

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6631 of 2014

- R.K. Sharma S/o Late Shri R.S. Sharma Aged About 54 Years
Occupation Assistant Engineer, E/M Public Health Engineering
Mahasamund Division Mahasamund P.S. Mahasamund Dist.
Mahasamund C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Public
Health Engineering, Mantralaya, Mahanadi Bhawan, Naya Raipur,
P.S. Abhanpur, District Raipur (CG)
2. The Engineer In Chief Public Health Engineering Raipur Office Of
Engineer In Chief, Raipur P.S. Raipur, District Raipur C.G.
3. Shri A.K. Tiwari, Assistant Engineer, E/M Sub Division
Rajnandgaon P.S. Rajnandgaon. District Rajnandgaon C.G.
4. Shri S.W. Manurkar Assistant Engineer E/M Sub Division Janjgir-
Champa, District Janjgir-Champa (CG)

---- Respondent

For Petitioner

Ms. Deepali Pandey, Advocate

For Respondent /State

Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

1/4/2016

1. Heard.
2. The petitioner is an Assistant Engineer in the Department of
Public Health Engineering. He was promoted on the said
post on 06.02.2012. However, in the present petition, he is
claiming promotion to the said post w.e.f. 01.04.2010, when
respondent No. 3 Shri A.K. Tiwari and respondent No.4 Smt.

S.W. Manurkar, were promoted.

3. Promotion to the post of Assistant Engineer in the PHE Department is governed under the C.G. Public Health Engineering (Gazetted) Service Rules, 1980. Under the said recruitment rules, 25% of the post are to be filled by direct recruitment and out of the remaining 75%, 50% is to be filled up from the quota of Diploma Holder Sub Engineers, 20% from the Degree Holder Sub Engineers and the remaining 5% from Draftsman. In the DPC meeting dated 02.01.2010, minutes of which has been filed as Annexure P/5, promotion of 11 posts of Assistant Engineers were considered. In the said promotion list, 5 Diploma Holder Sub Engineers were promoted from unreserved category, 01 Diploma Holder Sub-Engineer was promoted from Scheduled Caste Category, 4 Degree Holder Sub Engineers were promoted from unreserved category, whereas, 01 Draftsman was promoted from the unreserved category.
4. It is the contention of learned counsel for the petitioner that respondents 3 & 4 have wrongly been considered from the quota of Degree Holder Sub Engineers, because, at the time of entry into service, they were Diploma Holder Sub Engineers and have acquired the degree after joining the service. She would also submit that if these respondents would not have been considered as belonging to Degree Holder Sub Engineers, the post would have been available to be filled up from Diploma Holder Sub Engineers and the petitioner being the next person in the gradation list, from the quota of Diploma Holder Sub Engineers, he would have

been promoted. Learned counsel places reliance on the judgment of the Supreme Court in the matter of **Ashok V. David Vs. M.G. Halappanavar, AIR 1996 2165** and also on the provisions of the Fundamental Rule 53.

5. Learned counsel for the State would oppose the writ petition on the ground of delay and laches as also on the ground that the DPC has on merit considered the petitioner for promotion but he could not be promoted for want of post in the Diploma Holder quota.
6. For granting relief of promotion from a particular date, there has to be a post available on that date. In the case at hand, respondents 3 & 4 were promoted on 01.04.2010 and the entire posts belonging to the promotion quota have been filled up. Thus, no post is available for granting relief to the petitioner w.e.f. 1.4.2010. The only way for granting such relief is to set aside the promotion of respondents 3 & 4 and direct the respondents to convene a review DPC for promoting the petitioner. However, there being no relief claimed to challenge the promotion of respondents 3 & 4, no post is available.
7. The above is apart from the fact that as per the DPC proceedings, 05 Diploma Holder Sub Engineers have already been promoted to the post of Assistant Engineers and one such candidate has been promoted in the Scheduled Caste Category. Thus, out of 11 posts, 06 posts have been filled up from the Diploma Holder Sub Engineer Category, which is more than 50% posts available for promotion. Thus, the

quota of Diploma Holder Sub Engineers having already filled up, no post was available for the petitioner and more so, in the absence of any submission that any junior Diploma holder Sub Engineer has been promoted ignoring the seniority of the petitioner.

8. The writ petition otherwise also suffers from delay and laches, inasmuch as, claiming relief for promotion from retrospective effect i.e. from 01.04.2010, this writ petition has been preferred after about 4 ½ years i.e. on 16.12.2014.
9. It is the well settled proposition of law that when challenge is thrown to the seniority list or promotion or promotion is claimed from retrospective effect, the concerned employee has to move the Court within reasonable time.
10. Delay has always been considered vital in service matters especially with regard to promotion. As far back as **(1975) 1 SCC 152, P.S. Sadasivaswamy Vs. State of Tamil Nadu**, it was held that it would be a sound and wise exercise of discretion under Article 226 that the Court should not entertain claims regarding seniority after an approximate period of 6 months from the date of cause of action to prevent clogging the dockets of the Court and which would impede the work of the Court in considering legitimate grievances timely.
11. The Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu, (2014) 4 SCC 108**, after relying on its decision rendered in **State of M.P. v. Nandlal Jaiswal, (1986) 4**

SCC 566, held thus at para 15 & 16 :

"15. xxx xxx xxx

XXX XXX XXX

XXX XXX XXX

“24. ... If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

12. In the matter of **State of Kerala and others Vs. A.K.**

Gopakumar, (2013) 11 SCC 606, the Supreme Court has

held thus in para 9:

“9. It is also apposite to note that the writ petition filed by the respondent on 15-3-2010 was highly belated and the High Court would have been fully justified in refusing to entertain the respondent's prayer because he had not offered any explanation for the time gap of 2 years and 8 months between the issue of the order of dismissal and filing of the writ petition.”

13. Applying the well settled principles of law to the fact of the present case and for the reasons mentioned herein-above, the writ petition is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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