

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4721 of 2007**

Jeevan Lal Choudhary S/o Ishwar Prasad Choudhary, aged about 63 years,
R/o village Teka, Tehsil and District Raigarh, Chhattisgarh.

---- Petitioner**Versus**

- 1.State of Chhattisgarh, Through the Secretary, Department of Tribal and Scheduled Castes Development, DKS Building, Mantralaya, Raipur, Chhattisgarh.
2. Collector, Raigarh, District Raigarh, Chhattisgarh.
3. Commissioner, Department of Tribal and Scheduled Castes Development Chhattisgarh, Raigarh.
4. Assistant Commissioner, Department of Tribal and Scheduled Castes Development Raigarh, District Raigarh, Chhattisgarh.
5. Joint Director, Department of Treasury, Accounts & Pension, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri H.S.Patel and Shri Vineet Pandey, Advocates.
For Respondents/State	: Shri Prafull N Bharat, Additional Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice**Order on Board****10/05/2016**

1. Heard Learned Counsel for the Petitioner and Learned Additional Advocate General on behalf of the State.
2. The Petitioner was appointed as Upper Division Teacher on 26.6.1977. He was given the benefit of first time bound promotion on 1.4.1993 after completion of 12 years. He claims eligibility for second time bound promotion from 1.4.2005 on completion of 24 years of service.
3. Learned Counsel for the Petitioner submits that the order dated 16.10.1985 only posted him to discharge duties as a Head Master while holding the substantive post of Upper Division Teacher. The order itself clarified that it was not a promotion but he was merely paid the salary of the higher post

commensurate with the discharge of higher duties. The impugned order dated 29.1.2007 that he had been promoted to the post of Head Master which was a promotional post is therefore in direct conflict with the language in the order contained dated 16.10.1985.

4. Learned Additional Advocate General submitted that the Petitioner was paid the salary of the higher post and therefore the question for grant of second time bound promotion does not arise. The impugned order itself states that he was promoted to the post of Head Master. If subsequent promotion had been given from the post of Upper Division Teacher to Head Master, the question of any time bound promotion does not arise.

5. Having considered the submission, time bound promotion is granted as an anti-stagnation measure on completion of 12 years and 24 years of service when the incumbent receives no substantive promotion. The language in the order dated 16.10.1985 is explicit that the Petitioner was being posted "पदस्थ" as Head Master. It goes on to clarify that merely because he was being paid the higher salary of the post of Head Master, it would not amount to promotion. The order dated 29.1.2007 is in direct conflict with the former when it states that he was promoted to the post of Head Master which was a promotional post. The availability of a promotional post and substantive promotion to the same are entirely different issues from being asked to discharge duties of higher post without substantive promotion.

6. Nothing has been placed before us to demonstrate that subsequent to the order dated 16.10.1985 the Petitioner before his superannuation at any time was substantively promoted to the post of Head Master. The Court therefore is prima facie of the opinion that the Petitioner has made out a claim to be considered for grant of second time bound promotion.

7. The writ petition is therefore disposed with a direction to the Respondents to consider grant of second time bound promotion to the Petitioner on completion

of 24 years of service in accordance with law as claimed from 1.4.2005. Needless to state that in the event of his pension being required to be revised, necessary consequential orders shall be issued simultaneously. If the Respondents are satisfied that there are any arrears of pension to be paid in consequence to the same, that must also be considered and ordered simultaneously. The order be complied within a maximum period of three months from the date of receipt and/or production of a copy of this order.

8. The writ petition is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE