
(2013) 09 MP CK 0290

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4760 of 2007

Namdeo Ghanekar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2014) 3 MPLJ 694

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Anshuman Singh, for the Appellant; Rahul Jain, Learned Dy. Advocate General for Respondents No. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi. J.

1. The petitioner, a Class-IV employees of the Forest Department, working on the post of Peon, has approached this Court by way of filing this writ petition under Article 226 of the Constitution of India, ventilating his grievance of non-consideration for grant of promotion on the post of Assistant Grade-III in appropriate manner and denying the said promotion to him, whereas, the benefit is extended to the respondent No. 4, who is said to be junior to the petitioner. It is contended by the petitioner that he was initially appointed on 18.3.1986 on the post of Peon in the establishment of Chief Conservator of Forest (Production), Bhopal. The petitioner has passed Higher Secondary School Examination in the year 1991. There were instructions issued by the State Government for considering the cases of Class-IV employees, for promotion on Class-III post, but despite sending of the relevant Annual Confidential Reports (hereinafter referred to as the ACR for brevity) of the petitioner, by an order dated 21.5.2004 juniors to the petitioner were promoted. Pointing out these facts, representations were made by the petitioner, but nothing was done, therefore, the writ petition was required to be filed. It is further contended by the petitioner that the respondent

No. 4 was appointed on 9.12.1997 on the post of Daftari and therefore, the respondent No. 4 was much junior to the petitioner. Despite this fact, the respondent No. 4 was promoted and the name of the petitioner was not considered in appropriate manner. Even the relaxation has been granted by the State Government in passing of the Hindi typing test, but such a claim of the petitioner was not considered. Only this much was said that the post is not available to consider the claim of petitioner and as soon as the post is made available, the petitioner would be considered for promotion. In view of the aforesaid contentions, the petitioner has claimed following reliefs:-

(i). That, by issuance of a writ nature of Mandamus this Hon''ble Court may be pleased to call the records relating to the case of the petitioner.

(ii). That, by issuance of a Writ in nature of Mandamus the Hon''ble Court may be pleased to direct the respondents that replace the petitioner in place of respondent no. 4.

(iii). That, by issuance of a Writ in nature of Mandamus the Hon''ble Court to direct the respondent to promote the petitioner according to the rules, i.e. just after completion of 5 years of qualifying service and may also to given him further promotion alongwith all the consequential benefits and arrears with interest of 30% per annum.

(iv). That, he should also be granted all the consequential benefits including time bound promotion which he hasn''t received.

(v). That, by issuance of writ in the nature of Mandamus the Hon''ble High Court may be pleased to direct the respondents to pay Rs. 50,000/- towards the compensation for the harassment of the petitioner and also direct the respondents to take the punitive measures against the responsible authorities.

While filing the return, respondents No. 1 to 3 have contended that the claim of the petitioner was also considered for grant of promotion. In fact, such promotion was to be considered in terms of M.P. Class-IV Service Recruitment Rules, 1967 (hereinafter referred to as 1967 Rules for brevity). Promotion to the post of Assistant Grade-III feeder posts are Peon, Daftari/Jamadar and Supervisor. The seniority of all three feeder posts are maintained separately. The posts of Daftari/Jamadar are superior to the post of Peon. The name of respondent No. 4 was above in the list of Daftari/Jamadar and she being superior to other, her name was kept at Serial No. 1 in the zone of consideration for promotion from Class-IV to Assistant Grade-III. The name of the petitioner was also in the zone of consideration, keeping in view the vacancies available and the seniority of the petitioner. When the Departmental Promotion Committee (hereinafter referred to as the DPC for brevity) was held on 6.4.2004, considering the aforesaid seniority list, the fit list was prepared. There were eight posts of general category, one post of Scheduled Caste category and four posts of Scheduled Tribe category of Assistant Grade-III available. Since the senior persons to the petitioner in his category were found fit for grant of promotion,

they were promoted. The name of the petitioner was put in the select list, but in the waiting list as, for him, the vacancy was not available to promote him on the post of Assistant Grade-III. The representation of the petitioner made in this respect was also considered and a decision was intimated to the petitioner. It is, thus, contended that claim made by the petitioner is misconceived and petition deserves to be dismissed.

2. By filing a rejoinder, the petitioner has controverted such a stand taken by the respondents and has contended that there was no question of application of the Rules as referred to by the respondents No. 1 to 3 in their return. On the other hand, the specific Service Rules made for governing the services in the Forest Department were required to be followed. It is contended that M.P. Class-III (Ministerial) Forest Services Recruitment Rules, 2000 (hereinafter referred to as the 2000 Rules for short) were already made by the respondents wherein specific provisions for consideration for promotion on the post of Assistant Grade-III are prescribed, therefore, only these Rules would be applicable. There was no preference given to the post of Daftari or Jamadar, qua, the post of Peon and, therefore, only seniority-cum-merit criteria was to be made applicable, seniors were to be considered and granted promotion first and then juniors were to be promoted. It is, thus, contended that illegally the right of proper consideration for promotion and consequential promotion is denied to the petitioner.

3. No additional return is filed by the respondents controverting such stand taken by the petitioner. By making an application, the petitioner has pointed out that even during pendency of this petition, some other juniors have been promoted superseding the claim of petitioner and one of such order is placed on record, which fact is also not disputed by the respondents.

4. Heard learned counsel for the parties at length and perused the record.

5. It is not known as to how the respondents have made the application of the 1967 Rules for the posts which are governed by different sets of Rules in the particular department. The respondents have not carefully gone through the 2000 Rules referred to herein above. The said Rules are made in exercise of power conferred by proviso to Article 309 of the Constitution of India and the said Rules are made applicable to all persons, who at the commencement of the Rules were holding substantively the post specified in the schedule, persons recruited to the services before the commencement of the Rules and persons recruited to the service in accordance with the provisions of the Rules. The method of recruitment is prescribed in Rule 6 of the 2000 Rules and promotion is one of the mode of recruitment. The specific provisions are made in Rules 14, 15, 16, 17 and 18 of the 2000 Rules for the purposes of appointment by promotion. The repeal and saving clause prescribed in Rule 23 of the 2000 Rules specifically prescribes that the Rule in force corresponding the provisions made in the 2000 Rules referred to herein above, immediately before the commencement of the Rules are repealed in respect of the matters covered by the 2000 Rules. This makes it clear that after coming into force of the 2000 Rules, any previous

Rules, stood repealed and any action whatsoever required to be taken, was to be taken only and only under the 2000 Rules.

6. From the documents available on record, it appears that there were certain vacancies available and in terms of the provisions of the 2000 Rules, a decision was taken to fill in those vacancies by promotion of the suitable employees. The report in this respect indicates that there were certain sanctioned posts available for promotion of suitable candidates and, therefore, on 6.4.2004 a DPC meeting was convened. The petitioner belongs to the general category and, therefore, his claim was to be considered in terms of the provisions of the 2000 Rules. The eligibility conditions for promotion as prescribed in the Rules are only the requisite years of service as indicated in Schedule IV of the Rules. The schedule specifically prescribes that Class-IV servants working in circle and division office if have completed five years of regular service, would become eligible to be considered for promotion strictly in accordance to the criteria of seniority-cum-merit. A Committee for consideration was to be constituted including three Divisional Forest Officers in the division and circle office. The candidates who are found fit, are to be promoted on the post of Assistant Grade-III in circle office or in the head office. Nothing else is prescribed in the said Rules for such consideration. Admittedly, the petitioner had completed five years of service on a Class-IV post and strictly in order of seniority, he ought to have been considered as a general candidate against the vacancy available in that discipline or category. There was no question of giving any preference to a Daftari or a Jamadar as this was not the criteria prescribed in the 2000 Rules. The 1967 Rules referred by the respondents in their return have neither been produced nor shown. Even otherwise, since the vacancies occurred after coming into force of 2000 Rules, the 1967 Rules would have stand repealed or inapplicable in the Forest Department in the matter of promotion in Class-III Ministerial post. This being so, the entire stand taken by the respondents that the petitioner was inferior in category of post than the respondent No. 4, cannot be accepted. It has to be held that since the petitioner too was found fit for promotion in the very same DPC, but his name was mentioned in the waiting list, in the garb of the non-availability of the post for promotion, the petitioner would be entitled to be promoted on the post of Assistant Grade-III with all the consequential benefits from the date the same was extended to the respondent No. 4. This fact is not disputed by the respondents No. 1 to 3 that the petitioner too was considered for promotion, was found fit, but was not promoted. On the other hand, the respondents No. 1 to 3 have contended that for the petitioner, the vacancy was not available and, therefore, he was superseded by the respondent No. 4.

7. Consequently, the writ petition is allowed. The respondents No. 1 to 3 are directed to issue an order of promotion after recasting the merit list of all those suitable candidates, who are found fit for promotion by the DPC held on 6.4.2004, working in the general category, ignoring the posts on which they were working in Class-IV category, strictly in order of their seniority on their post, and then to issue the orders in respect of petitioner granting him the benefit of

promotion with all consequential benefits of such promotion as were made available to the respondent No. 4, including pay, allowance, seniority etc. Let this order be complied with within a period of three months from the date of receipt of copy of the order. The writ petition stands allowed to the extent indicated herein above. There shall be no order as to costs.