

Court No. - 33

Case :- WRIT - A No. - 36594 of 2014

Petitioner :- Smt.Chetana

Respondent :- State Of U.P.And 2 Others

Counsel for Petitioner :- Krishna Nand Yadav,Rajesh Kumar
Maddheshiya,Ved Byas Mishra

Counsel for Respondent :- C.S.C.,Mohd.Shere Ali

Hon'ble J.J. Munir,J.

Parties have exchanged affidavits.

2. Admit.

3. Heard forthwith.

4. Heard Mr. Ved Byas Mishra, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel on behalf of respondent no. 1.

5. No one appears on behalf of respondent no. 3, though a counter affidavit on behalf of the Basic Shiksha Adhikari, Maharajganj has been filed by Mr. Mohd. Shere Ali, Advocate and his name is printed in the cause list.

6. This petition is directed against an order dated 29.03.2014 passed by the District Basic Education Officer, Maharajganj ordering that the petitioner, an Assistant Teacher, Purva Madhyamik Vidyalaya, Nataunva-I, Block-Nautanva, District-Maharajganj, though promoted earlier, shall be entitled to the benefit of promotion from the date of the impugned order; not from the date of the promotion order dated 15.11.2011.

7. The brief facts giving rise to this petition are that Smt. Chetna, the petitioner, was duly selected and appointed to the post of an Assistant Teacher in the year 2004. She underwent the Special B.T.C. course in the year 2004 and joined service at Gorakhpur. On 02.07.2007, the petitioner

joined as an Assistant Teacher, Prathmik Vidyalaya, Aabhuram, Block-Jangal Kaudia, District-Gorakhpur and worked there up to 01.09.2008. She was then transferred to District-Maharajganj and relieved on 01.09.2008. In compliance with the order of the District Basic Education Officer, Maharajganj, the petitioner was permitted to join the Prathmik Vidyalaya, Nautanva-I, Block-Nautanva, District-Maharajganj on 04.09.2008 and, since then, she is working with the said Institution.

8. In the year, 2001 a seniority list was drawn up for the purpose of consideration for promotion to the post of an Assistant Teacher, Junior High School/Headmaster/Headmistress, Primary School. In the seniority list that was drawn up for the aforesaid purpose, the petitioner's joining date was mentioned as 01.07.2009, instead of 04.09.2008.

9. The petitioner moved an application to the District Basic Education Officer, Maharajganj seeking correction of her date of appointment. She also sought correction of records regarding her educational qualifications. This application dated 29.09.2011 was duly received in the office of the District Basic Education Officer, Maharajganj. The petitioner moved a further application seeking correction of the date of joining, but it remained unattended.

10. The petitioner, all this while, remained under the impression that she might be lower down in seniority, and, therefore, not considered for promotion. She would get it on her turn. The petitioner discovered that her name did not find place in the seniority list drawn up by the Department. Therefore, on 10.10.2013, she approached the office of the District Basic Education Officer, Maharajganj with a request to permit her to participate in the ongoing counselling for promotion. It was only then that she was informed about an order dated 15.11.2011, whereby the petitioner had been promoted to the post of an Assistant Teacher, Junior High School by the last mentioned order. The petitioner's name could not find place in the seniority list of teachers of Junior High School, because the promotion

order carried a condition that promotees, who do not avail their promotion, will not be considered for the next three years.

11. There is a specific averment in paragraph no. 13 of the writ petition that the petitioner was never communicated with the promotion order dated 15.11.2011, and, therefore, never came to know of it. It is also averred that the said order was never served upon the petitioner and, therefore, the question of declining or refusing promotion does not arise.

12. On 10.10.2013, the petitioner moved a representation before the District Basic Education Officer, Maharajganj placing her grievance with the request that she be given promotion with effect from 15.11.2011. This was followed by another representation dated 17.10.2013, where, again, it was emphasized that the petitioner was never served with the promotion order dated 15.11.2011. It was also said that depriving the petitioner of her promotion, owing to a default on the respondents' part in communicating the order, was illegal. No action, however, was taken on the petitioner's request that her promotion be treated as one made with effect from 15.11.2011.

13. In the circumstances, the petitioner preferred Writ A No. 63114 of 2013, raising her claim before this Court to be promoted with effect from the date of promotion order. This Court, in the said petition, by means of an order dated 03.12.2013, directed the District Basic Education Officer, Maharajganj to pass appropriate orders on the petitioner's pending representation(s) within a period of three months in accordance with law, from the date of production of a certified copy of that order. It is in compliance with the aforesaid order that the impugned order dated 29.03.2014 has been passed by the District Basic Education Officer.

14. As already said, the petitioner is aggrieved by the order, only to the extent that her promotion has been directed to take effect from the date she joins the promotion post, pursuant to the impugned order and not with

effect from the date of her promotion order dated 15.11.2011. The only finding that has been recorded in the order impugned, is that though the petitioner was promoted *vide* promotion order dated 15.11.2011, she did not avail of it, and, instead, moved this Court by means of Writ A No. 63114 of 2013 seeking to enforce her right to be promoted. It is then observed that honouring (which does not mean complying) the order of this Court dated 03.12.2013 and taking a humanitarian view of the matter, the District Basic Education Officer, Maharajganj is extending the benefit of promotion to the petitioner from the date she actually joins the promotion post, pursuant to the impugned order.

15. Upon hearing learned Counsel for the parties and perusing the counter affidavit filed on behalf of the District Basic Education Officer, Maharajganj, what this Court finds is that the assertion in paragraph no. 13 of the writ petition to the effect that the promotion order dated 15.11.2011 was never communicated to the petitioner, has not been denied at all. A reading of the impugned order also does not show that there is any remark to the effect that the promotion order was ever communicated to the petitioner. There is no reference to any dispatch of the promotion order to the petitioner, either by registered post or departmental *dak*.

16. The petitioner was serving in a primary school under the control of the Basic Shiksha Adhikari in the District of Maharajganj. It would be the most convenient thing to do if the petitioner was served with her promotion order through the Headmaster/Headmistress of the School, where she was already serving as an Assistant Teacher. There is not even a case to the effect that the promotion order was communicated to the petitioner through her Principal or otherwise, where the petitioner was serving, that is to say, the Prathmik Vidyalaya, Nautanva-I, Block-Nautanva, District-Maharajganj. It is also not the respondents' case that this order was communicated to the petitioner at her residence by registered post or the place she was working, that is to say, the school

where she was serving. There is non-traverse of the petitioner's case that she was never communicated with her promotion order.

17. A promotion order that was passed by the respondents, but apparently kept back on their file, cannot be made the subject matter of disadvantage or prejudice to the petitioner, saying that she did not avail of it. Availing the benefit of a promotion order is a conscious act, which postulates awareness on the employee's or the beneficiary's part about the existence of the promotion order. There is nothing to show that the petitioner was ever made aware of the promotion order dated 15.11.2011. It is perhaps for this lapse on their part that the Basic Shiksha Adhikari has not held the petitioner to have forfeited her right to promotion and asked her to wait for her turn, postponed by three years, which otherwise, is the consequence of not availing a promotion order.

18. Apparently, the Basic Shiksha Adhikari, Maharajganj was aware that the promotion order was never communicated to the petitioner; she was never made aware of it. However, instead of extending full relief to the petitioner and giving effect to the promotion order dated 15.11.2011, the Basic Shiksha Adhikari has tried to put up a strong face and says that taking a sympathetic view in the matter, he was granting promotion to the petitioner with effect from the date that she joins the promotion post, pursuant to the impugned order.

19. *Ex facie*, the impugned order is flawed, arbitrary and unreasonable. It is not sustainable to the extent that it limits the petitioner's right to promotion from the date she joins her duties on the promotion post, pursuant to the impugned order. The petitioner's rights have clearly to be traced back to the order dated 15.11.2011, when she was granted promotion to the post of an Assistant Teacher, Junior High School.

20. Now, the question that arises is whether the petitioner would be entitled to pecuniary benefits attached to the promotion post. This Court is of opinion that whatever kind of an accident the petitioner has been a

victim of, she cannot be extended the benefit of pecuniary benefits attached to the promotion post, which she has not yet joined, but, she has to be treated notionally promoted as an Assistant Teacher, Junior High School with effect from the date of the promotion order. This Court is of opinion that the promotion would have to be considered as one effective from 15.11.2011, because there is no possibility now, of finding for the petitioner, the actual date when she would have joined pursuant to the order of promotion. She would, therefore, be entitled to be appropriately placed in the seniority list of Assistant Teachers, Junior High School on whatever basis maintained, treating her date of joining to be 15.11.2011.

21. The impugned order passed by the District Basic Education Officer, Maharajganj is, therefore, **quashed** to the extent that it limits the petitioner's promotion to the date that she joins the post of an Assistant Teacher, Junior High School pursuant to the impugned order.

22. A *mandamus* is issued to the respondents to treat the petitioner as notionally promoted to the post of an Assistant Teacher, Junior High School with effect from the date of the order of promotion dated 15.11.2011 passed by the Basic Shiksha Adhikari, Maharajganj. The actual benefits in terms of emoluments *et cetera* shall be reckoned from the date the petitioner joins the promotion post or has already joined pursuant to the impugned order. However, the notional promotion will entitle the petitioner to other benefits of seniority in that cadre.

23. This writ petition is **allowed** in terms of the aforesaid orders.

24. There shall be no order as to costs.

25. Let this order be communicated to the Secretary, Basic Shiksha Parishad, Prayagraj and the District Basic Education Officer, Maharajganj by the Registrar (Compliance).

Order Date :- 30.11.2023
Prashant D.