

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) No.638/2014

%

24th April, 2015

NIRMAL KASHYAP

..... Petitioner

Through: Mr.Anilendra Pandey, Advocate.

versus

STATE OF M.P. & ORS.

..... Respondents

Through: Mr.Sunny Choudhary with
Mr.Abhimany Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner has sought for the following reliefs:

“(a) issue a writ, order or direction in the nature of mandamus directing the respondents to grant retirement benefits on promotional basis to the petitioner as per Rules and directions issued by Hon’ble Supreme Court in Civil Appeal No.2095 of 2009 titled as Madan Mohan Saxena Vs. State of Madhya Pradesh and others;

(b) issue a writ order or direction as are deemed fit and proper directing the respondent to grant the interest on arrears to the petitioner at 18% p.a.

(c) pass such further and other order as may be deemed fit and proper in the interest of justice.

(d) award the cost of litigation in favour of the petitioner and against the respondents.”

2. The petitioner had earlier filed a writ petition being W.P.(C) No.7977/2013, and which was allowed to be withdrawn vide order dated 17.12.2013, giving liberty to file a fresh petition only if the necessary ingredients of cause of action entitling the petitioner to the higher pay scale of promotion is stated. The order dated 17.12.2013 reads as under:-

“ Counsel for the petitioner, after arguments, seeks liberty to withdraw the petition and to file the petition in which the necessary ingredients of cause of action whereby a higher pay scale of promotion which is claimed are averred.

Dismissed with the aforesaid liberty.”

3. In this writ petition, petitioner has not pleaded any cause of action based on a specific service rule or circular etc of the employer/respondent no.1/State of M.P, as to how the petitioner is entitled to the higher scale of pay of promotion, and such averments were necessary because only on the petitioner satisfying the relevant ingredients with respect to the applicable rule he can be granted the higher scale of pay of promotion. Obviously, petitioner has not pleaded the requisite cause of action in his favour for grant of promotion, much less in a writ petition which is filed in the year 2015 claiming the entitlement of higher pay scale of promotion since the year 2001, because petitioner would not be satisfying the requirement of grant of promotion or the higher pay scale of the promotion post. It is no cause of action in the eyes of law to simply allege that since someone junior to the

petitioner has been promoted, hence the petitioner is also automatically entitled to promotion because of promotion of the junior. There is no such rule pleaded or filed for the petitioner to get promotion only because his junior is promoted.

4. The respondents have filed the counter-affidavit making averments as to how the petitioner repeatedly has been granted *in situ* promotion or higher time scale of pay as per the Assured Career Progression (ACP) Scheme, and which are stated in paras 2(ii)(b) to (g) of the counter-affidavit of the respondents, and these paras read as under:

“

(ii) That the relevant/material facts and documents hided from this Hon'ble Court pertaining to the promotion and the grant of higher time scale to the petitioner are enumerated as below:

X X X X X

(b) The State Government of Madhya Pradesh implemented the “kramonati yojna” for the fact that the regular employees who were working continuously for 12 years or more and could not be promoted to higher post because of some reasons, vide order dated 17.04.1999. Under this scheme the employees who have continuously worked for 12 yrs or more on the same pay scale were granted First Higher pay scale. A true translated copy of the order/policy dated 17.04.1999 is annexed herewith and marked as **ANNEXURE R-1.**

(c) The Petitioner vide order dated 26.02.2000 was granted higher pay scale in pursuance of the order/policy dated 17.04.1999 w.e.f. 17.05.1999 in the pay scale of 4000-100-6000. The Petitioner herein has hided this grant of higher pay scale from this Hon'ble Court. A true translated copy of the order dated 26.02.2000 is annexed herewith and marked as **ANNEXURE-2.**

(d) The Petitioner herein vide government order dated 01.08.2007 was promoted on the post of Assistant House Keeper in the pay scale of Rs.4000-100-6000 on certain terms and conditions under Rule 15, Schedule IV of Office of the Commissioner, Government of Madhya Pradesh, at New Delhi Class III (Non-gazetted) Service Recruitment Rules, 2003 when the vacancy fell vacant. The Petitioner herein had hid her promotion from this Hon'ble Court and tried to create an impression that in her entire career, she was never granted any promotion or higher pay scale in lieu of promotion. A copy of the Office of the Commissioner, Government of Madhya Pradesh, at New Delhi Class III (Non-gazetted) Service Recruitment Rules, 2003 and true translated copy of the promotion order dated 01.08.2007 is annexed herewith and marked as ANNEXURE R-3 (COLLY).

(e) That the State Government of M.P vide order dated 24.01.2008 amended above referred "kramonati Yojna" to further facilitate employees with "Time scale pay". A true and translated copy of the amended 'Kramonati Yojan'/Time Scale Pay dated 24.01.2008 is annexed herewith and marked as ANNEXURE R-4.

(f) The Petitioner vide order dated 05.08.2011 was granted time pay scale in pursuance of the order/policy dated 24.01.2008 w.e.f. 01.04.2006 in the pay scale of 5200-20200+2800. The Petitioner herein has hid this grant of time pay scale from this Hon'ble Court. A true translated copy of the order dated 05.08.2011 is annexed herewith and marked as ANNEXURE R-5.

(g) That the answering Respondents herein most respectfully submits that the Petitioner has hid the abovementioned facts pertaining to promotion and the grant of higher pay scale from time to time and tried to mislead this Hon'ble Court by creating the impression that in her entire service she was never promoted or granted any higher pay scale in lieu of promotion."

(underlining added)

5. It is, therefore, clear that the petitioner does not seem to understand the basic aspect that courts of law are meant to be approached where there is at least a reasonable case, and it is not that courts of law have to be repeatedly approached with totally frivolous matters and even without pleading the

necessary cause of action. As already stated above, the requisite facts have not been pleaded in the writ petition, because, the petitioner in fact has no legal cause of action to claim the reliefs which are sought in the writ petition.

6. In terms of the counter affidavit of respondents it is noted that the petitioner did receive one promotion on 01.8.2007, and a copy of which promotion order has been annexed with the counter-affidavit of the respondents as Annexure R-3 (colly).

7. I may note that in view of the frivolous nature of the case, even after arguments, I put it to the counsel for the petitioner whether the petitioner still seeks to press this petition and invite a judgment, in reply to which counsel for the petitioner seeks a judgment.

8. In view of the above, the writ petition is a total abuse of the process of the law, and the same is therefore dismissed with costs of Rs.20,000/-.

At this stage, on the submission of counsel for the respondents, costs instead of being paid to the respondents be deposited with the Delhi High Court Legal Aid Services Committee within a period of six weeks from today.

9. List before the Registrar on 1st July, 2015. In case, costs imposed are not deposited by the petitioner, Registrar can recover the same as arrears of

land revenue from the petitioner and deposit the same with the Delhi High Court Legal Aid Services Committee.

APRIL 24, 2015
KA

VALMIKI J. MEHTA, J.