, the educational institutions were transferred from Tribal Welfare Department to the School Education Department and vice versa. 174 schools situated in the Tribal blocks were transferred to the Tribal Welfare Department and 285 schools of Tribal Welfare Department situated in non tribal blocks were transferred to the School Education Department. It was made clear that the employees would continue as employees of their parent department and their transfer would be treated as on deputation. It was further provided that opportunity would be granted for absorption in the deputation department. Thereafter, by order dated 15.05.1995 (Annexure P/7), proper order was passed transferring the Petitioners from Tribal Welfare Department to the School Education Department on deputation. It is not clear from the documents appended to the pleadings by the parties as to whether any opportunity was afforded to the Petitioners or they have made any application for absorption in the School Education Department, thereafter. The Petitioners have also not raised any grievance with regard to absorption in the School Education Department, prior to filing of this writ petition.

8. During pendency of this petition, the State Government has issued a memo dated 09.02.2010 (Annexure A/1) filed along with an application dated 22.02.2010 for dismissal of the writ petition, stating that the transferred employees from the Tribal Welfare Department to School Education Department or vice versa were treated as employees of the parent department and were sent to the other department on deputation. It was further contemplated to provide an opportunity for absorption which could not be done and there has been a lot of discrepancies in case of promotion and seniority of the employees. Thus, it was decided jointly by the Tribal Welfare Department and the School Education Department that option would be sought from the concerned employees as to whether they wish to remain in the parent department or they want to be absorbed in the deputation department and thereafter, their seniority and consideration for promotion would be considered.

9. In view of the above facts situation, this Court is of the considered opinion that it would be just and expedient to grant liberty to the Petitioners to exercise their options, if so advised, pursuant to the order dated 09.02.2010 (Annexure A/1). In that event, the State authorities shall consider the cases of the

Petitioners in accordance with law as expeditiously as possible, preferably within a period of three months from the date of receipt of the representation/option, if any.

10. With the above direction, this petition stands disposed of.

11. No order asto costs.