

(2008) 02 CHH CK 0042
In the Chhattisgarh High Court
Case No : Writ Petition No. 1045 of 2004

Dr. Om Prakash Sharma

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226

Citation : (2008) 2 MPJR 89

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Manindra Shrivastava, with Mr. Devendra Patel, for the Appellant;
U.N.S. Deo, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.

Being aggrieved by the non-action of the Respondents, the Petitioner has filed this petition, whereby the Petitioner was not granted promotion.

The indisputable facts, in nutshell, are that initially the Petitioner was appointed as Laboratory Assistant in Govt. Kamla Devi Mahila Mahavidyalaya, Rajnandgaon vice order dated 7.1.1985 (Annexure P/1) on temporary adhoc basis for a period of 89 days. Thereafter, vide order dated 31.8.89 (Annexure P/2) the Petitioner was appointed on regular basis on the post of Laboratory Technician. The State Government declared the post of Laboratory Technician under the Higher Education Department to be deemed as "Teaching Post" and the age of superannuation of the Laboratory Technician was increased to 60 years, in lieu of 58 years by memo dated 06.03.1997. Thereafter, the Petitioner made a representation dated 26.4.1999 (Annexure P/8) for promotion on any higher post. This representation was rejected vide order dated 10.8.1999 (Annexure P/9) on the ground that since the appointment on the post of Assistant Professor, which is a Class-II post, is to be done by the Public Service Commission, as such

the Petitioner cannot be promoted on the post of Assistant Professor.

Vide memo dated 25.1.2002 (Annexure P/14) the representations of the Petitioner were rejected on the ground that there is no provision for promotion to the post of Assistant Professor, as the said post is filled in by direct recruitment through Public Service Commission and there is no provision for promotion from the post of Laboratory Technician to the post of Assistant Professor. Being aggrieved, the Petitioner has filed this petition.

Shri Manindra Shrivastava, learned senior counsel appearing for the Petitioner submits that the Respondents/State be directed to create promotional avenues for the Laboratory Technicians. He further submits that since the Petitioner has not been given any promotion to any higher post and he is working as Laboratory Technician since 31.8.1989, he is entitled to get the first kramonnati after completion of 12 years of service i.e. 31.8.2001 under the time bound Advancement Scheme as provided in the circular dated 24.4.2006 read with the circular dated 17.3.1999/19.4.1999.

In support of his submission, learned Counsel appearing for the Petitioner strongly relied on a decision of Hon"ble the Supreme Court in the matter of State of Tripura and Ors. v. K.K. Roy, (2004 SCW 1) and judgment and order dated 29.8.2006 passed by this Court in W.P. No. 2805/2002 (R.S. Verma v. State of Chhattisgarh and others), wherein, the question for grant of first and second kramonnati was under consideration. Hon"ble the Supreme Court observed as under:

We are, thus, of the opinion that the Respondent herein is at least entitled to grant of two higher grades, one upon expiry of the period of 12 years from the date of his joining of the service and the other upon expiry of 24 years thereof.

Learned Counsel appearing for the Petitioner further submits that it is a case where there is no avenue for promotion. The Respondents/State should have created promotional avenues for the Petitioner having regard to its constitutional obligations under Articles 14 and 16 of the Constitution of India. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India can issue a writ in the nature of Mandamus directing the Respondents/State to grant a scale of pay which would be equivalent to Grade-II in the Higher Education Department.

Hon"ble the Supreme Court in the matter of State of Tripura (Supra) held as under:

It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The Appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the Respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that

as the Respondent herein accepted the terms and conditions of the offer of appointment knowing full well that there was no avenue of promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India, Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned Counsel appearing on behalf of the Appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle.

Having heard learned Counsel for the parties, perusing the pleadings and documents appended thereto, it is evident that the grant of pay scale or promotion to the higher post is within the ambit of the employer. It is well settled principle of law that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue such a direction/write either to promote the Petitioner to a higher post or to grant a particular pay scale.

This Court in the matter of R.S. Verma (supra) observed that "Bare reading of Circular dated 17-3-1999/19-4-1999 (Annexure R-1) makes it clear that if an employee stagnates on one pay-scale for 12/24 years and is not granted two higher pay-scales, the employee will be entitled to two Kramonnatis." Thus, the Petitioner is entitled for the same benefit.

In View of the foregoing, this petition is allowed. The Petitioner is entitled to the first kramonnati after completion of 12 years of service i.e. 31.8.2001 and thereafter second kramonnati after completion of 24 years of service under the Time Bound Advancement Scheme. No order as to costs.

Before parting with the order, I hope and trust that the observations made by Hon"ble the Supreme Court in the matter of State of Tripura (supra) may be considered by the State Government.