
(2017) 01 MP CK 0096
In the Madhya Pradesh High Court
Case No : 713 of 2009

Dr. Smt. Ansuya Paraste

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Citation : (2017) 01 MP CK 0096

Hon'ble Judges : S K Gangele, Subodh Abhyankar

Bench : Division Bench

Advocate : Sankalp Kochar, Pradeep Singh

Judgement

1. The writ appeal arises out of the order dated 24.6.2009 passed in WP No.4346/2009 by the learned Single Judge. The aforesaid writ petition was filed by the petitioner against the order dated 5.12.2008; whereby, while treating the petitioner as Director, Health Services w.e.f. 23.12.2003, she has been placed below the respondent No.2 Ashok Sharma in the cadre of the Director. Prior to the present WP No.4346/09, the petitioner had also preferred WP No.2045/03 for her promotion earmarking the post of Director, Medical Services. The aforesaid writ petition was dismissed in the year 2004 and being aggrieved by the same, Writ Appeal No.723/06 was filed by the petitioner, which was disposed of in the following terms: "9. It is settled law that no person can claim promotion as of right and that inclusion of an employees name in the select list does not confer any right to promotion. However, in the instant case, both the respondent no.2 and appellant were found fit by the same DPC which was held on 16-9-03. The respondent/State immediately issued orders of promotion for respondent no.2 as Director, Medical Service on 19-9-03 but did not issue any orders of promotion in respect of the appellant. The respondents in their return have categorically admitted the fact that the appellant was found fit for promotion but orders of promotion in her favour could not be issued in view of the Model Code of Conduct and in view of the directions of the Election Commission restraining the government from doing so vide their letter dated 28-10-03. It is also an admitted

fact that though the appellant had been found fit for promotion and the election process was over sometime in the month of December, 03, the respondents instead of issuing regular orders of promotion in respect of the appellant issued orders dated 22-12-03 giving officiating charge of Director, Kamla Nehru Hospital, Bhopal to the appellant and ultimately granted regular promotion subsequently by order dated 18-10-04. It is also clear from the perusal of the order dated 18-10-04 which was produced before the court by the parties that the seniority of the appellant has been made subject to the decision in LPA No.116/04 which has now been reconverted into the present Writ Appeal. In the facts and circumstances of the case as stated above, we are of the considered opinion that as the appellant had been found fit for promotion and as admittedly orders of promotion in her favour were not issued in view of commencement of the election process and keeping in mind the fact that no person junior to the petitioner included in the select list has been promoted prior to the petitioner, the petitioner should be deemed to have been promoted on the post of Director, Kamla Nehru Hospital, Bhopal, with effect from 22-12-03, i.e. the date from which she was given officiating charge of that post and not from 18-10-04, i.e. the date of actual promotion. The appeal filed by the petitioner is allowed to this extent. It is made clear that the issue of seniority of the petitioner which has been kept in abeyance by the respondents be decided expediently in accordance with law taking into consideration the observations by this Court in the above mentioned paragraphs.

In view of the above, the appeal filed by the appellant is allowed to the extent indicated above. In the peculiar facts and circumstances of the case, there shall be no order as to costs....

2. W.P.No.4346/2009(S) was dismissed by quoting the aforesaid order passed in W.A.No.723/2008.

3. Since the petitioner was already agitating for her right to get proforma promotion in WP No.24186/2003, the present W.A.No.713/2009 was directed to be listed along with the said writ petition for analogous hearing and since the final order has already been passed in favour of the petitioner granting her proforma promotion with consequential benefits, in the circumstances, nothing survives in this Appeal and it is accordingly disposed of as infructuous.