
(2014) 08 CHH CK 0031
In the Chhattisgarh High Court
Case No : W.P. (S) No. 4335 of 2007

Nanhi Babu Kasyakar

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 1 CGLJ 474

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Parag Kotecha, Advocates for the Appellant; Sangharsh Pandey, Deputy Govt. Advocate, Advocates for the Respondent

Judgement

Prashant Kumar Mishra, J.—The petitioner has challenged the recommendation and approval concerning promotion of respondent No. 8 and his consequent promotion on the post of AG-III in the establishment of District Collectorate, Raigarh. He has also prayed for a direction to the respondents to consider his case for promotion on the post of AG-III. Facts of the case, briefly stated, are that the petitioner and respondent No. 8 were working on Class-IV post in Sarangarh Tehsil of Raigarh district. Meeting of the departmental promotion committee for considering promotion from the post of Peon to the post of AG-III in the establishment of District Office, Raigarh was convened on 24.4.2007. In the said meeting, the petitioner was found ineligible for consideration of his case on the ground that in his service book, his educational Qualification is mentioned as 8th standard pass. Although he is higher secondary pass, however, before appearing in the higher secondary examination, he has not obtained permission from the department. The name of respondent No. 8 was recommended as 3rd candidate for 3 posts earmarked for unreserved category.

2. According to the petitioner, the criteria for promotion is seniority cum merit, therefore, he being senior to respondent No. 8, should have been promoted. Learned counsel for the petitioner has argued that before clearing his higher

secondary examination, he had moved an application seeking permission, but the same was kept pending. However, he was granted leave for appearing in the examination, therefore, it should be held that the petitioner has obtained permission before actually appearing in the examination. He has also argued that if the educational qualification is not entered in the Service book for the fault of the department, the petitioner cannot be punished and he cannot be denied promotion throughout his life.

3. On the other hand, learned counsel for the respondents have argued that in the absence of obtaining permission before appearing in the examination, acquisition of qualification of higher secondary is of no value and the same has rightly been ignored while considering promotion. They have prayed for dismissal of the writ petition. Learned counsel for respondent No. 8 has relied on judgment of the Supreme Court in the matter of Smt. Nutan Arvind Vs. Union of India and another, .

4. This Court has heard learned counsel for the parties at length and perused the record.

5. Admittedly, gradation list of Class-TV employees working in the district office showing the position as on 1.4.2005. was published vide Annexure-P/3 wherein the petitioner was placed at S. No. 61, having been appointed on 9.7.1992, whereas respondent No. 8 Arvind Kumar Patel was placed at S. No. 84, having been appointed on 5.7.1995. Thus, the petitioner is senior to respondent No. 8. Under Rule 4 of Chhattisgarh Public Service (Promotion) Rules, 2003, the criteria for promotion from Class-IV post to Class-III post is "Seniority subject to Fitness".

6. Prior to present DPC meeting dated 24.4.2007, a DPC was earlier convened about a week back i.e. on 17.4.2007, the minutes whereof are on record as Annexure-P/4, wherein the petitioner's name was recommended for promotion. However, recommendation of this DPC was not given effect to and another DPC was convened. The file prepared and presented before the DPC contains a synopsis of each of the candidate. In the paragraph dealing with the petitioner, it is mentioned that he was granted permission to appear in Class-10th examination and BA 2nd year examination. He applied for permission to appear in the higher secondary examination; he submitted information of having passed higher secondary examination and similarly, he moved an application seeking permission to appear in BA 1st year examination, informed about passing of BA 1st year examination and moved an application for appearing in BA 2nd year examination and all these applications are in the concerned record placed, before DPC. His applications for making entry of qualification of higher secondary examination, BA 1st year and BA 2nd year are on record placed before DPC, which are pending consideration. Similarly, paragraph concerning respondent No. 8 mentions that although his qualification of passing higher secondary examination is entered in the service book, but there is no entry of obtaining permission to appear in the examination. With respect to respondent No. 9 Ajay

Kumar Sidar whose promotion is not challenged in this petition because he has been promoted in the ST category, it is mentioned that he has not obtained permission for passing higher secondary examination.

7. There is nothing on record to indicate that the petitioner has not been recommended for promotion for any other reason like earning adverse entries or pendency of any disciplinary proceeding. Thus, this Court is only required to consider as to whether mere failure to seek permission for appearing in the qualifying examination i.e. higher secondary examination in the present case, would debar a person from being promoted to the next higher post. This Court is also required to consider as to whether when the promoted candidates have also not secured such permission, the authority was justified in applying different yardsticks with respect to the promoted candidates.

8. The synopsis giving particulars of each of the candidates coming within the zone of consideration would indicate that the petitioner as well as respondents 8 & 9 had appeared in the examination without obtaining permission, however, while obtainment of such qualification has been entered in the service book of respondents 8 & 9, the same was not entered in case of the petitioner. In the additional documents filed by the petitioner on 21.7.2014, he has produced copy of the application wherein he was sanctioned leave by the Deputy Collector acting on behalf of the Collector, Raigarh for appearing in the higher secondary examination in the month of March, 2001. In this application, the petitioner has mentioned the time-table of the examination. He has clearly mentioned in the application that he has already applied for permission to appear in the examination and the said examination is to be held as per time-table for which he is required leave. Considering these details, examination leave was sanctioned to the petitioner. Thus, when the petitioner was granted leave to appear in the examination. It was a case of deemed permission to appear in the examination. In fact, respondent No. 8 has also filed a document as Annexure-R-8/1 wherein he has sought leave for appearing in the examination. Thus, the case of the petitioner as well as respondent No. 8 is identical because both have not been granted written permission to appear in the examination, but when they applied for leave to write the examination, such leave was sanctioned. When on the basis of similar state of facts, qualification of respondent No. 8 was entered in the service book, it was not the fault of the petitioner when his qualification was not entered in the service book even though he has applied for the same as is mentioned in the file presented before the DPC.

9. In the opinion of this Court, once it is found that the person concerned has cleared the qualifying examination, he cannot be denied benefit of such qualification because holding otherwise would mean that the candidate shall have to suffer throughout his career.

10. Now coming to the second issue, when the case is considered on the principles enshrined under Articles 14 and 16 of the Constitution of India, it is apparent that two similarly placed persons i.e. the petitioner and respondent No.

8 have been treated differently and thus, the petitioner has been treated discriminately in the matter of promotion. Since the petitioner was senior to respondent No. 8, he deserves to be promoted but the DPC faultily recommended the name of respondent No. 8 even though he is junior to the petitioner and the criteria for promotion is "Seniority cum Fitness".

11. The judgment cited by learned counsel for respondent No. 8 is not applicable to the facts of the present case, as the same is distinguishable on facts.

12. For the foregoing, the writ petition deserves to be and is hereby allowed. The promotion of respondent No. 8 on the post of AG-III in the District Establishment, Raigarh is set aside. The respondents are directed to convene review DPC to consider promotions as on 24.4.2007 and recommend promotion of eligible candidates in accordance with law. If the name of the petitioner is recommended, he will be entitled to seniority and arrears of pay from the date when promotion order was issued in favour of respondent No. 8. No order as to costs.