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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2723 of 2011**

1. Mohan Lal Sahu S/o Shri Ghasiram Sahu, aged about 47 years, Head Master, Girls Primary School, Nawagaon (Kandel) Block Dhamtari, District Dhamtari, Chhattisgarh.
2. Yadunandan Singh, aged about 41 years, S/o Shri Udai Singh Verma, Head Master, Navin Primary School Kotabharri, Block Dhamtari, District Dhamtari, Chhattisgarh.
3. Sunil Kumar Sao, S/o Shri Sohanlal Sao, aged 50 years, Head Master, Primary School Unnayit, Block Dhamtari, District Dhamtari, Chhattisgarh.
4. Sanjay Kumar Sahu, Aged 50 years, S/o Shri Baisakhu Ram Sahu, Head Master, Unnayit Primary School Dhimartikur, Block Dhamtari, District Dhamtari, Chhattisgarh.
5. Rewa Ram Sahu, Aged 46 years, S/o Shri Sita Ram Sahu, Head Master, Govt. Primary School, Junwani, Block Dhamtari, District Dhamtari, Chhattisgarh.
6. Santosh Kumar Kumbhakar, Aged about 49 years, S/o Shri Derha Ram Kumbhakar, Head Master, Govt. Primary School Sehradabri, Block Dhamtari, District Dhamtari, Chhattisgarh.
7. Smt. Usha Jachak, Aged 47 years, W/o Shri Vasant Rao Jachak, Head Master, Govt. Girls "A" Primary School, Junwani, Block Dhamtari, District Dhamtari, Chhattisgarh.
8. Dihrendra Rao, Aged about 49 years, S/o Shri Shivaji Rao Pawar, Head Master, Government Primary School, Bharripara, Amdi, Block Dhamtari, District Dhamtari, Chhattisgarh.
9. Smt. Sangeeta Dukre, Aged about 47 years, S/o Shri Chandrashekhar Dukre, Block Dhamtari, District Dhamtari, Chhattisgarh.
10. Gajendra Kumar Sahu Aged 47 years, S/o Shri Bhukhanlal, Head Master, Govt. Girls Primary School, Nari Block Kurud, District Dhamtari, Chhattisgarh.
11. Salik Ram Sahu Aged about 53 years, S/o Shri Hariram Sahu, Govt. Primary School, Kurud, Block Kurud, District Dhamtari, Chhattisgarh.
12. Goverdhan Singh Patel Aged 53 years, S/o Shri Padmanlal Patel, Block Magarload, District Dhamtari, Chhattisgarh.
13. Kamleshwar Sinha Aged about 51 years, S/o Shri Nohar Sinha, Block Magarload, District Dhamtari Chhattisgarh.

---- Petitioners**versus**

1. State of Chhattisgarh, Through the Secretary, Education Department, DKS Building, Raipur, Chhattisgarh.
2. District Education Officer, Dhamtari, District Dhamtari, Chhattisgarh.
3. Nand Kumar Nirmal, Head Master, Govt. Primary School Piparchedi, District Dhamtari, Chhattisgarh.
4. Smt. Komal Lata Soni Head Master, Govt. Primary School, Adhari Nawagaon, Dhamtari, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Ajay Shrivastava, Advocate
For Respondents No.1&2/State	:	Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice

Order on Board

16/10/2015

1. Heard Learned Counsel for the Petitioners and the State.
2. Learned Counsel for the Petitioners submits that they were appointed as Assistant Teachers in different schools, and were eligible to be considered for promotion to the post of Head Master, Primary School. Superseding them, Respondents No.3 and 4 were promoted as Head Master, Primary School on 18.8.2008. The criteria for promotion under the Chhattisgarh Promotion Rules, 2003, was seniority-cum-merit. Therefore, seniority had to be given primacy, subject to any demerits, which may overcome the same. The authority on realising their mistake, promoted the Petitioners on 17.2.2010 instead of 18.8.2008, the date their juniors were promoted. Thereafter, the Petitioners have been given retrospective notional seniority from 18.8.2008 by order dated 27.12.2010, but without arrears of salary.
3. Learned Counsel for the State submits that the grievances have been redressed by grant of retrospective promotion. There is no merit in the writ application. The authorities have rightly applied the principle of 'No Work No Pay'. If the Petitioners did not work during the period in question on the promoted post, the question of salary for the promotional post does not arise.
4. We have considered the submissions. The question for grant of consequential benefits pursuant to an order for retrospective notional promotion was considered in (2007) 6 SCC 524 (State of Kerala v. E.K. Bhaskaran Pillai), observing as follows:

“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 a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. 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 sometimes 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”

5. The Petitioners were eligible to be promoted as on 18.8.2008. Superseding them, juniors were promoted. The matter was relentlessly pursued by the Petitioners. The Respondents having realised the mistake committed have granted them retrospective notional seniority. The Petitioners cannot be allowed to suffer for what was essentially the fault of the Respondents alone. Justice demands that the Petitioners, in the facts of the present case be granted retrospective consequential benefits also.
6. Respondents No.1 and 2 are directed to pay the arrears of salary to the Petitioners from 18.8.2008 to 17.2.2010 within a maximum period of three months from the date of receipt and/or presentation of a copy of the present order.
7. The writ application is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE