

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2220 of 2007

- Rajeshwar Rao Kridat, aged about 40 years, Assistant Teacher, S/o Shri Shivshankar Rao Kridat Govt. Purv Madhyamik School, Jhalmala, Block Balod, Distt. Durg (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, School Education Department, DKS Bhawan, Raipur (C.G.)
2. Director Lok Shikshan, Raipur, District-Raipur, (C.G.)
3. Dy.Director Lok Shikshan, Durg Division, District-Durg (C.G.)
4. District Education Officer, Durg (C.G.)
5. Head Master, Govt. Purv Madhyamik School, Jhalmala, Block Balod, District-Durg (C.G.)
6. Smt. Sunita Deshmukh Teacher, Purv Madhyamik School, Godpendry, Patan, District-Durg (C.G.)
7. Rohit Kumar Chandrakar Teacher, Purv Madhyamik School, Vijaytala, District-Rajnandgaon (C.G.)
8. Ram Kumar Verma Teacher, Purv Madhyamik School, Sirsakala, Patan, District-Durg (C.G.)
9. Ajay Chandrakar, Teacher, Purv Madhyamik School, Saloni, Distt. Rajnandgaon (C.G.)

---- Respondents

For Petitioner	: Shri Ajay Shrivastava, Advocate
For State	: Shri S.P. Kale, Dy. Advocate General

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/06/2017

1. Heard.
2. In view of subsequent development, the dispute is in narrow compass.
3. The brief facts of the case is that the petitioner while working as Lower

Division Teacher was promoted to the post of Upper Division Teacher vide order dated 07/11/2006 passed by the District Education Officer, Durg. The order of the District Education Officer clearly mentioned that if any adverse comments are given by the State Government, promotion would liable to be cancelled. Later on, as per direction of the State Government, impugned order dated 05/03/2007 was passed by District Education Officer cancelling promotion order of the petitioner. This order was challenged by the petitioner by filing the instant petition.

4. During pendency of the petition, subsequent events have taken place, and order was passed on 18/08/2008. It appears that when the petitioner represented seeking seniority from the original date, another order was passed on 08/10/2008 directing the District Education Officer to grant seniority and all consequential benefit from the date, when his juniors were granted promotion. Acting on this direction, the District Education Officer passed an order on 15/01/2009 granting the petitioner, seniority on the post of Upper Division Teacher w.e.f. 30/01/1993.
5. The Commissioner, Higher Education, however, intervened the matter by giving a show cause notice dated 03/03/2009 to the petitioner. Thereafter, the Commissioner, Lok Sikshan rejected vide order dated 06/04/2009 claim of promotion of the petitioner from the date when his junior were promoted and cancelled the order dated 15/01/2009.
6. In these circumstances, learned counsel for the petitioner confined his challenge to the legality and validity of the order passed by the Commissioner on 06/04/2009 on the sole submission that as long as the order dated 08/10/2008, passed by the State Government stands, the Commissioner had no authority to pass any order withholding the benefit of seniority and other consequential benefits from the date when juniors of the petitioner were granted promotion.
7. Learned State counsel opposes the contention by submitting that earlier order of cancellation dated 06/04/2009 was justified, because the State Government did not approve the promotion earlier made. Learned State counsel however, would not satisfy the Court that the Commissioner had any authority under the law to set-aside an order passed by the District Education Officer in compliance of the order dated 08/10/2008 passed by the State Government.

8. The illegality in passing the order dated 06/04/2009 by the Commissioner is writ large and it cannot be sustained in the eye of law.
9. The decision to grant seniority with all consequential benefits was that of the State Government, manifested vide order dated 08/10/2008. As long as that order stands, the Commissioner had no jurisdiction to cancel the order passed by the District Education Officer, which was only in execution of the State Government order dated 08/10/2008. No further consideration is required in the matter. The order dated 06/04/2009 is set-aside.
10. The petition is accordingly allowed in the manner as indicated above.

Sd/-

(Manindra Mohan Shrivastava)
Judge