

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.108 of 2016**

Sanjay Pathak, S/o Late Shri R.P. Pathak, aged about 44 years, Occupation Service, Presently working as Executive Engineer, E/M, L.M., TW & Gate Division, Sakri, Bilaspur, R/o Near Deshbandhu Press, Jarabhata, Bilaspur, Chhattisgarh

---- Appellant**versus**

1. State of Chhattisgarh, through Secretary, Water Resources Department, Govt. of C.G., Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. Secretary, Water Resources Department, Govt. of C.G., Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
3. Engineer-in-Chief, Water Resources Department, Raipur, Chhattisgarh
4. Chhattisgarh Public Service Commission, through Chairman, Shankar Nagar Road, Bhagat Singh Square, Raipur, District Raipur, Chhattisgarh, 492 001
5. P.K. Paul, SDO, E&M, R/R, Water Resources Department, Behind Kali Mata Mandir, Raipur, District Raipur, Chhattisgarh
6. D.S. Dandotia, S/o Rameshwar Prasad Dandotia, aged about 56 years, R/o 27 Kholi, Bilaspur, P.S. Civil Lines, District Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Rajeev Shrivastava, Advocate
For State/Respondents No.1 to 3	:	Shri Arun Sao, Deputy Advocate General
For PSC/Respondent No.4	:	Shri Ashish Shrivastava, Advocate
For Respondent No.6	:	Shri Saurabh Dangi, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board****Per Deepak Gupta, Chief Justice****17.10.2016**

1. This writ appeal is directed against the judgment dated 17.12.2015 passed by Learned Single Judge of this Court, whereby Writ Petition (S) No.6479 of 2014 filed by the Writ Petitioner D.S. Dandotia (Respondent No.6 herein) was allowed and it was held that a review DPC be held to consider the case of the Petitioner for proforma promotion to the post of Assistant Engineer with effect from 13.1.2006 when his juniors were promoted.

2. The undisputed facts are that the Writ Petitioner D.S. Dandotia (Respondent No.6 herein) joined service in the erstwhile State of Madhya Pradesh. The State of Chhattisgarh was carved out in terms of the Madhya Pradesh Reorganisation Act, 2000 with effect from 1.11.2000. The services of the the Writ Petitioner D.S. Dandotia (Respondent No.6 herein) were allocated to the State of Chhattisgarh. He, however, did not join in the State of Chhattisgarh and filed an Original Application No.1237 of 2002 before the Madhya Pradesh State Administrative Tribunal challenging his allocation to the State of Chhattisgarh. In this original application, he applied for grant of interim relief and relief was granted to him that he would continue to serve in the State of Madhya Pradesh till further orders. The Madhya Pradesh State Administrative Tribunal was abolished and on its abolition this original application was transferred to the High Court of Madhya Pradesh, Gwalior Bench. It appears that a Lok-Adalat was conducted in the High Court of Madhya Pradesh at Gwalior Bench and during this Lok-Adalat a settlement was arrived at that the matter be disposed of in the terms of the order passed in Writ Petition No.2156 of 2003. The Writ Petitioner was permitted to make a representation to the Government of India within 30 days and the Petitioner along with other similarly situated employees was permitted to continue in his original State, i.e., State of Madhya Pradesh till decision on his representation is taken. The Petitioner admittedly continued to serve in the State of Madhya Pradesh. His representation to the Central Government was rejected on 5.7.2006 and the Petitioner was relieved from the State of Madhya Pradesh by order dated 17.7.2007. He was actually relieved on 6.8.2007. He joined in the State of Chhattisgarh on 13.8.2007.
3. In the meantime, on 13.1.2006, some employees, who were admittedly much junior to the Petitioner, were promoted as Assistant

Engineers in the State of Chhattisgarh. On 29.9.2010, the Petitioner was also promoted as Assistant Engineer in the State of Chhattisgarh. It was only thereafter that he made a representation that he should be promoted with effect from 13.1.2006, the date when his juniors were promoted. This representation was rejected on the ground that since the Petitioner had not joined the State of Chhattisgarh prior to 13.1.2006, he could not be promoted in the State of Chhattisgarh prior to the said date. Aggrieved by the said action, the Petitioner D.S. Dandotia (Respondent No.6 herein) filed the writ petition, which has been allowed. Now, one of the private Respondents, whose seniority is affected, has challenged the order of the Learned Single Judge.

4. The facts are not disputed. As rightly culled out by the Learned Single Judge, the question for consideration is as follows:

“8. The question for consideration is whether joining of the petitioner on the post of Sub Engineer subsequent to rejection of his representation by the Central Government on 13.8.2007 in the State of Chhattisgarh, will be deemed to be with effect from the date of his allocation i.e. with effect from 1.11.2000 or with effect from the date of his joining i.e. 13.8.2007.”

5. The Learned Single Judge held that the Petitioner is deemed to have been allotted to the State of Chhattisgarh w.e.f. 1.11.2000. He has relied upon Section 68(2) of the Madhya Pradesh Reorganisation Act, 2000, which reads as follows:

“(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have take effect.”

6. The fact of the matter is that the Petitioner was allocated to the State of Chhattisgarh on 16.9.2002. He did not join the State of Chhattisgarh. He chose to challenge the allocation order by filing an original application. There can be no quarrel with the submission made by Shri Saurabh Dangi, Advocate for the Petitioner D.S. Dandotia (Respondent No.6 herein) that the Petitioner had a legal right to challenge the said order. A stay order was also granted in favour of the Petitioner and he continued to serve in the State of Madhya Pradesh. His writ petition appears to have been disposed of in the Lok-Adalat along with many other petitions. In the order passed by the Lok-Adalat, it was clearly mentioned that the decision of the Central Government will be given effect to after 15 days from the date of communication of the order to the concerned employee and the concerned employee would get another 15 days to either comply with the order or to challenge it, if he so feels. Admittedly, in this case, the order was passed by the Central Government rejecting the representation of the Petitioner on 5.7.2006. It is not clear as to on which date this order was communicated to the Petitioner. The Petitioner, for reasons best known to him, has not stated on which date he received the order because as per the terms of the order of the Lok-Adalat, he was to comply with the order within 15 days. In any event, the Petitioner was relieved on 6.8.2007 and he joined the State of Chhattisgarh on 13.8.2007.
7. The issue is whether the Petitioner could be promoted in the State of Chhattisgarh prior to 13.8.2007. We are of the considered view that the Petitioner cannot be promoted in the State of Chhattisgarh prior to the said date. An employee can only be promoted by the employer with whom the employee is working. An employee cannot be promoted in the establishment of some other employer with whom he was not even working on a particular date. It is true that this is the

case of allocation. It is also true that the Petitioner remained in Madhya Pradesh on the basis of a judicial order. However, if any party does not comply with the order passed by his superior and files a case and takes benefit of an interim order granted by a Court and if the final order is passed against the said party, he will have to suffer the consequences. The unfortunate situation in this case has been created by the Writ Petitioner himself by not joining in the State of Chhattisgarh. If he had complied with the orders and joined in the State of Chhattisgarh, he would have obviously been promoted prior to his juniors. The only reason why he was not promoted was that he was not working in the State of Chhattisgarh and he was working in the State of Madhya Pradesh.

8. As far as interpretation of Section 69 of the Madhya Pradesh Reorganisation Act, 2000 is concerned, we are in respectful disagreement with the finding given by the Learned Single Judge. Section 69 reads as follows:

“69. Provisions relating to other services.–(1) Nothing in this section or Section 68 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Madhya Pradesh or to the State of Chhattisgarh under Section 68 shall not be varied to his disadvantage except with the previous approval of the Central Government.”

9. The proviso to Section 69 only provides that the State shall not place any employee allocated to it in a disadvantageous position. The Writ Petitioner is placed in disadvantageous position because of the situation created by himself by filing the writ petition and not obeying

the orders of the superior authorities. There is no action of the State which was disadvantageous to him.

10. Reliance placed on the judgment of the Apex Court in **R.R. Bhanot v. Union of India, (1994) 2 SCC 406** is totally misplaced. In **R.R. Bhanot case** (supra), the employee, after the Punjab Reorganisation Act, 1966, was working within the jurisdiction of Himachal Pradesh. He was prematurely retired from services on 20.3.1969 by the State of Himachal Pradesh. He challenged that order before the Himachal Bench of the Delhi High Court. Vide judgment dated 29.9.1969, the order of premature retirement was quashed. Shri R.R. Bhanot was to attain the age of superannuation on 31.12.1970. Shri R.R. Bhanot was finally allocated to the State of Punjab vide notification of the Central Government only on 19.5.1969, i.e., after the order of premature retirement had been passed by the State of Himachal Pradesh. He did not join the State of Punjab. Since he had not joined the State of Punjab, the said State did not give him retiral benefits. He filed a petition claiming retiral benefits. The Apex Court passed the following order:

“10. We, therefore, order and direct as under:

(1) The Himachal Pradesh Bench of Delhi High Court quashed the premature retirement of the appellant by its judgment dated September 29, 1969. The appellant shall be deemed to be working with the State of Himachal Pradesh till September 30, 1969. We direct the State of Himachal Pradesh through its Chief Secretary and the Secretary, PWD to pay the arrears of salary due to the appellant till September 30, 1969 within two months from the receipt of this judgment.

(2) Since the appellant did not join service with the State of Punjab from October 1, 1969 to December 31, 1970, he shall not be entitled to any salary for the said period. The State of Punjab shall treat the said period to be leave of the kind due to the appellant. The appellant shall be deemed to have been retired from service on December 31, 1970 when he attained the age

of superannuation.”

11. Therefore, what the Apex Court held was that till September 30, 1969, the Petitioner would be treated as an employee of the State of Himachal Pradesh and only with effect from October 1, 1969 to December 31, 1970, he would be held to be an employee of the State of Punjab. Even thereafter he was held not entitled for the salary for this period since he had not worked with the State of Punjab. This judgment does not support the Writ Petitioner D.S. Dandotia at all.
12. The Learned Single Judge also did not consider the fact that though the Writ Petitioner joined services in the State of Chhattisgarh in the year 2007, he did not file any representation against his juniors till he was promoted in the year 2010. Be that as it may, the fact of the matter is that the Writ Petitioner could not have been promoted in the State of Chhattisgarh till he actually joined in the State of Chhattisgarh on 13.8.2007. Therefore, the only benefit that can be given to the Writ Petitioner D.S. Dandotia (Respondent No.6 herein) is that the DPC shall consider him for promotion with effect from 13.8.2007, when he joined in the State of Chhattisgarh. The order of the Learned Single Judge shall stand modified to that extent.
13. We are, therefore, of the opinion that the writ appeal has to be and is accordingly allowed and the judgment of the Learned Single Judge is modified and the Respondent No.6 shall be considered for promotion by the DPC only w.e.f. 13.8.2007.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE