

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 114 of 2005

Reserved on 30/08/2018

Delivered on 13/12/2018

Basant Kumar Sharma, S/o. Salikram Sharma, Lecturer,
Government Ayurvedic College, Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Madhya Pradesh, through: Secretary, Health, Bhopal, Madhya Pradesh
2. Director, Bhartiya Chikitsa Padhati & Homeopathy, Bhopal Near Lilly Talkies, Bhopal, Madhya Pradesh
3. Dr. Buddha Narayan Sharma, Reader, Government Ayurvedic College, Indore, Madhya Pradesh
4. Dr. R.S. Chauhan, Reader, Government Ayurvedic College, Rewa, Madhya Pradesh
5. MPPSC, Residency Area, Indore, Madhya Pradesh
6. CGPSC, Shankar Nagar, Raipur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Aman Tamboli, Advocate under instructions of Mr. R.S. Marhas, Advocate
For State	:	Mr. R.N. Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

1. The petition was originally filed as an original application before the Madhya Pradesh State Administrative Tribunal at Jabalpur, where it was registered as O.A. No. 628/1989. In due course of time, since the Tribunal was abolished, the matter stood transferred to the Madhya Pradesh High Court as W.P. No. 5552/2003. However, since the matter pertained to the Chhattisgarh region, the writ petition got further transferred from the Madhya Pradesh High Court to the Chhattisgarh High Court, where it was renumbered as WPS No. 114/2005.

2. The present writ petition has been filed by the petitioner assailing Annexure P/5 & P/10 and has further sought for a direction to the respondents to consider the case of the petitioner for promotion to the post of Reader ahead of the private respondent i.e. respondents No.3 & 4. Annexure P/5 and P/10 the two orders under challenge are the orders of promotions, which have been passed in the intervening period and where it is alleged that the petitioner had not been considered, though he was entitled for the same.
3. The facts relevant for the adjudication of the present dispute is that the petitioner is a person having a degree of BAMS from the Ravi Shankar University. The petitioner was appointed as a Demonstrator in the Govt. Ayurvedic College, Raipur on 01.07.1973. In due course of time, when an advertisement in the same department for the post of Lecturer was published, the petitioner applied and he was found selected and appointed as a Lecturer w.e.f. 01.07.1975. However in the year 1979, it is said that the petitioner got involved in some criminal case and was also arrested for the same and got suspended w.e.f. 28.06.1979. The petitioner was subjected to trial, which initially resulted in his conviction.
4. Against the said judgment of conviction, the petitioner had preferred an appeal before the High Court, which was registered as Cr.A. No. 729/1980. The said appeal finally stood allowed on 11.11.1983 acquitting the petitioner of all the criminal charges that were leveled against him. The judgment of acquittal was challenged by the State Government before the Hon'ble Supreme Court and the Hon'ble Supreme Court also vide its order dated 15.07.1985 in Special Leave to Appeal No. 1549/1989 dismissed the S.L.P. Subsequently,

the order of suspension got revoked and the petitioner was asked to rejoin his duties w.e.f. 09.05.1985 at the Govt. Ayurvedic College, Jabalpur and later on was further transferred back to the Govt. Ayurvedic College, at Raipur.

5. The grievance of the petitioner is that during the period that he was under suspension when the criminal case was pending, the petitioner has not been granted any consequential benefits of promotion, which he was otherwise entitled for atleast at par with his juniors, who were promoted vide Annexure P/5 and where the claim of the petitioner was ignored for no fault of his. It was also the contention of the petitioner that subsequently vide Annexure P/8 again the claim of the petitioner was ignored by the department and the persons still juniors to the petitioner were again promoted to the post of Reader, which has led to the filing of the present petition.
6. According to the petitioner, since he has been acquitted by the High Court, giving the honourable acquittal it shall be presumed that he has never being convicted and the intervening period during which he was either suspended or out of employment for all practical purposes has to be deemed to have been spent on duty and the same should also be taken into consideration while considering the case of the petitioner for promotion.
7. It is further the contention of the petitioner that even if it be a case where the petitioner is found ineligible on account of not obtaining the minimum bench mark as is required from the grading that are given in the ACRs, the same also would be bad in law for the reason that none of these entries in the ACRs have been communicated to the petitioner and therefore relying upon those entries in the ACRs,

which were never communicated, would be bad in law in the light of the judgment of the Hon'ble Supreme Court in the case of "**Devdutt v. Union of India**" reported in **2008(8) SCC 725**.

8. Per contra, the State counsel opposing the petition submitted that it is a case where the petitioner immediately on his being permitted to resume his duties on the post that he initially held. Subsequently when the others were considered for promotion, the petitioner's claim initially could not be considered on account of non-availability of the ACRs during the period that he was out of employment and that was the reason why initially he could not be promoted along with his immediate juniors. The State counsel further brought to the notice of the Court that later on a review DPC was convened for reconsidering the claim of the petitioner with the available ACRs with the department and in the process, the ACRs for the years 1974-75, 1976-77 and 1977-78 and subsequent to his reinstatement, the ACRs for the year 1986-87 and 1987-88 was considered and since the petitioner did not have the bench mark required for promotion, he was found not fit. The criteria for promotion was merit with due regard to seniority (i.e. merit-cum-seniority), therefore the petitioner cannot have any grievance when his case was duly scrutinized and was found not eligible for promotion and prayed for the rejection of the writ petition.
9. Having heard the contentions put forth on either side and on perusal of the record, some of the undisputed facts of the case is that the petitioner while discharging the duties as a Lecturer got implicated in a criminal case and was arrested. He was placed under suspension, thereafter he was also convicted in the criminal case by the trial

Court, but in an appeal, the Appellate Court had set-aside the judgment of conviction and acquitted the petitioner and judgment of acquittal stood affirmed by the Hon'ble Supreme Court also.

10. Pursuant to his acquittal, the petitioner was also taken back in service and he was also given continuity in service. The question only remains is whether the petitioner would be entitled for promotion at par with his immediately juniors or not? From the perusal of the reply and the additional reply, so also the affidavit filed by the Director, AYUSH, it reveals that subsequent to the petitioner being placed under suspension, his ACRs subsequently have not been prepared and it has only been prepared after he has been permitted to resume his duties from 1995 onwards. Therefore, for the purpose of considering the petitioner for promotion, the respondent authorities took the ACRs for the year 1986 and 1987 and also took into consideration the available previous three years of ACRs that was from 1974-75 to 1977-78. For the aforesaid five years, the grading that the petitioner received were “ख” and “ग” for the year 1986 as well as 1987 respectively and for the three years of 1974-75 to 1977-78 the ACRs grading were “ग”, “ख” and “ग” respectively.
11. As per the reply of the State Government, the criteria for promotion from Lecturer to Reader were merit-cum-seniority. From perusal of the grading, which are reflected in the preceding paragraph, what cannot be lost sight of is the fact that firstly the department has taken due care to consider the case of the petitioner for promotion from the post of Lecturer to Reader. Secondly, the respondents also did take due care to ensure that the available 5 years of ACRs was taken into

consideration for the purpose of scrutinizing the assessment of the petitioner. Further, from the grading it also reflects that the petitioner in the available 5 years of ACRs had received three “ग” and two “ख” entries, which by itself would show that he did not have the minimum bench mark for being promoted. Thus, it is not case where the case of the petitioner was not considered for promotion rather it is a case where he was considered and found not suitable. To this extent, there cannot be any illegality or infirmity on the part of the government, as far as considering the case of the petitioner is concerned for promotion.

12. Now coming to the question, whether uncommunicated ACRs could had been taken into consideration for the purpose of declaring the petitioner unfit, we must not forget the fact that the Judgment of the “**Devdutt**” (supra) was one which was rendered in the year 2008 and the present dispute pertains to the DPC that was held about 20 years prior from the date of the judgment of “**Devdutt**” (supra). At the relevant point of time i.e. in the year 1988-89, the then prevailing practice did not require communication of the ACRs annually, except the one where there are adverse entries and for this reason also, the action of the respondents cannot be said to be adverse or bad in law in any manner.
13. Given the aforesaid facts and circumstances of the case, particularly taking note of the fact that the respondents have considered the case of the petitioner for promotion, but the fact that the petitioner was found unfit, he became ineligible for promotion. For the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned

orders of promotion Annexure P/5 and P/10, nor does this Court finds any sufficient strong material made out for issuance of a direction to the respondents for promoting the petitioner as a Reader at par with his immediate juniors.

14. The writ petition for the aforesaid reasons fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved