

(2004) 12 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8823 of 2003

Jagendra Singh Chandel

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Citation : (2005) 2 MPLJ 384

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Ku. Malti Dadariya, for the Appellant; V.P. Nema, Government Advocate, for the Respondent

Judgement

A.K. Shrivastava, J.

A decade before the Apex Court in its well known decision Dr. Ms. O.Z. Hussain Vs. Union of India and others, has said that the provision for promotion increases efficiency of the public service while stagnation reduces efficiently and makes the service ineffective. The Apex Court further threw sufficient light in the field of Service Jurisprudence that promotion is normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the other officers of a particular department would be deprived of such advantage. This principle was laid down by the Apex Court on the basis that in a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation to the Government to provide promotional avenue to the employees.

According to me, the present case in hand is the best case in which a direction is contemplated to the Government to follow the verdict of the Apex Court in the case of Dr. Ms. O. Z. Hussain (supra). Ms. Malti Dadariya, Learned Counsel for the petitioner has invited my attention that the present petitioner is serving on the post of Soil Surveyor in the Department of Agriculture and this post do not have any promotional avenue as per Schedule IV framed under Rule 13 of M.P.

Subordinate Agricultural (Non-Gazetted) Executive Service Recruitment Rules, 1971. She has also invited my attention that if a person is given appointment to the post of "Surveyor" he enjoys the promotional avenue which is shown in Schedule IV but what sin the petitioner has committed if he has been appointed to the post of Soil Surveyor.

Shri Nema, learned Government Advocate, has contended that since there is no channel of promotion in the rules, therefore, the petitioner cannot be promoted. Thus, in this situation we can follow the verdict of the Apex Court passed in the Case of Dr. Ms. O. Z. Hussain (supra). The Supreme Court in the said case in para 7 has held as under :

7. this Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical "A" Group Scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the "A" category scientists in the non-medical wing of the Directorate.

Thus, the Government should consider the case of petitioner in the light of the decision of Dr. Ms. O. Z Hussain (supra).

Ms. Malti Dadariya, Learned Counsel for the petitioner, has also placed reliance on the another decision of the Supreme Court Raghunath Prasad Singh vs. Secretary, Home (Police) Department, 1988 SCC LS 927. Para 4 of the said decision is quite relevant which reads thus:

4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, Learned Counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organization. Reasonable promotionable opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organization within

six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter give a fresh opportunity to personnel in the police wireless organization to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organization.

The petitioner was appointed on the post of Soil Surveyor on 19-11-1976 and after having served for near about three decades he has not been provided any promotion. Naturally frustration would crept in the mind of the petitioner that after having served near about three decades even a single promotion has not been given to him. In this view of the matter, as this Court is realizing the agony of the petitioner and, therefore, respondent No. 1, Secretary, Agriculture Department, Bhopal is hereby directed that after considering the above said two cases of the Apex Court, necessary order in regard to promotion of the petitioner may be passed. Let a copy of this order be sent to the Chief Secretary, State of Madhya Pradesh, who shall deal the situation and may do needful to amend the rules in order to promote the employees who are appointed and are serving to the post of Soil Surveyor. this Court hope and trust that the direction may be complied with within a period of ten months.

With the aforesaid observation, this petition is disposed of.