

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 710 OF 2007**

M.H. Wase S/o MM Wase, aged about 61 years, Lecturer DIET,
Colony Pendra, District Bilaspur (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh, through Secretary, School Education Department, DKS Bhawan, Raipu (CG).
2. Director Lok Shiksha Sancharnalaya, Chhattisgarh Raipur (CG).
3. Principal, District Institute of Education & Training (DIET) Pendra, District Bilapur (CG).

... Respondent(s)

For Petitioner	:	Shri Mateen Siddique, Advocate.
For Respondent-State	:	Shri SP Kale, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.09.2018

1. Challenge in this petition is non consideration of the petitioner for promotion to the post of Principal in the School Education Department when his juniors were promoted on 27.06.2003.
2. The relevant facts necessary for adjudication of the present petition is that, the petitioner was initially appointed way back on 17.11.1969 as Upper Division Teacher (in short, UDT) with the respondents. In due course of time the petitioner was granted promotion on the post of Lecturer w.e.f. 09.04.1971. The next promotion due to the petitioner was on the post of Principal and the petitioner fulfills all the requisite eligibility criteria under the rules and regulations. On 27.06.2003, in the course of granting promotion of similarly placed persons, the respondents issued an order promoting 109 persons on the post of Principal. Immediately thereafter again on 19.09.2003, 25 more persons were promoted. Thus, in all the respondents promoted

134 persons on the post of Principal out of which 40 persons were junior to the petitioner.

3. The contention of the petitioner is that till date the promotion orders were issued, the petitioner has not been subjected to any departmental proceedings. Neither has he been inflicted with any punishment nor any enquiry was pending consideration before the authorities with which the petitioner could have been refused consideration for promotion. It was also the contention of the petitioner that the petitioner also has not been communicated with any adverse entries made in his ACRs before the promotion orders were issued. Thus, non consideration seems to be apparently bad in law and contrary to law and therefore prayed that the case of the petitioner be considered for promotion from the date his juniors were promoted on 27.06.2003 and again on 19.09.2003.
4. Pending the writ petition before this court, the petitioner got retired from service on 31.01.2008.
5. The State counsel submits that the petitioner was also found suitable for promotion and accordingly promotion committee had scrutinized the case of the petitioner but the committee did not find the petitioner fit for promotion and as such he could not be promoted. Further, it is always the prerogative of the said promotion committee to decide the suitability part which cannot be questioned any further and therefore once when the promotion committee found the petitioner to be unfit, he does not have any further claim for promotion.

6. It was also the contention of the State that the juniors who have been promoted ahead of the petitioner vide orders dated 27.06.2003 and 19.09.2003 have not been impleaded as necessary party and therefore the petition also suffers from non joinder of necessary party. Therefore, the petition deserves to be rejected.
7. Having heard the contentions put forth on either side and on perusal of records indisputably there have been two orders of promotion issued from among Lecturers on 27.06.2003 and 19.09.2003. The order of promotion reflects that there were large number of Lecturers who were juniors to the petitioner who were found suitable and accordingly promoted to the post of Principal. No reason has been assigned by the respondents either in their reply or in their additional reply or even while deciding the representation of the petitioner on 30.05.2006 as to why the petitioner has been found unfit for promotion.
8. It is necessary to take note of the fact that when the petitioner was superseded by his juniors, the petitioner filed a writ petition before this court i.e. WP No.1096 of 2004 which got disposed of on 27.04.2004 directing the respondents to decide the representation of the petitioner. Once when such an order is passed by the High Court, the least that is required by the officer of the respondents is that they should consider the contentions raised in the representation and decide the same by giving reasons after proper application of mind.
9. In the instant case though Annexure R/1 dated 30.05.2006 has been passed by the authorities rejecting the representation, but the only

ground for rejecting the representation is that according to the respondents since the promotion committee found the petitioner unfit for promotion, the same cannot be questioned any further and on this ground alone the petitioner's representation has been rejected. This manner in which the representation of the petitioner has been rejected is totally uncalled for and is not acceptable particularly when the representation is being decided at the behest of an order passed by this court under Article 226 of the Constitution.

- 10.** In the instant case the State had filed reply and in the said reply there was not one good reason dealing with the merits of the case. For ready reference, paragraph 2 of the reply is being reproduced herein as under:

“2. It is respectfully submitted that the matter is being enquired by the answering respondents regarding the confidential report of the year, 2000,2001 and 2002 of the petitioner and a detailed enquiry is undergoing. It is important to mention here that those lectures who have been promoted vide order dated 27.06.2003 and 19.08.2003 were related to the “un-reserved category” and appointed on 09.11.1972, but the date of the appointment of the petitioner is 17.04.1971.”

- 11.** Subsequently, the State found that the said reply of the State may not be sufficient to defend their case, therefore they took time to file additional reply and later on they filed additional reply in which also the respondents have not taken much defence except the ground of not impleading of the juniors as necessary party to the writ petition and the fact that petitioner was found unfit by the committee, and therefore there cannot be a challenge to the decision of the promotion committee.
- 12.** Meanwhile two orders have been passed on same day i.e. on 07.11.2007 by which the respondents have promoted 15 juniors of

the petitioner to the post of Principal w.e.f. 27.06.2003 and second order reflects 103 more persons having been promoted on the post of Principal.

- 13.** The reply as well as additional reply filed by the State Govt. is as bald as it can be. No justification whatsoever is reflected from the plea of the State as to why the petitioner could not be promoted or was not found suitable for promotion. In the absence of any such specific reasons assigned by the State particularly when the criteria for promotion is that of seniority-cum-merit, it is presumed that adverse inference has been drawn against the petitioner by the respondents and it is held that the action of the respondents is malafide, bad in law and arbitrary.
- 14.** Under the circumstances, this court is left with no other option but to direct the respondents to consider the case of the petitioner for promotion on the post of Principal with effect from the date his juniors have been promoted. The petitioner would also be entitled for all consequential benefits which includes monetary benefits which he would have got had he not been promoted timely. The impugned rejection order of the petitioner's representation dated 30.05.2006 also stands set aside/quashed.
- 15.** The writ petition is allowed. Let this exercise be done within a period of 90 days from the date of receipt of certified copy of this order.

Sd/-

(P. Sam Koshy)
Judge