
(2013) 07 MP CK 0111

In the Madhya Pradesh High Court

Case No : Writ Petition (s) No. 1714 of 2004

Dr. Dharmesh Chandra Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 MP CK 0111

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Pavan Dwivedi, for the Appellant; Praveen Newaskar, DGA, for the Respondent

Final Decision : Disposed Off

Judgement

Sujoy Paul, J.—Petitioner was appointed as Resident Pathologist in the year 1981. It is contended by the petitioner that at the time of petitioner's appointment, there was only one department and the department was bifurcated subsequently into Medical Education and Health Department. Petitioner prayed for providing a promotional avenue and desired that he be promoted to the post of Assistant Professor, Pathology Blood Bank. For the purpose of this relief, petitioner has placed reliance on the case of Demonstrators. The Demonstrators had no promotional avenue. Pursuant to the order of M.P. State Administrative Tribunal dated 05/03/2003 Annexure-P/11, they were promoted as Assistant Professors. In addition, it is contended that as per M.C.I. guidelines, the Demonstrators and petitioner's category are similar and belongs to same category. Lastly, it is submitted that a high level review meeting was convened by the Directorate of Medical Education on 18/11/1997. As per decision of said meeting, petitioner should have been promoted. Petitioner has brought this order Annexure-P/18 and proceeding of review committee by way of amending the petition. However, respondents have not filed additional reply to rebut the same. This is settled in law that the qualification, promotional avenues, eligibility condition, job nomenclature etc. are to be decided by the employer. It is

prerogative and in the province of the employer to decide the aforesaid aspect. Unless it is established that any fundamental right is infringed or order is violative of any constitutional or statutory provision, no interference is warranted. The stand of the State Government is that petitioner belongs to Health Department and he does not belong to the Medical Education Department and therefore, they do not have any avenue for promotion to the post of Assistant Professor.

2. I have heard learned counsel for the parties and perused the record.

3. The Zonal Committee aforesaid, opined as under:-

Most ZBTC's represented that work was suffering because of shortage of staff. The entire staff situation in each ZBTC was reviewed by the Principal Secretary, P.H. & F.W. and Secretary Medical Education, M.P. They directed that the gazetted posts should be filled by 25/12/1997 by getting suitable qualified candidates from the cadre of Public Health Department till fresh appointments can be made as per Govt. directives. The chair also directed to formulate uniform rules of recruitment of gazetted posts created for blood banks, irrespective of their cadre i.e. whether it is under Medical Education or Public Health Department and their notification at the earliest.

(Emphasize Supplied)

4. Since, the respondents have not filed any additional return, it is not clear as to what action has been taken by the respondents on the said agenda decision of the Zonal Committee. In any case, the Apex court in catena of judgments has held that a person is not appointed for the post, but is appointed for a career. Stagnation on a particular post for indefinite period creates frustration, which is neither proper for his own career advancement nor for the health of the institution. In absence of proper promotional avenues, the zeal to work gets vanished which is not good for the health of the institution. The Apex Court in AIR 1988 1033 (SC) , Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, 1990 supp. 688, State of Tripura and Others Vs. K.K. Roy, and Food Corporation of India and Others Vs. Parashotam Das Bansal and Others, has opined that the promotional avenues should be provided to the employee for the reasons stated above.

5. In the light of aforesaid and considering the recommendation of the committee, I deem it proper to dispose of this petition with the following directions:-

1) Petitioner shall prefer a representation before respondent No. 1 stating the relevant facts and shall enclose the relevant documents.

2) The respondents shall consider the representation and the decision of the central review meeting dated 18/11/1997 (if already not considered and rejected) and shall decide regarding promotional avenues of the petitioner by taking into account the aforesaid legal position.

3) The respondents shall consider and decide the said representation within 06 months. Outcome shall be communicated to the petitioner by passing a reasoned order.

It be noted that this Court has not expressed any opinion on the merits.

Petition is disposed of. No costs.