

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6143 of 2007

Keju Ram Sahu S/o Shri Gayaram Sahu, aged about 59 yrs., R/o Ram Kund Raipur Working As Accountant, 8 C.G. Girls Battalion National Cadet Corps Kota Raipur

---- Petitioner

Versus

1. State Of Chhattisgarh, through: Secretary School Education Department, DKS Bhawan, Raipur
2. Director, National Cadet Corps State Cell, Dongajee Colony, Raipur CG
3. Commanding Officer, 8 CG Girls Battalion National Cadet Corps, Kota ,Raipur CG

---- Respondents

And

WPS No. 6144 Of 2007

N.D. Lanjewar (Dead) through LR Smt. Satyabhama Lanjhewa Wd/o late Shri N.D. Lanjewar, aged about 62 years, R/o house No.51/1801, Sudhir Mukharji, behind Trimurti Mandir, Lakhe Nagar, District-Raipur (CG)

---- Petitioner

Vs

1. State Of Chhattisgarh, through: Secretary School Education Department, DKS Bhawan, Raipur
2. Director, National Cadet Corps, State Cell, Dongajee Colony, Raipur CG
3. Commanding Officer, 8 CG Girls Battalion National Cadet Corps, Kaileshpur, Tikrapara, Raipur (CG)

---- Respondents

For Petitioners	:	Shri N.K. Vyas, Advocate
For Respondent-State	:	Shri Chandresh Shrivastava, Panel Lawyer

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/01/2017

Heard.

1. This order shall dispose off both the aforesaid writ petitions as they involve common issue based on similar facts challenging the same order on record.
2. The petitioners in the aforesaid writ petitions, while working as Accountants, were promoted on ad hoc basis on the post of Assistant Grade-I along with many other Accountants in the establishment of National Cadet Corps in the 2002. Upon scrutiny of their records, they were found suitable for promotion vide order dated 20th September, 2002 (filed as Annexure P-5 in WPS No.6143 of 2007). By this order, the petitioners in the aforesaid two petitions were granted ad hoc promotion. Even though, no vacancies actually existed at that point of time, these ad hoc promotions were made in anticipation of creation of vacancies of Assistant Grade-I, as certain proposals were forwarded by the higher authorities for sanction of posts of Assistant Grade-I.
3. The petitioners continued as Assistant Grade-I on the basis of ad hoc promotion until by impugned order, they were reverted to the post of Accountant. It is this order on record which is under challenge in this petition.
4. Learned counsel for the petitioners submits that the reversion of the petitioners is based on an incorrect factual premise that the vacancies are not available. He submits that it is undisputed factual position obtaining on record in view of return of the respondent that the six posts of Assistant Grade-I were sanctioned w.e.f. 2.11.2004. The impugned order shows that the petitioners were actually considered for promotion on the post Assistant Grade-I along with number of other Accountants in different establishment of National Cadet Corps, but, in case of these two petitioners, they were reverted by recording that vacancies are not available. Though the petitioners were granted ad hoc promotion without there being any vacancy, when the post of Assistant Grade-I were sanctioned w.e.f. 2.11.2004, the respondents were obliged to hold DPC immediately

thereafter as per the mandate of Chhattisgarh Public Services (Promotion) Rules, 2002 (hereinafter referred to as "*the Rules of 2002*"), which was not done until 2007. At the time when petitioners' cases were considered for promotion to the next higher post, the vacancies had become available at that point of time. Therefore, in these circumstances when the petitioners were found suitable for promotion, vacancies being available, there was no justifiable reason to revert the petitioners on the ground that when the petitioners were promoted in the year 2002, there was no sanctioned post available.

5. On the other hand, learned counsel for the State submits that the petitioners were considered for promotion on ad hoc basis though in the year 2002, no sanctioned post of Assistant Grade-I was lying vacant. The promotions were made only in anticipation of creation of vacancies of Assistant Grade-I. He submits that six posts of Assistant Grade-I were finally sanctioned only w.e.f. 2.11.2004. That means, at the time when the petitioners were promoted on ad hoc basis, there was no vacancy, therefore, the respondents were fully justified in passing the impugned order of reversion.
6. I have considered the rival submissions made by learned counsel for the parties and perused the records.
7. While it is not in dispute that at the time when the petitioners were granted ad-hoc promotion, the sanctioned posts of Assistant Grade-I were not available. It is equally undisputed that while the petitioners were continuing on ad hoc basis, six sanctioned posts of Assistant Grade-I were sanctioned by the State Govt. w.e.f. 2.11.2007. If that be so, there was no reason to revert the petitioners once they were found suitable for promotion to the next higher post of Assistant Grade-I in the DPC held in the year 2007.
8. Rule 6 (4) of the Rules of 2002 casts mandate on the respondent to hold DPC every year. Once posts were sanctioned on 2.11.2004, the petitioners, even if not entitled to claim promotion from 2002, were entitled to be considered for promotion to the post of Assistant Grade-I soon after creation of vacancy. Considering that vacancies were created in the month of November, 2004 at least in the year 2005, the petitioners' cases ought to be taken into consideration which was not done and their cases were ultimately considered

for promotion only in the year 2007 when the petitioners were found fit for promotion.

9. The reversion of the petitioners on the ground that at the time when they were promoted on ad hoc basis, no vacancy on the post of Assistant Grade-I was available, is arbitrary because in the meantime, on 2.11.2004, vacancy was created. It is not a case that when the petitioners were considered for promotion on regular basis in the year 2007, at that point of time, vacancy was not available and, therefore, option being only to revert the petitioners.
10. In view of the above consideration, I am of the view that the reversion of the petitioners was not at all warranted because the vacancies had become available and the petitioners were actually found fit for regularization on the post of Assistant Grade-I by the DPC which was convened in the year 2007.
11. In view of the above consideration, in the opinion of this Court, the petitioners were entitled to be considered for promotion to the post of Assistant Grade-I as per Rules soon upon creation of posts w.e.f. 2.11.2004.

Learned counsel for the State submits that DPC which was convened in the year 2007 had considered the cases of the petitioners as on 2002 and to regularize their ad hoc promotion.

As there was no vacancy available at the time when the petitioners were actually promoted on ad hoc basis, there is no question of granting regular promotion to the petitioner and consequent seniority from the date of their actual promotion on ad hoc basis, but the vacancies have come into existence w.e.f. 2.11.2004. The petitioners' promotion could be regularized at least from the date vacancies had become available. In any case there was no warrant for reversion of the petitioners.

12. In view of the above, these petitions are allowed to the extent that the order of reversion of the petitioners is quashed. However, the petitioners shall be entitled to seniority on the post of Assistant Grade-I only from the date of creation of vacancy and not prior to that nor from the date of their ad hoc promotion in the year 2002. The respondents shall assign due seniority to the petitioners in the light of observations made by this Court.

13. The submission of learned counsel for the petitioners that the petitioners have already retired is placed on record and taking cognizance of this fact, respondents shall also revise the pension of the petitioners accordingly treating them as having retired from the post of Assistant Grade-I.

14. No order as to costs.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Praveen