

(2009) 10 CHH CK 0012
In the Chhattisgarh High Court
Case No : Writ Petition No. 5356 of 1997

Udhav Ram Sahu

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Citation : (2009) 4 CGLJ 591

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Sanjay S. Agrawal, for the Appellant; Sharmila Singhai and Anand Dadariya, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—With the consent of learned Counsel appearing for the parties, the petition is heard finally.

2. By this petition, the Petitioner seeks a direction to consider the case of the Petitioner for promotion to the post of Water Works Inspector in Water Resources Department of the Respondent-Municipal Corporation, Durg (for short "the Respondent-Corporation") from the date the Respondent No. 2 was promoted i.e. w.e.f. 4-6-1996 with consequential benefits.

3. Indisputably, the Petitioner was appointed on the post of Time Keeper on 7-8-1987 (Annexure - P/7) and the Respondent No. 2 was appointed as Time Keeper on 10-8-1989. The Respondent-Corporation by order dated 4-6-1996 (Annexure -P/4) promoted the Respondent No. 2 to the post of Water Works Inspector on the pay scale 1400-2340 ignoring the case of the Petitioner. Thus this petition.

4. Shri Agrawal, learned Counsel appearing for the Petitioner, would submit that the Petitioner was appointed on 7-8-1987 on the pay scale 515-10-575-15-840 whereas the Respondent No. 2 was subsequently appointed on 10-6-1989 (Annexure -P/3) on compassionate ground for a period of two years probation.

Thus, the Petitioner, being senior as Time Keeper, is entitled to be considered and promoted to the post of Water Works Inspector, but the Respondent-Corporation ignoring the case of the Petitioner for promotion to the post of Water Works Inspector promoted the Respondent No. 2 to the said post. The said act of the Respondent-Corporation is illegal, arbitrary and unreasonable.

5. In support of his contention, learned Counsel appearing for the Petitioner placed his reliance upon the decision of the Supreme Court rendered in *Municipal Corporation, Raipur Vs. Ashok Kumar Misra*, and upon the decision of this Court rendered in *Tijoram Sahu v. Nagar Nigam Durg* and Ors.WP No. 625 of 1999.

6. Ms Singhai, learned Counsel appearing for the Respondent-Corporation, would submit that there were no service rules available in the year 1996. The appointments and promotions were made on the basis of orders and resolutions passed by the Standing Committee and Mayor of the Respondent-Corporation. Ms Singhai would further submit that on the basis of resolution dated 28-5-1996 passed by the Standing Committee, the Respondent No. 2 was promoted to the post of Water Works Inspector, as the minimum qualification required for the said post was Matric (Science). The Petitioner does not possess the requisite qualification for promoting to the post of Water Works Inspector.

7. Ms Singhai would next submit that the promotion of the Respondent No. 2 is not on the basis of seniority alone. Suitability and eligibility is to be seen for promotion and appointment on the post of Water Works Inspector. About this fact the Petitioner has been informed under the Right to Information Act, 2005 vide letter dated 22-7-2006.

8. Adopting the submissions made by Ms Singhai, learned Counsel appearing for the Respondent No. 1, Shri Anand Dadariya, learned Counsel appearing for the Respondent No. 2, would submit that the Respondent No. 2 rendered his services in the Water Resources Department and his case was considered for promotion to the post of Water Works inspector in accordance with law. Even otherwise, the Respondent No. 2 possesses the requisite qualification for the post of Water Works inspector. There are no rules, which require consideration of Time Keepers for promotion on the basis of merit-cum-seniority or seniority-cum-merit. Shri Dadariya would further submit that the Respondent No. 2 had already completed probation before the date his case was considered for promotion to the post of Water Works Inspector.

9. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

10. The decision of the Supreme Court rendered in *Municipal Corporation, Raipur Vs. Ashok Kumar Misra*, , cited by learned Counsel appearing for the Petitioner, is on the termination of probationer. Thus, the same is not applicable to the facts of the present case, as the termination of a probationer or otherwise is not involved in the case on hand. Another decision cited by learned Counsel for the Petitioner i.e. the decision of this Court rendered in *Tijoram Sahi WP No. 625 of 1999*

(supra) is also not relevant to the facts of the present case, as in the present case no rules governing the service conditions of the employees were in existence at the time when the Respondent-Corporation considered the case of the Respondent No. 2 for promotion. It appears that the Respondent No. 2 has been promoted to the post of Water Works Inspector on the basis of requisite qualification i.e. Matric (Science).

11. The Standing Committee of the Respondent-Corporation in its meeting decided to post Water Works Inspector, who has minimum qualification of Matric (Science), as is evident from the note sheet circulated, during the course of hearing. Thus, the claim of the Petitioner on the ground of seniority alone cannot be accepted.

12. In view of foregoing, there is no illegality or infirmity in the decision taken by the Respondent-Corporation for promoting the Respondent No. 2 to the post of Water Works inspector. Thus, the Petitioner is not entitled to any relief.

13. For the reasons mentioned hereinabove, the writ petition is dismissed. No order asto costs.