

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.4911 of 2004

Smt. Pravin Sant, W/o Shri Ashok Sant, aged about 51 years, Occupation Service, presently posted as Lecturer, Vidyut Grih Higher Secondary School No.1, Korba East, Distt. Korba (C.G.)

---- Petitioner

Versus

1. Vidyut Grih Vidyalay Prabandhan Samiti, a Society registered under Society Registrikaran Adhiniyam, 1973 bearing the Registration No.2182 and having its Head Office at Korba (C.G.), Through its Secretary N.M. Nadig, Additional Superintending Engineer, O/O S.E.II, C.S.E.B., Korba, District Korba (C.G.)
2. The Secretary, Vidyut Grih Vidyalaya Prabandhan Samiti, Korba in the office of the Additional Superintending Engineer, O/O S.E.II, C.S.E.B., Korba, District Korba (C.G.)
3. M.L. Chandra, Principal, Vidyut Grih Vidyalay (Higher Secondary School) No.1, C.S.E.B., Korba (C.G.)

---- Respondents

For Petitioner: Mr. Ashish Shrivastava, Advocate.
For Respondents No.1 and 2: Mr. S.S. Baghel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/11/2017

1. Heard on the application for taking appropriate direction and production of DPC record held in compliance of order dated 9-8-2004 passed in W.P.No.5555/1999.
2. After hearing learned counsel for the parties, I do not find any merit in the application, it deserves to be and is accordingly rejected.
3. Learned counsel for the petitioner submits that this Court vide order dated 9-8-2004 passed in W.P.No.5555/1999 disposed of the petition with a direction that regular departmental promotion committee

meeting be held and the case of the respective parties be considered and decided strictly in accordance with law. The departmental promotion committee was constituted and the said committee in compliance of order dated 5-11-2004, has decided the appointment of respondent No.3 herein as Principal vide the impugned order dated 20-1-2004, which is bad and unsustainable in law. Learned counsel further submits that the petitioner is more meritorious than respondent No.4 and as such the order passed by the respondent authorities deserves to be set aside.

4. Learned counsel for respondents No.1 and 2 would support the impugned order.
5. I have heard learned counsel for the parties and gone through the material available on record extensively.
6. In compliance of order passed by this Court in the earlier writ petition, regular meeting of the departmental promotion committee was held and the petitioner's case has been considered and decided on 27-11-2004.
7. In the matter of **Union of India and others v. Lt. Gen. Rajendra Singh Kadyan and another**¹, the Supreme Court has held that where the entire service profile was considered by the authorities concerned or by the DPC, court cannot substitute its own view to that of the authorities / DPC sitting under Articles 226 and 136 of the Constitution of India, and observed as under in para 29: -

“29. ... It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been

1 (2000) 6 SCC 698

ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”

8. In the matter of **Syed T.A. Naqshbandi and others v. State of Jammu & Kashmir and others**², the Supreme Court has delineated the scope of judicial review in the consideration made by the competent authority while considering the case of a person for higher promotional post and held as under: -

“On a careful consideration of the entire materials, it must be held that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted.”

9. Recently, in the matter of **Union of India and others v. S.P. Nayar**³, the Supreme Court again while delineating the scope and grounds for judicial review in a consideration made by the DPC has held that High Court under Article 226 of the Constitution of India cannot sit in appeal over the assessment made by the DPC. The Supreme Court observed in paragraphs 11, 13, 14 and 15 of its report as under: -

“11. It is settled that the High Court under Article 226 of the Constitution of India cannot sit in appeal over the assessment made by the DPC. If the assessment made by the DPC is perverse or is not based on record or proper record has not been considered by the DPC, it is always open to the High Court under Article 226 of the Constitution to remit the matter back to the DPC for recommendation, but the High Court cannot assess the

2 (2003) 9 SCC 592

3 (2014) 14 SCC 370

merit on its own on perusal of the service record of one or the other employee.

13. The bias and mala fide acts can be adjudged only on the basis of evidence. The assessment of character roll by one or the other officer, giving a general grade such as "Good" cannot be the sole ground to hold that the officer was biased against the person whose character roll is assessed. In the instant case, there is nothing on record to suggest that the Appellant 3, E.N. Ram Mohan was biased against the respondent. Merely because he assessed the ACR of the respondent as "Good" as against assessment of "Very Good" made by IO it cannot be said that he was biased against the respondent.

14. The Departmental Promotion Committee consists of a Chairman and the members. Even if bias is alleged against the Chairperson, it cannot be presumed that all the members of the Committee were biased. No ground has been made out by the respondent to show as to why the assessment made by the DPC is not to be accepted. The High Court failed to notice the aforesaid fact and wrongly discarded the assessment made by the DPC.

15. It is also settled that the High Court under Article 226 can remit the matter for reconsideration if a person was not properly considered for a promotion for which he was eligible. But it cannot direct to promote a person to the higher post, without giving a plausible ground."

10. The principle of law laid down in the aforesaid case of **S.P. Nayyar** (supra) has been followed with approval by the Supreme Court in a recent decision in the matter of **H.S. Sidhu v. Devendra Bapna and others**⁴.

11. Following and applying the principles of law laid down by Their Lordships of the Supreme Court in afore-cited cases to the facts of the present case, in the present case, it would be quite vivid that on considering the case of the petitioner as well as respondent No.4, respondent No.4 was found fit / suitable for the promotional post of Principal, considering the overall service records and facts and

4 (2016) 1 SCC 495

circumstances of the case. In the considered opinion of this Court, there is neither any perversity nor any bias established by the petitioner in the proceeding of the departmental promotion committee to interfere in exercise of jurisdiction under Article 226 of the Constitution of India, as the recommendation has been made on the basis of material available on record.

12. As a fallout and consequence of aforesaid discussion, it is held that the petitioner has failed to make out a case for interference in the recommendation made by the DPC for the post of Principal. The writ petition is accordingly dismissed leaving the parties to bear their own costs in the peculiar facts and circumstances of the case.

Sd/-
(Sanjay K. Agrawal)
Judge