

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No.1540 of 2015**

Hemant Kumar Shrivastava S/o Late Shri B.P. Shrivastava Aged About 58 Years Posted As Asstt. Gr.-I/head Clerk At Govt. D.K. Post Graduate College, Baloda Bazar, District Baloda Bazar-Bhatapara, (Chhattisgarh).

---- Petitioner**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur.
2. The Commissioner, Higher Education Department, Chhattisgarh, H.Q. Indrawati Bhawan, Naya Raipur.
3. State of Madhya Pradesh Through its Commissioner, Higher Education Department, Satpuda Bhawan, Bhopal (Madhya Pradesh).

---- Respondents

For Petitioner	:	Shri Rajesh Kumar Kesharwani, Advocate.
For respondent/State	:	Ms. K. Tripti Rao, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****31/08/2017**

1. This is second round of litigation on the part of petitioner who is claiming promotion on the post of Upper Division Clerk from the date his juniors were promoted in the year, 1991.
2. The petitioner has been agitating for his grievance right from the year, 1991 onwards. The petitioner on an earlier occasion had filed a petition bearing Writ Petition No.1938 of 2006. The said writ petition got disposed of on 18.06.2014. While disposing of the said writ petition, this High Court has passed the following orders:

“8. In view of the above, it is directed that the respondent No.3 shall communicate the confidential report of the year, 1990 to the petitioner within a period of two months from

the date of presenting the certified copy of this order before the respondent No.3 and after such communication, the petitioner shall make a representation against the entry and if his prayer for up-gradation is allowed, then he is entitled for promotion to the post of UDC along with all consequential benefits.”

3. A perusal of the aforesaid operative part of the order dated 18.06.2014 would clearly reflect that the only document which was required for consideration of the entitlement of the petitioner for promotion was the Annual Confidential Report (in short, ACR) of the petitioner of the year, 1990. The direction was for communicating the ACR of the year, 1990 to the petitioner. Though the direction was given to the respondent No.3-The State of Madhya Pradesh, however, the intention and object behind communication of the ACR of the year, 1990 was with an intention to ensure whether there was any adverse entry made in the ACR of the petitioner for the year, 1990, which perhaps would have dis-entitled him for promotion when his juniors were considered.
4. Subsequent to the disposal of the said writ petition on 18.06.2014, the office of the Commissioner, Higher Education, Govt. of Madhya Pradesh has written a couple of letters to the Commissioner, Higher Education, Govt. of Chhattisgarh to provide ACR of the year, 1990 so that compliance of the order passed by this court in WP No.1938 of 2006 could be made.
5. Learned counsel for the petitioner submits that in spite of repeated letters being issue by the Govt. of Madhya Pradesh, the State of Chhattisgarh is not acting upon those letters nor have they either provided ACR of the year, 1990 to the petitioner as a result, the

petitioner is being deprived of his rightful claim for consideration for promotion from the date his juniors have been promoted. It also amounts to a clear non compliance of the directives given by this court in WP No.1938 of 2006.

6. The State of Chhattisgarh though have filed its reply as early as in June, 2015, but the entire reply is silent on the aspect of the correspondence that have been made by the State of MP to the Commissioner, Higher Education, State of Chhattisgarh requesting for making available the ACR of the year, 1990 of the petitioner. The only objection which the State in its reply has taken is that of remedy of contempt which were available to the petitioner and that the petition suffers from delay and laches.
7. Both these grounds raised cannot be taken by the State of Chhattisgarh at this juncture in the light of the specific direction given by this court in WP No. 1938 of 2006 whereby a clear mandamus was issued to the the respondent No.3 for making available ACR of the year, 1990 to the petitioner. The respondent No.3 on his part has shown his bonafide of making efforts for compliance of the order dated 18.06.2014, but the same could not be complied due to non co-operation on the part of the officers in the State of Chhattisgarh particularly the Higher Education Department. Thus, both the objections raised by the State in their reply stands negated.
8. The issue involved in this case that of claim of the petitioner for consideration of his case for promotion alongwith his juniors already stands decided by this court in WP No.1938 of 2006 whereby it has

been held that the authorities concerned would provide ACR of the year, 1990 to the petitioner to ascertain whether there is any adverse entry or not. Thereafter, the concerned authority, if there was no adverse entry in the ACR, were duty bound to consider the case of the petitioner treating him also as one of the claimant for the promotion along with his juniors that was considered in the year, 1991.

9. This court does not find any delay on the part of the petitioner as the petitioner has been agitating right from 1991 itself inasmuch as he had initially approached the State Administrative Tribunal from where the matter subsequently got transferred to the High Court from where he had withdrawn the writ petition with liberty to file duly constituted fresh petition which led to filing of WP No.1938 of 2006.
10. Be that as it may, this court is of the opinion that since the grievance of the petitioner could be redressed if the directions given by this court in WP No.1938 of 2006 decided on 18.06.2014 is complied with, this court does not intend to keep this petition pending any further.
11. Thus, the present writ petition is disposed of with a specific direction to the respondents No.1&2 to ensure that the ACR of the petitioner of the year, 1990 is made available to him directly by the respondent No.2. After the receipt of ACR, the petitioner, in turn, in accordance with the directions of this court in WP No.1938 of 2006, shall have liberty to represent against the entries made in the ACR therein, provided the same is adverse against the petitioner, and if his

representation is entertained and allowed by the respondent No.3 seeking for up-gradation of the same and which, if allowed, the petitioner shall be entitled for promotion to the post of UDC along with his juniors who have been considered when the DPC was held in the year, 1991. He would also be entitled for all consequential benefits as has already been held by this court in WP No.1938 of 2006.

12. Let this exercise so far as the part to be performed by the respondents No.1&2 be carried out within a period of six weeks from the date of furnishing certified copy of this order by the petitioner. Thereafter, the petitioner shall have an opportunity of filing of representation, if he so chooses, within a further period of four weeks, and the respondent No.3 shall pass appropriate order on the representation so made by the petitioner within a further period of eight weeks thereafter.
13. The writ petition is accordingly disposed of. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

inder