

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision : July 21, 2015*

+ **LPA 466/2015**

NIRMAL KASHYAP Appellant

Represented by: Mr.Anilendra Pandey,
Advocate.

versus

STATE OF MADHYA PRADESH & ORS Respondents

Represented by: Mr.Sunny Choudhary,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No.12773/2015 (Exemption)

Allowed, subject to all just exceptions.

CM No.12775/2015 (Delay in refiling)

For the reasons stated in the application 33 days delay in refiling the appeal is condoned.

Application is disposed of.

LPA 466/2015

1. Aggrieved by the order dated April 24, 2015 dismissing the writ petition filed by the Appellant Nirmal Kashyap with cost, Nirmal Kashyap prefers the present appeal.

2. In the writ petition Nirmal Kashyap prayed for the following relief:

“(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.”

3. The learned Single Judge noted that an earlier writ petition filed by Nirmal Kashyap being W.P.(C) No.7977/2013 was permitted to be withdrawn vide order dated December 17, 2013 giving opportunity to file a fresh petition only if the necessary ingredients of cause of action entitling the Petitioner to the higher pay scale for promotion were stated. However, despite the opportunity being granted no cause of action was pleaded in W.P.(C) No.638/2014 resulting in passing of the impugned order dated April 24, 2014. The learned Single Judge noted that the writ petition does not disclose the service rules or circular on the basis of which the Appellant was entitled to higher scale of pay or promotion. Thus the writ petition was dismissed with cost of ₹20,000/-.

4. Before this Court Nirmal Kashyap has placed on record Schedule-IV of the Office of the Commissioner, Government of Madhya Pradesh at New Delhi Class-III (Non-gazetted) Service Recruitment Rules, 2003. As per the Schedule-IV the minimum service period required for promotion from the post of Receptionist/Telephone Operator/Hospitality Assistant-III to

Assistant House Keeper/Protocol Assistant-II was five years.

5. In the counter affidavit filed by the Respondents in response to the writ petition it was pointed out that Nirmal Kashyap was appointed on the post of Telephone Operator in Madhya Pradesh Bhawan, New Delhi. The State Government of Madhya Pradesh implemented “Kramonati Yojna” which entitled a regular employee working continuously for 12 years or more who could not be promoted to higher post for grant of first higher pay scale. Thus vide order dated February 26, 2000 Nirmal Kashyap was granted higher pay scale pursuant to the said policy dated April 17, 1999 w.e.f May 17, 1999 in the pay scale of ₹4000-100-6000. The grant of higher pay scale to Nirmal Kashyap was concealed by him in the writ petition. Nirmal Kashyap was further promoted on the post of Assistant House Keeper on August 01, 2007 in the pay scale of ₹4000-100-6000 on terms and conditions under Rule 15 Schedule-IV of the Office of the Commissioner, Government of Madhya Pradesh at New Delhi Class-III (Non-gazetted) Service Recruitment Rules, 2003 on the vacancy falling. This fact was also not noted in the writ petition. The State of Madhya Pradesh vide its order dated January 24, 2008 amended the “Kramonati Yojna” to further facilitate employees with time scale pay and thus Nirmal Kashyap vide order dated August 05, 2011 was granted time pay scale w.e.f April 01, 2006 in the pay scale of ₹5200-20200+2800.

6. It is thus apparent that Nirmal Kashyap had two promotions which facts were concealed in the writ petition and he has not been able to point out what further promotion he was seeking so as to be entitled to retirement benefits on promotional basis as prayed for in the writ petition.

7. Nirmal Kashyap solely relies on the decision of the Supreme Court in

Civil Appeal No.2095/2009 Madan Mohan Saxena vs.State of Madhya Pradesh and Ors. decided on March 27, 2009 to seek promotion. In Madan Mohan Saxena (supra) the Appellant therein had not since been granted even one promotion. The Supreme Court held that there being nothing against the Appellant in his service career he was entitled to at least one promotion on completion of five years satisfactory service and thus to serve the ends of justice he was granted monetary benefits treating him to be promoted to the post of Telephone Supervisor on the expiry of five years from the date of his entry in the said service.

8. As noted above Nirmal Kashyap has had two pay enhancements and promotions and thus his case is not identical to that of Madan Mohan Saxena (supra) and no parity can be granted.

9. Consequently, we find no merit in the appeal hence the same is dismissed. However, the cost of ₹20,000/- imposed by the learned Single Judge vide the impugned order is waived.

CM No.12774/2015 (Stay)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

**JULY 21, 2015
'vn'**