

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5244 of 2008**

Smt. Veena Lahre, (Smt. Veena Vikrant Singh) D/o Shri B.R. Lahre, (W/o Dr. Vikrant Singh), aged about 31 years, R/o Indu Chowk, Jarhabhata, Bilaspur (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through: The Secretary, Local Administration Department, Mantralaya, D.K.S. Bhawan Raipur, (C.G.)
2. The Commissioner Municipal Corporation, Bilaspur (C.G.)
3. Shri Pramendra Kumar Singh, Teacher, Marathi Putri Shala, Tilak Nagar, Bilaspur (C.G.)
4. Shri Bhawani Shankar Soni, Teacher, Government Ghasidas Primary School, Jarhabhata, Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Ms. Meena Shastri, Advocate
For State	:	Mr. P. Acharya, PL
For Respondent No. 2	:	Mr. A. S. Kacchawaha, Advocate
For respondent No. 3 & 4	:	Mr. S. K. Kushwaha, on behalf of K. S. Pawar, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/07/2019**

1. The challenge in the present writ petition is to the order Annexure P-7 dated 15/18.07.2008. Vide the impugned order the respondent No. 3 and 4 who are juniors to the petitioner considering the initial date of appointment and date of confirmation have been granted promotion to the post of Shiksha Karmi Grade – II ahead of the petitioner.
2. Facts of the case is that the petitioner was initially appointed as Shiksha Karmi Grade -III vide the order dated 08.02.1999. The petitioner was appointed under the respondent No. 2 Municipal Corporation, Bilaspur. Service conditions of the petitioner are

governed under the Chhattisgarh Municipal Corporation Act (Recruitment & Conditions of Service), Rules 2008. The petitioner stood confirmed with the services of the respondent vide order dated 07.08.2007 (Annexure P-2). Annexure (P-2) specifically discloses the details of the date on which the petitioner and respondent No. 3 & 4 were initially appointed for joining as also the date on completion of probation period. The details given in the Annexure P-2 clearly reflects that respondent No. 3 & 4 were appointed much after the petitioner was appointed with respondents. There is no dispute to the fact that petitioner as well as respondent No. 3 & 4 were appointed as Shiksha Karmi Grade-III by the respondent No. 2. In spite of the fact that petitioner was senior the respondent issued the promotion order Annexure P-7, the impugned order 15/18.07.2008 wherein the petitioner was not granted promotion and at the same time the juniors to the petitioner i.e. Respondent No. 3 & 4 have been granted promotion. It is this order which has been assailed by the petitioner in the present writ petition.

3. The contention of the petitioner firstly is that the impugned order is bad for the reason that the petitioner's seniority have been ignored by the respondents while granting promotion. According to the petitioner there is no dispute to the fact that petitioner being senior to the respondent No. 3 & 4 neither has such a stand taken by the respondent in any of their reply. Therefore, granting of the promotion to the respondent No. 3 & 4 ahead of the petitioner is bad in law. The second contention of the petitioner is that she belongs to reserved category i.e. the SC category and that she was the only candidate in the SC category who could have been promoted but respondents have deliberately ignored the petitioner against the reserved category

also while issuing promotion order. According to the petitioner it was incumbent upon the respondents to follow the roster system applicable in the department for the purpose of promotion. Without which the order of promotion becomes bad in law. Third contention of the petitioner is that the ground taken by the respondent of promotion having been made subject wise and since the petitioner was not coming in any of the two subject groups and she being denied promotion is also not sustainable for the reason that rules do not provide for promotion from Shiksha Karmi Grade-III to Shiksha Karmi Grade-II on the basis of subject. Moreover, according to the petitioner she has never been appointed as a Teacher of the Commerce subject. The petitioner cannot be denied promotion only on the basis of subject in which the petitioner has undertaken her education. The only requirement is the length of service for the purpose of becoming eligible for promotion. That for all these reasons counsel for the petitioner prayed for quashment of the impugned order or atleast respondent be directed granting the petitioner also promotion at par with the immediate juniors.

4. Counsel appearing for the respondents, however, opposing the petitioner submits that since the promotion orders have been made on the post of Shiksha Karmi Grade-II subject wise and since the petitioner did not belong to the two groups with Science and Arts group, the petitioner could not have been considered for promotion. According to the counsel for the respondent the petitioner was posted as a Commerce Teacher and therefore she could not have been accommodated against the science group or in the arts group for the purpose of promotion.

5. Counsel for the State referred to the State Government instructions received on 09.06.2008 which clearly envisages that in the upgraded schools the post of Shiksha Karmi Grade-II should be filled up half by the science group Teacher and half by the Arts group Teacher. According to the counsel for the respondent No. 2 it is these guidelines which was applied for promotion and therefore the impugned order cannot be said to be bad in any manner. The same argument has also been adopted by counsel for Respondents No. 3 and 4. In addition to the ground of the alternative remedy, that of not preferring an appeal to the commissioner, Municipal corporation against the order of promotion. So far as the objection of maintainability of the petition on the ground of there being an alternative remedy is concerned, this Court is of the opinion that since the petition itself has been entertained by this Court 11 years ago and after 11 years accepting the preliminary objection of having an alternative remedy would be too harsh and hyper technical a ground, the said objection therefore stands rejected
6. So far as the merit part is concerned there is no dispute so far as the petitioner being senior to the Respondents No. 3 and 4. There is no dispute in the fact that at the time of appointment of the petitioner as well as Respondents No. 3 and 4 there was no subject wise appointment made, all the persons were appointed as Shiksha Karmi Grade III. The next promotion from Shiksha Karmi Grade III to Shiksha Karmi Grade II the requirement under rules is a specific length of service as Shiksha Karmi Grade III. There is no dispute that the petitioner does have requisite length of service for being promoted.

7. In view of the aforesaid undisputed facts, this Court is of the opinion that unless the appointment of the petitioner has been exclusively for commerce Subject, she could not be branded as Commerce Teacher nor can she be denied promotion only on account of having the qualification in commerce. The promotion from the post of Shiksha Karmi Grade III to II is on the basis of length of service. So far as the Government Instruction dated 09.06.2008 is concerned, it only mentioned that so far as upgraded schools are concerned Shiksha Karmi Grade II posted in those schools should be filled by half being from the science group and half being from the Arts Group. This only is a matter of posting which cannot come in the way of granting of promotion. If the Respondents intend to fill up the upgraded post with only Science and Arts Teachers the persons with commerce would have been accommodated in other Schools. That only because there is an instruction of the State Government for filling up of the upgraded schools with half from Science Group and half of Arts Group by itself cannot be a ground for denial of promotion to the petitioner who otherwise fulfills all the requisite eligibility criteria under the Schools. Moreover, the petitioner is also undisputedly Senior to Respondents No. 3 and 4.
8. Given the said facts and circumstances of the case this court is of the opinion that the petition deserves to be and is accordingly allowed. It is directed that Respondent No. 2 shall consider grant of promotion to the petitioner on the post of Shiksha Karmi Grade II at par with Respondents No. 3 and 4 by issuing appropriate orders in this regard, if not, issued by now. Since the appointment of the petitioner was not as a commerce teacher or atleast it is not reflected from the

appointment orders, the respondent NO. 2 can also consider granting promotion to the petitioner against the Arts Group.

9. With the aforesaid observation the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rohit