

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2186 of 2005**

Dr. B.N. Arjaria, S/o Shri RS Arjaria, aged about 45 years, resident of Near IT Computer Centre, Main Road, Chhatarpur, MP.

Presently posted and residing at Govt. Hospital, Govt. Dispensary Gram Banjari, Post Goudolwahi, Tahsil Dondi Lohara, Distt. Durg (MP) (Now Chhattisgarh).

---- Petitioner**VERSUS**

1. The State of Madhya Pradesh, through Principal Secretary, Health Education Department Govt. of MP Vallabh Bhawan, Bhopal.
2. Officer of Director, Bhartiya Chikitsa Padhyathi and Homeopathy, Bhopal, MP.
3. District Ayurvedic Medical Officer, District Chhatarpur, MP.

---- Respondents

For Petitioners	Shri Preetam Tiwari, Advocate under instructions of Shri CD Sharma.
For Respondent/State.	Shri UNS Deo, Govt. Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****04/12/2015**

1. Grievance of the Petitioner through the instant petition is for grant of monetary benefit that would accrue to him as a consequence of promotion which was granted to him on 06.11.1999 w.e.f. 08.08.1997 when his juniors were promoted.
2. Case of the Petitioner is that, though he was eligible and competent for being promoted, but for some reasons and due to the mistake on the part of Respondents, he was not promoted to the post of Ayurvedic Chikitsa Adhikari. He made a representation to the State Government which accepted only on

06.11.1999 (Annexure A/1) whereby the petitioner was also promoted w.e.f. 08.08.1997 when his juniors were promoted. However, while passing the said order, it was held that the intervening period from 08.08.1997 to 06.11.1999 should be treated as 'No Work No Pay' with regard to monetary benefit, but he was granted notional fixation for the said period. This according to petitioner was illegal and improper as the mistake was committed on the part of State/respondents for which he should not suffer or be put to loss.

3. Learned counsel for the State opposing the petition submits that infact the petitioner had physically started work on the promoted post only from 06.11.1999 and not from 08.08.1997 and therefore, he cannot claim for monetary benefit for the period from 08.08.1997 to 06.11.1999 and prays for rejection of this petition.
4. The issue involved in this petition is no longer res integra as the same has already been adjudicated by the Supreme Court. The Supreme Court in 2007 (6) SCC 524 (State of Kerala & Others v. E.K. Bhaskaran Pillai), re-iterating the ratio of law laid down in cases of 1991(4) SCC 109 (Union of India & Others Vs. K.V.Jankiraman and Others), 1999(4) SCC 181 (State of A.P. Vs. K.V.L. Narasimha Rao & Others) and 2006 (9) SCC 621 (State of U.P. And Another Vs. Vinod Kumar Srivastava), has held that concerned employee cannot be denied of his duties for the fault of department, and therefore, incumbent would be entitled for the salary of the intervening period and the said period cannot be treated as 'No Work No Pay', and it has been observed as under :

“4.....so far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered.Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and

he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb....”

5. Applying the principles of law laid down by the Supreme Court in the above referred cases, this petition is allowed and the impugned order dated 06.11.1999 is quashed to the extent of period being treated as 'No Work No Pay' and it is made clear that petitioner shall be entitled for all the monetary benefits for the period from 08.08.1997 to 06.11.1999.
6. The petition is allowed.

Sd/-

(P.Sam Koshy)

JUDGE