

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 7132 of 2008

Sushil Kumar Agrawal S/o Shri Hari Prasad Agrawal, aged about 59 years, R/o Baiga Para, Durg, Posted as Upper Division Teacher in Dau Rarauha Prasad Rashtriya Higher Secondary School, Durg (C.G.).

---Petitioner

Versus

1. State of C.G. through Secretary, School Education Department, Mantralaya, DKS Bhavan, Raipur (C.G.).
2. Commissioner, Public Instruction (DPI), Directorate, Raipur (C.G.).
3. District Education Officer, Durg, District Durg (C.G.).
4. District Education Society, Through President District Education Society, C/o Dau Rarauha Prasad Rashtriya Higher Secondary School, Durg (C.G.).

---Respondents

For petitioner	:	Shri H.B.Agrawal, Senior Advocate and Shri Pankaj Agrawal, Advocate.
For resp.No.4	:	Shri Raza Ali, Advocate on behalf of Shri B.P.Sharma, Advocate.
For State	:	Shri Chandresh Shrivastava, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/11/2018

1. The instant Writ Petition has been filed seeking for the following relief:-

“(i) The Hon'ble Court may kindly be pleased to allow the petition by direction respondent No.4 to not cancel the promotion already granted to the petitioner but to release salary of Lecturer (Biology) w.e.f. 20.05.2008. Further more, to consider the case of petitioner like Dushyant Kumar Sharma and Ramkant Swarnkar as already ordered in WP

No.29/2000 by paying difference of wages, seniority and promotion w.e.f. 24.12.97 i.e. the date when Departmental Promotion Committee has recommended the case of petitioner to be considered in presence of government representative, which was not object in order dated 04.03.2008 of this Hon'ble Court in WP No.29/2000.

(ii) Cost of the petition be awarded and

(iii) Any other relief or direction which the Hon'ble Court may deems fit, be also awarded.”

2. The brief facts relevant for adjudication of the present Writ Petition is that the petitioner was appointed under the respondent No.4 on the post of “Assistant Teacher” in the year 1975. Lateron the petitioner got promoted on the post of Upper Division Teacher on 09/09/1988.
3. According to the counsel for the petitioner, the petitioner was further entitled for promotion on the post of Lecturer having fulfilled the length of service required for promotion to the post of Lecturer and a DPC also in this regard was constituted on 24/12/1997 and the DPC had also recommended the case of the petitioner for being promoted and the matter was sent for the approval of the competent authority i.e. the respondent No.2 – the Director, Public Instruction, Bhopal. However, no further orders were received from the office of the Director, Public Instructions.
4. Since, the petitioner was not granted the promotion as per the recommendation of the DPC held in 1997, he had filed a Writ Petition in

the year 2000 which was registered as WP No. 29/2000 where the relief sought for was as under:-

“(1) To call the entire records pertaining to the disputes of the petitioner for full satisfaction of this Hon'ble High Court.

(2) To issue writ for mandamus or any other nature in favour of the petitioner and against the respondent to give order of promotion for the post of Lecturer in D.R.P.R. H.S. School, Durg in Biology Subject on the recommendation of the D.P.C.”

5. The said Writ Petition finally got disposed off on 04/03/2008 where this Court orders as under:-

“2. Having regard to the facts and circumstances of the case, the respondent No.4 is directed to consider the case of the petitioner in the light of the judgment and order dated 28/11/1997 passed by the High Court of Madhya Pradesh at Jabalpur in W.P.No.546/1991 (Dushyant Kumar Sharma v. State of M.P. & Ors.) and W.P.No.744/1998 (Ramakant Swarnakar v. State of M.P. & Ors) on its merit, in accordance with law, within a period of 12 weeks.”

6. Since the said order was not complied with, a Contempt Petition was also filed registered as Contempt Petition No. 310/2008. However, before an order could be passed, the respondents vide order dated 12/11/2008 passed an order and on due consideration of the claim of the petitioner with Dushyant Kumar Sharma and Ramakant Swarnkar found that the case of the petitioner factually was quite different from the

claim that Dushyant Kumar Sharma and Ramakant Swarnkar had raised or were granted. Thereafter, the present Writ Petition has been filed by the respondents claiming for the relief as has been reflected in the first paragraph of this judgment.

7. Prima-facie a plain reading of the relief clause would clearly reflect that the sole relief sought for by the petitioner is for the relief that has been granted to Dushyant Kumar Sharma and Ramakant Swarnkar and which has already granted by this Court in the Writ Petition preferred by the petitioner on the earlier occasion i.e. in Writ Petition No. 29/2000.
8. What is pertinent at this juncture is that subsequent to the order passed by this Court in Writ Petition No. 29/2000 which was earlier preferred by the petitioner and which stood disposed off on 04/03/2008 (operative part reproduced in the preceding paragraph of this judgment). The respondent No. had considered the case of the petitioner and reached to the conclusion that the petitioner cannot be granted the benefits which have been extended to Dushyant Kumar Sharma and Ramakant Swarnkar for the reason that, the petitioner was not similarly or identically placed so as to enable him the said relief.
9. A plain reading of the Annexure-P/7 would reveal that the authorities concerned have on scrutiny of the case of the petitioner found that it is a case where the petitioner infact was substantially discharging the duties of Upper Division Teacher and was claiming promotion on the post of Lecturer. However in the case of Dushyant Kumar Sharma and

Ramakant Swarnkar they were already discharging duties of Lecturer when their salary and other benefits attached to the post of Lecturer were discontinued which led to the filing of the Writ Petition by them which stood allowed in their favour. Whereas undisputedly the petitioner was working as Upper Division Teacher as would also reflect from the cause title itself where the petitioner itself shows his status to be that of an Upper Division Teacher.

10. Another aspect which cannot be lost sight of is that this order of the State Government dated 12/11/2008 which was passed pursuant to the order passed by this Court in Writ Petition No. 29/2000 dated 04/03/2008 has not been challenged by the petitioner either in this petition or by way of any other Writ Petition.

11. In the absence of any challenge to the order (Annexure-P/7) dated 12/11/2008 the petitioner cannot be granted the benefits which he is otherwise claiming for.

12. Moreover, the relief sought for in this Writ Petition would be hit by the principles of resjudicata as for the same relief there is already an order passed in favour of the petitioner on 04/03/2008 in Writ Petition No. 29/2000 by this Court.

13. For the aforesaid reason this Court is of the opinion that the present Writ Petition with the relief that has been sought for since having already been granted in favour of the petitioner and after which the claim of the petitioner on due consideration having been rejected, the

subsequent Writ Petition for the same relief would not be maintainable and the present Writ Petition thus being devoid of merits deserve to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit