

(2009) 07 MP CK 0008
In the Madhya Pradesh High Court
Case No : W.A. No. 190/09

Narendra Kumar Chauhan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2009) 3 MPJR 315

Hon'ble Judges : S. Samvatsar, J; A.P. Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This judgment shall govern disposal of aforesaid appeals as both arise out of a common order dated 22nd Day of April, 2009, passed by the learned Single Judge of this Court in W.P. No. 3520/06(s) and W.P. No. 3353/06(s).

For marshaling the facts, writ petition No. 3520/06(s) is taken for consideration.

Brief facts of the case are that the petitioner in W.P. No. 3520/06(s) was appointed to the post of Asst. Professor on 24.10.1979 on adhoc basis. His services were regularized on the aforesaid post w.e.f. 22.08.1986 in the pay scale of Rs.700/-, 1600/-. He was granted senior pay scale vide order dated 17.03.1998 w.e.f. 25.08.1994. He was promoted to the post of Professor vide order dated 23rd May, 2006 Annexure P/11. A show-cause notice was issued to him as Annexure P/1, dated 9th June, 2006, whereby he was asked why his promotion was cancelled as his case was erroneously considered by the DPC for promotion to the post of Professor. It is alleged in the show-cause notice that the petitioner does not possess requisite qualification of Ph. D which is an essential qualification for the said post and, therefore, why his promotion should not be cancelled. Subsequently, the show-cause notice the order cancelling the promotion of the petitioner is passed on 22nd August, 2006 as Annexure P/1-A. This order was challenged by the petitioner by filing a writ petition before the

Writ Court which was dismissed by the impugned order. Hence, this appeal u/s 2(i) of Madhya Pradesh Uchha Nyayalaya (Khand "Nyayapeeth Ko Appeal), Adhiniyam, 2005.

Contention of learned counsel for the appellant is that the order Annexure P/1-A, dated 22nd August, 2006 is illegally and contrary to law. Their first contention is that the appellant was not promoted by order Annexure P/11 dated 23rd May, 2006 and in fact, he was upgraded to the post of Professor. This contention cannot be accepted.

From the bare reading of order dated 23rd May, 2006 Annexure P/ 11, it is clear that the appellant was promoted to the post of Professor from the post of Asst. Professor. The Clause (3) which is heavily relied by the learned counsel for the appellant also does not help the appellant because the said clause merely shows that after promotion the appellant shall be treated as up-graded from the date of promotion. This clause is included in the order because the DPC for the said promotion was held on 5th September 2005 and 15th December, 2005. The DPC was considering the case of the appellant for promotion from 01.01.2004 the cut-off date which was fixed for consideration of said promotion on 31.12.2003. Hence, as the case of the appellant and the other employees were considered for promotion w.e.f. 01.01.2004, it does not mean that the appellant is promoted to post of Professor from the post of Asst. Professor.

From the perusal of service Rules Annexure P/5, it is apparent that post of Asst. Professor and Professor belong to two separate cadre and as per the channel of promotion, a promotion post of Asst. Professor is that of Professor. Therefore, for this reason, it cannot be said that order Annexure P/1 is merely degradation and not a promotion. As per the service Rules, namely, Madhya Pradesh Education Service (Collegiate Branch) Recruitment Rules, 1990 which governs the service conditions of the appellant. The eligibility criteria is provided in Schedule IV. Clause(3) of Schedule IV lays down that the Asst. Professor working in the Senior/Selection grade pay scale shall be eligible for promotion to the post of Asst. Professor, if he/she has:

(a) completed 8 years of service in the senior scale, provided that the requirement of 8 years will be relaxed if the total service of the Asstt. Professor is not less than 16 years for Ph. D and M. Phil holders 13 and 15 years respectively;

(b) obtained Ph. D. degree or an equivalent published work;

(c) made some mark in the areas of scholarship and research as evidence by self-assessment, reports of reference as evidence by self-assessment, reports of referees quality of publications, contribution to educational renovation, design of new courses and curricular, etc.;

(d) participated in two refresher courses/summer institutes each of approximately 4 weeks duration of engaged in other appropriate continuing

education programmes of comparable quality as may be specified by the UGC, after placement in the Senior-Scale; and

(e) consistently good performance appeasable reports. Thus, from perusal of these provisions, it is clear that Ph. D. is one the essential qualifications for promotion to the post of Professor.

In the present case, the DPC was held on 5th and 15th December, 2005. Present appellant Narendra Kumar Chouhan has acquired his Ph. D. on 2nd December, 2005 vide Annexure P/8 i.e., few days prior to the DPC.

Considering these facts, learned counsel for the appellant contended that as on the date of DPC the present appellant has acquired the said qualification promotion could not have been cancelled. In support of their arguments learned counsel for the appellant relied on a judgment of Apex Court in the case of R.B. Desai and Another Vs. S.K. Khanolkar and Others, . In the aforesaid judgment, it is, of course laid down by the Apex Court that for deciding the eligibility of a candidate, it has to be seen that whether the candidate has possessed the requisite eligibility criteria on the date of DPC. The question is, however, involved in this case was quite different. In that case, number of persons were considered by the DPC for promotion and all of them have possessed the requisite eligibility criteria. However, some of juniors have acquired the said qualification prior to their seniors and, therefore, they were placed at higher in seniority than their juniors. Considering this fact, the Apex Court has held that if all the candidates have possessed the requisite qualification on the date of DPC then while promoting them their seniority could not have been disturbed merely because some of junior have acquired qualification prior to their seniors. This is not a situation in the present case.

The next judgment relied upon by the learned counsel for the appellant is in case of Union of India (UOI) and Others Vs. Majji Jangamayya and Others, . In para-56 of the aforesaid judgment, the Appeal Court has laid down that a particular officer whether eligible do not, should be decided with reference to the date of committee's meeting.

Another judgment relied by the learned counsel for the appellant is in case of State of Tamil Nadu and others Vs. S. Thangaval and others, . In para 12 of the said judgment, the Apex Court has laid down that a person has acquired qualification two days prior to the date of DPC, therefore, his case should be considered by the DPC.

There is no dispute about this proposition. However, in the present case, the DPC was considered the case of promotion on 01.01.2004 and on that date the appellant admittedly did not possess the eligibility criteria. He has acquired the eligibility criteria only on 2nd December, 2005. Hence, admittedly, he did not possess the requisite eligibility criteria on 01.01.2004.

The Apex Court in the case of Vijay Singh Charak Vs. Union of India (UOI) and

Others, in para 12 of its judgment has laid down that a selection list can only be prepared for a particular year, and only those who are eligible in that particular year, alone can be considered for selection in the selection list. Even if the selection list is not prepared in that very year, it will relate back to that particular year.

In the present case, the DPC was considered the case of promotion on 01.01.2004. On that date, the present appellant did not possess eligibility criteria. The appellant in the present case was considered by the DPC on 5th December, 2005 and found it fit because as per seniority list prepared in the year 1991 which was wrongly mentioned that the appellant has acquired Ph. D on 01.01.1998 which was admittedly a factual mistake and the said mistake continuing subsequent seniority list in which it shows that the appellant does possess the requisite qualification since 1994 and due to this mistake his name was considered. When this mistake came to the knowledge immediately after the promotion the promotion was cancelled after service of show-cause notice.

In such circumstance, the Writ court has not committed any error in dismissing the petition filed by petitioner. Narendra Kumar Chauhan i.e., W.P. No. 3520/06(s) as well as petition filed by Dr. Chand Kumar Khaneja i.e., W.P. No. 3353/06(s). Hence, no interference is called for in the impugned order.

Both the appeals stand dismissed with the aforesaid observation.