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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2457 of 2016

- Arvind Kumar Patel S/o Late Shri Tulsidas Patel, Aged About 43 Years, Assistant Grade- III, Tahsil Office Sarangarh, Dist. Raigarh (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh)
2. Collector, Raigarh, District Raigarh (Chhattisgarh)
3. Additional Collector, Raigarh, District Raigarh (Chhattisgarh)
4. Deputy Collector/Sub Divisional Officer (Revenue), Raigarh, District Raigarh (Chhattisgarh).
5. Assistant Commissioner, Tribal Welfare, Raigarh, Dist. Raigarh (Chhattisgarh)
6. Superintendent, District Office, Raigarh, Dist. Raigarh (Chhattisgarh)
7. Chief Executive Officer, Zila Panchayat, Raigarh, District Raigarh (Chhattisgarh)
8. Nani Babu Kasyakar, AG III, Tahsil Office Sarangarh, Dist. Raigarh (Chhattisgarh)
9. Harikishan Dansena, A G III, Tahsil Office Lailunga, Dist. Raigarh (Chhattisgarh)

---- Respondents

And

REVP No. 154 Of 2014

- Arvind Kumar Patel S/o Late Tulsidas Patel Aged About 41 Years Assistant Grade-III, Wrongfully Revered to the Post of Peon, Tahsil Office- Baramkela, Distt. Raigarh C.G.

---- Petitioner

Vs

1. Nanhi Babu Kasyakar, S/o Sadharam Kashyakar, Aged About 48 Years, R/o Pailpara, Sarangarh, Working as A.G.-III, Tahsil Office, Sarangarh, Distt. Raigarh C.G.
2. The State of C.G. Through the Secretary, Department of Revenue, Mahanadi Bhawan, Mantralaya, New Raipur C.G.
3. The Collector Raigarh, Distt. Raigarh C.G.
4. The Deputy Collector/Sub Divisional Officer (R) Raigarh, Distt. Raigarh C.G.
5. The Additional Collector Raigarh, Distt. Raigarh C.G.
6. The Assistant Commissioner, Adivasi Vikas, Raigarh, Distt. Raigarh C.G.
7. The Superintendent, District Office, Raigarh, Distt. Raigarh C.G.
8. The Chief Executive Officer, Jila Panchayat, Raigarh, Distt. Raigarh C.G.
9. Ajay Kumar Sidar, Clerk District Officer, Raigarh, Distt. Raigarh C.G.

---- Respondents

For Petitioner	Shri Dhani Ram Patel, Advocate
For Respondent-State	Shri Satish Gupta, GA
For Respondent-Nanhi Babu Kasyakar	Shri Parag Kotecha, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

17/05/2017

REVP No.154/2014

1. This review petition arises out of the order passed on 21.08.2014 in WPS No.4335/2007, however, during the pendency of this review petition, the petitioner has been

granted promotion on the post of AG-III vide order dated 02.05.2015, therefore, the issue raised in the review petition has been rendered academic. Moreover, the petitioner has also preferred WPS No.2457/2016, therefore, the review petition is not required to be decided on merits.

2. The review petition stands disposed of.

WPS No.2457/2016

1. In this petition, the petitioner has prayed for notional seniority on the post of AG-III w.e.f. 26.04.2007 placing him just below the respondent No.8 Nanhi Babu Kasyakar, who has been granted promotion from the said date in compliance of the order passed by this Court in WPS No.4335/2007.
2. It appears, on 24.04.2007, the present petitioner was promoted from the post of Peon to AG-III, which was challenged by the respondent No.8 Nanhi Babu Kasyakar in WPS No.4335/2007. Allowing the said writ petition, this Court directed the District Establishment, Raigarh to convene review DPC to consider promotions to the post of AG-III as on 24.04.2007 and recommend the promotion of eligible candidates in accordance with law. It was further directed that if the name of the said petitioner (Nanhi Babu Kasyakar) is recommended, he will be entitled to seniority and arrears of pay from the date when promotion order was issued in favour of the present petitioner.

3. As a consequence of the above order in WPS No.4335/2007, a review DPC was convened, wherein the present respondent No.8 Nanhi Babu Kasyakar was promoted to the post of AG-III and the petitioner was thus reverted to the post of Peon.
4. During pendency of the earlier writ petition, 5 other Class IV employees namely, Ajay Kumar Sidar, Sukhdev Prasad Chouhan, Atmaram Baghel, Vidyanand Sidar and Harikishan Dansena were promoted to the post of AG-III, therefore, after the review DPC when the petitioner was reverted to the post of Peon, his above named juniors were working on the higher post of AG-III. After the order passed on 10.06.2013 promoting the above named 5 peons on the post of AG-III, the petitioner was also promoted to the post of AG-III on 02.05.2015, however, he is still treated as junior to the above named 5 persons, because they have been promoted in the year 2013.
5. It is argued that if the petitioner would not have been promoted in the year 2007, his case would have been considered for promotion in the year 2013, because the petitioner is senior to the above named 5 persons promoted in the year 2013. It is thus argued that the petitioner should not be made to suffer because the earlier writ petition remained pending and in the meanwhile, some other juniors were promoted.
6. Learned State counsel and learned counsel for the respondent No.8 would not dispute the above factual aspects of the matter. Learned counsel for the respondent No.8 would

submit, in addition, that the petitioner cannot be made senior to respondent No.8, because he has been promoted in compliance of the Court order, therefore, a contrary writ or a contrary administrative order cannot be issued.

7. It is settled principle of law that act of Court should prejudice none, therefore, if the earlier writ petition challenging the petitioner's promotion remained pending before this Court and in the meanwhile, his juniors were also promoted to the post of AG-III, but the petitioner could not have been considered because he was already holding the post of AG-III, which was later on set aside by this Court, the petitioner's seniority on the post of AG-III should not be affected. If the petitioner was duly qualified, eligible and suitable for promotion in the year 2013 when 5 peons junior to him were promoted, the petitioner appears to be entitled for notional seniority over and above Ajay Kumar Sidar, Sukhdev Prasad Chouhan, Atmaram Baghel, Vidyanand Sidar and Harikishan Dansena, who were junior to the petitioner on the post of Peon, yet they were promoted as AG-III and the petitioner was later on promoted on 02.05.2015.
8. In the obtaining facts and circumstances of the case, the writ petition deserves to be disposed of with direction that in the event, the petitioner prefers a representation before the Collector within one month, claiming notional promotion on the post of AG-III w.e.f. 10.06.2013 when 5 other peons have been

promoted, the Collector shall examine the matter within a period of 6 months from the date of submission of representation to assess the petitioner's service record and if the petitioner was eligible and suitable for promotion on the post of AG-III as on 10.06.2013, the petitioner should be granted notional promotion from the said date by placing him below the respondent No.8 Nanhi Babu Kasyakar and above Ajay Kumar Sidar, who was the first person promoted on 10.06.2013. Before passing the order, the Collector shall also hear the five peons who were promoted as AG III on 10.06.2003.

9. Accordingly, the writ petition is disposed of.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

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