

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(S) No. 5946 of 2011**

Chandu Ram Jatwar S/o Sukram, working as Superintendent at Post
Metric Boys Hostel, Sarangarh, Distt. Raigarh, CG

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Scheduled Caste and Scheduled Tribe of School Department D.K.S. Bhawan, Raipur, CG
2. The Commissioner, Deptt. of SC & ST , Raipur, CG
3. The Regional Deputy Director, Deptt. of SC & ST, Bilaspur, CG
4. The Assistant Commissioner, Development of Tribal, Raigarh, CG
5. Lekh Ram Banjare (Headmaster), Govt. Middle School, Pindri, Tah. Sarangarh, Distt. Raigarh, CG
6. Surendra Singh Thakur, Headmaster, Govt. Middle School, Kapartunga, Tah. Sarangarh, Distt. Raigarh, CG

---- Respondents

For Petitioner	:	Shri Udho Ram Koshaley, Advocate
For Respondent/State	:	Shri U. N. S. Deo, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04.12.2015**

The petitioner through the present writ petition has claimed for grant of seniority pay scale and also promotion at par with his juniors who were granted the same in the year 1981 on the post of Upper Division Teacher and subsequently on the post of Headmaster w.e.f. September, 1991.

2. According to the petitioner, he was fully eligible and fit for promotion but on account of inaction on the part of the respondent department and the mistake attributed to the officers of the respondent department, he was denied the same whereas his juniors i.e. respondents 5 & 6 were promoted to Upper Division Teacher w.e.f. 06.05.1981 and thereafter also promoted to the post of Headmaster w.e.f. 05.09.1991 on account of which he has suffered a great loss. According to the petitioner, subsequently, the State realizing the mistake

has granted him promotion w.e.f. 06.05.1989 on the post of Upper Division Teacher and thereafter without granting proper fixation, he was again promoted on the post of Headmaster, Middle School.

3. At this juncture, State counsel submits that vide order dated 23.06.2011 the petitioner has already been granted promotion from the back date to the post of Upper Division Teacher from 31.03.1981 and thereafter to the post of Headmaster from 05.09.1991 i.e. the dates when his juniors were promoted and as such the grievance of the petitioner stands redressed.

4. Counsel for the petitioner submits that though the State Govt. vide order dated 23.06.2011 has granted promotion to the petitioner from the back dates yet the petitioner has been denied his rightful claim for monetary benefit for the intervening period for these posts. He submits that the petitioner was not at fault for not being promoted earlier along with his juniors but it was the fault on the part of the respondent department for which the petitioner should not be put to loss.

5. The Supreme Court in the case of Union of India & Others v. K.V. Jankiraman & Others [1991 (4) SCC 109] while dealing with similar circumstances though in a case of a departmental enquiry in para 24 and 25 has held as under:-

“24. It was further contended on their behalf that the normal rule is “no work no pay”. Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is

for this reason that F.R. 17(1) will also be inapplicable to such cases.”

6. The reason for the Supreme Court to draw such analogy was for the reason that an employee if he is not found blameworthy in the least for not getting the advantage of promotion and is also not been visited with a penalty or even an order of censure, he is entitled and has to be given the benefits of the higher posts along with other benefits from the date on which he would have normally been promoted to the said post but for the act of the Respondent-State.

7. Relying upon the aforesaid judgement of K.V. Jankiraman (supra), the Supreme Court again in the case of State of A.P. v. K.V.L. Narasimha Rao & Others [1999 (4) SCC 181] has held that :

“A wrong had been committed in unduly delaying the finalisation of seniority and giving promotions thereto and hence denial of monetary benefits to them would be arbitrary in violation of Articles 14 and 16 of the Constitution.

In normal circumstances, when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier.”

8. Recently, the Supreme Court in one of the matters reported in 2007 (6) SCC 524 (State of Kerala & Others v. E.K. Bhaskaran Pillai) following and relying upon the principles laid down in the case of K.V. Jankiraman (supra) and other subsequent judgements, has held that so far as the situation with regard to monetary benefits with retrospective promotion is concerned that depends upon case to case as there are various facets which have to be considered. Particularly, when administration has wrongly denied the employee his due then in that case he should be given full benefits including monetary benefits. Further, in such circumstances, principle of “no work no pay” cannot be accepted as a thumb rule. In the instant case also, in the year 2011, the Petitioner's case was considered and it was found that persons junior to him were promoted ahead of him and he was wrongly denied. Therefore, the State Government promoted the Petitioner from a retrospective date, i.e., from 5.9.1991, i.e., the date on which his juniors were promoted but was only granted notional fixation in the intervening period and he was not paid the benefits of promotion in terms of arrears of salary.

9. Therefore, in the given facts and circumstances of the case, this Court is of the opinion that when the Petitioner is not to be blamed for not getting promotion in time and that the reason for the delayed promotion was

attributable on the Respondent-State and that there was no fault of the Petitioner whatsoever. That the persons who had been promoted earlier ahead of the Petitioner have enjoyed the fruits attached to the post and there is no reason why the Petitioner for the fault of the Respondents should be denied the fruits of the posts which he would have otherwise got but for the unjustified delay on the part of the Respondents.

10. The employee cannot be put to loss for the lapse on the part of the State Government as the petitioner was always willing to discharge his duties on the higher post and it was the act on the part of the State Govt. which deprived him firstly from discharging the duties of the higher post and secondly from getting the benefits that were attached with the higher post.

11. Considering the total facts and circumstances of the case and also applying the principle laid down by the Supreme Court in the aforementioned judgments, this Court is of the opinion that it is a fit case where the petitioner is entitled for monetary benefits for the intervening period. Accordingly, it is directed that the State Govt. shall grant proper monetary benefits for the intervening period to the petitioner within a period of four months from today.

12. The writ petition is accordingly allowed.

Sd/-

P. Sam Koshy
Judge