
(2004) 02 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7233 of 2003

Smt. Pushpa Shrivastava and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Citation : (2004) 2 MPJR 36

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Ramesh Shrivastava, for the Appellant; Rahul Jain, Govt. Advocate For State, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

By this petition, the original petitioner, late Raswroop Shrivastava had prayed for correction of the gradation list published on 1-4-1989 and to promote him as Superintendent of Land Records with effect from 11-12-1987 as his juniors were promoted with effect from that date. In addition, there was prayer for grant of all consequential benefits.

The facts as have been depicted are that the original petitioner was promoted to the post of A.S.L.R. on 28-06-1976 and was posted at different places. He continued as such till 10-3-1977. He was promoted to take charge of Naib Tahsildar Keskhal, Dist-Bastar. It is put forth that respondent no.2, the Commissioner Land Records, Gwalior got a gradation list published in respect of A.S.L.R. and S.L.R.S. as per document no. 3. It is urged in the petition that the persons who were appointed along with him and his juniors were promoted to the post of S.L.R. with effect from 11-12-1987 but the original petitioner was deprived of the aforesaid benefit. It is contended that though the petitioner is senior to the said persons who have been promoted, is yet without considering his case in the proper perspective his case has been ignored.

A preliminary objection has been filed on behalf of the respondents stating that during the period in question the petitioner was serving as Naib Tahsildar on adhoc-basis in the district of Bastar. As regards the seniority it is put forth that the Commissioner, Land Records, Gwalior made a recommendation to the State Govt. to carry out the gradation list and subsequently the original petitioner's seniority has been refixed vide Annexure R-1. As far as promotion of the petitioner to the post of S.L.R. is concerned, it is put forth that pursuant to the correction carried out in the gradation list the case of the petitioner was recommended to be considered for promotion with retrospective effect but as the service record was not available his case could not be considered. It is asserted that the steps in regard to reconstructing the service record and considering the case of the petitioner for promotion has been taken vide Annexure R-1. And the case of the petitioner would be considered within a period of four months.

It is relevant to state here that the Original Petitioner died in the year 1992 and in his place the legal heirs have been brought on record.

I have heard Mr. Ramesh Shrivastava, learned counsel for the petitioner and Mr. Rahul Jain, learned counsel for the State.

The core question that arises for consideration is whether the Original petitioner could have been considered for the post of S.L.R. from the date when his juniors were promoted. It has been stated in the return that the seniority of the Original writ petitioner was erroneously fixed. The said gradation list has been rectified. The respondents have clearly stated that they would consider the case of Raswroop within a stipulated time. In the meantime, the said Raswroop has left for heavenly abode. What was once a total claim within the parameters of service litigation, with the passage of time due to the death of Original Petitioner, has become only a money claim. There can be no doubt, had the original petitioner's seniority been correctly reflected in the gradation list he would have been considered in the post of S.L.R. in the year 1987. It is well settled in law that an employee is entitled to be considered for promotion but cannot claim promotion as a matter of right. If the Original petitioner's case is considered for promotion from the year 1987 when his juniors were considered and if on the basis of ACR's he is found suitable then there would be a revision of the pay-scale and the petitioner would be entitled to get the arrears of pension and also the arrears of enhanced family pension. Thus, I am inclined to direct the respondents to convene a review DPC to consider the case of late Raswroop for the purpose of promotion when his juniors were considered, and if he is found suitable to pass an order of promotion. I may hasten to clarify, if his case is found suitable for promotion his legal representatives would be entitled to get the arrears with regard to differential salary, and the pension as there would be a hike in the same and further they would be entitled to the enhancement in the family pension. The review DPC be convened within a period of three months and matter be finalized keeping in view the totality of circumstances within the said period. This court hopes and trusts that the respondents would act in total

objectivity and would not think that with the death of Raswroop they have to carryout a mere formality. If eventually, the benefits are conferred, the same should be extended to the petitioners within a period of four months from the date of such determination. The amount so fixed shall not carry any interest.

The writ petition is allowed to the extent indicated above. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.