

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2121 of 2005**

1. Kumar Singh Thakur, aged about 52 years, S/o Shri Vijay Bahadur Singh Thakur, Asst. Grade I, Office of Joint Director Fisheries, Raipur.
2. Ram Chandra Kaushik, aged about 58 years, S/o late Shri Nakchhed Prasad Kaushik, Asst. Grade I, Office of the Director, Fisheries, Raipur (Chhattisgarh)
3. Vittal Singh Nikam, aged about 52 years, S/o Shri Sumer Singh Nikam, Asst. Grade I, office of Deputy Director Fisheries, Bilaspur
4. Ishwari Prasad Pandey, aged about 47 years, S/o late Shri Bisahu Pandey, Asst. Grade I, Office of Joint Director, Fisheries, Raipur.
5. Agrahij Prasad Naik, aged about 46 years, S/o late Shri Uday Ram Naik, Asst. Grade I, Office of the Asst. Director of Fisheries, Janjgir
6. Vikas Wadibhasme, aged about 45 years, S/o late Shri Anand Ram Wadibhasme, Asst. Grade I, Office of Fish Farmer Development Agency, Rajnandgaon.

---- Petitioner**Versus**

1. State of Madhya Pradesh, through the Principal Secretary, Deptt. Of Fisheries, Vallabh Bhawan, Mantralaya, Bhopal.
2. The Director, Directorate of Fisheries, Vindhachal Bhawan, Bhopal.
3. The State of Chhattisgarh, through the Secretary, Department of Fisheries, Govt. of Chhattisgarh, Raipur

---- Respondent

For Petitioners : Shri Manoj Kumar Sinha, Advocate.
For Respondent/State : Shri S.K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/07/2019 :

1. The present Writ Petition was preferred before the erstwhile State Administrative Tribunal (for brevity 'the Tribunal') in December, 2000 calling in question the order of reversion of the petitioners dated 30.10.2000 and the consequential promotion order of the private respondents issued on the same date.
2. The petitioners were promoted on the post of Assistant Grade-I on different dates. They were subsequently reverted to the feeder post of Assistant Grade-II by the impugned order which was assailed before the Tribunal by other affected persons by preferring O.A. No.2318/2000 (Dinesh Chandra Sharma, Vishnu Prasad Dubey, Santosh Kumar Dubey Vs. State of Madhya Pradesh & 21 others); OA No.2611/2000 (Smt. Sunita Kasture Vs. State of Madhya Pradesh & Another) and OA No.2612/2000 (Jagdish Rathore Vs. State of Madhya Pradesh & Another). The aforesaid OAs have been decided by the Division Bench of the Tribunal on 9.3.2001, copy of which has been filed by the respondent/State as Annexure-R/2 with the return. Nothing has been brought to the notice of this Court indicating that the said order of Division Bench of the Tribunal has been interfered either by the High Court or the Supreme Court. Therefore, the same has attained finality. When the O.A. was first heard on 14.12.2000 , the petitioners' counsel referred to the interim order granted in earlier matter bearing O.A.

No.2318/2000, referred to above. On the said basis the petitioners were also allowed interim relief. Thus, it is the petitioners' own case that their case is similar to the petitioners of O.A. No.2318/2000, which has already been dismissed by the Division Bench of the Tribunal.

3. Learned counsel for the petitioners has argued that no opportunity of hearing was afforded to them before passing order of reversion. Therefore, there being violation of principles of natural justice, the impugned order deserves to be set aside. He would also submit that the petitioners were not at fault if they were promoted as Assistant Grade-I despite non-availability of posts.
4. Per contra, learned State Counsel would submit that the validity of the same impugned order has already been upheld by the Division Bench of the Tribunal and the matter having already become stale, as the present petitioners have already retired way back, the present Writ Petition deserves to be dismissed at once.
5. In the order passed by the Tribunal, the facts, state of rules governing the field and the illegality in promoting the petitioners on earlier occasion has been discussed in detail and thereafter the following has been observed in paras-16, 17, 19, 20 & 21:-

“16. Admitted facts of the case are that the parent department of both the applicants and private respondents is the department of Fisheries of State of Madhya Pradesh. It is also not disputed that Fish Farmers Development Agencies (FFDA) are registered Societies and are not part of the Government. Annexure A/14 is the administrative report pertaining to the year 1999-2000 of Fisheries Department of M.P.

At page 5 of this Annexure A/14 the structure of FFDA has been given. According to it the FFDA are functioning in 45 districts of the State. The approved set-up has also been indicated. As per this set-up the senior most authority of FFDA in the District is Chief Executive Officer. The post of Assistant-cum-Accountant is placed at Sl. No.7 and the sanctioned posts are 45. Annexure A/15 is the guide-line of FFDA. The District staff pattern of FFDA is shown at page No.4 of Annexure A/15. As per this pattern one post of Head Clerk-cum-Accountant is provided which has to be filled up by persons taken on deputation from the Fisheries Department. Thus, for 45 districts Head Clerk-cum-Accountants are required to be posted on deputation. These Annexures- A/14 and A/15 do not indicate that ex-cadre pay scales are provided to the persons whose services are taken by FFDA on deputation. This is further confirmed by the promotion order dated 6.4.1993, copy of which is placed at Annexure A/5. As per this order Annexure A/5, after promotion of UDCs in the parent department itself against the post of Assistant/Junior Accountant the applicants were posted against the vacant and sanctioned post of Assistant-cum-Accountant in various districts. As per this order Annexure A/5, two pay scales were provided to such promotees. One pay scale of 1320-2040 for accounts trained and another 1200-2040 for accounts un-trained. These pay scales are admittedly not ex-cadre pay scales of FFDA. Thus, only after promotion in the parent department itself the applicants were sent on deputation to FFDA against the vacant and sanctioned post of Assistant-cum-Accountant.

17. Thus, the applicants as well as the private respondents are fully governed by the Recruitment Rules of 1971 for the purpose of promotions and other ancillary matters. As per Sl. No.3 of Schedule IV annexed with the Recruitment Rules of 1971 for promotion on the post of UDC Grade-I/Head Clerk, the feeder posts are UDC Grade-II/Accountant/Librarian and Auditor. As per Sl. No.5 LDC is the feeder post for promotion on the post of UDC Grade-II/Accountant/Sub-Auditor and Librarian. Similarly, at Sl. No.3 Sub-Auditor is feeder post for Auditor. It is, thus, clear that the posts of UDC Grade II and

Accountant both are equal. In other words UDC Grade-II is not a feeder post for promotion to the post of Accountant. However, post of Accountant carried different but better pay scale of 115-220 in comparison of UDC Grade-II as per Schedule I attached to the Recruitment Rules of 1971. UDC Grade-II was provided lower pay scale of 110-190. It appears that slightly higher pay scale was given to the Accountant as for the said post accounts training was necessary and nature of the work of the Accountant is also different than that of UDC Grade-II.

19. It is not disputed that the designation of UDC Grade-II was subsequently changed to that of Assistant Grade-II and that of UDC Grade-I as Assistant Grade-I. It is also not disputed that at the time of passing of the promotion order Annexure A/5 dated 6.4.1993 private Respondents were senior to the applicants in the gradation list of UDC Grade-II. However, as the pay scales of both Assistant and the Accountant were equal at the time of issuance of order Annexure A/5 and therefore, the private Respondents seriously did not take note of the promotion order Annexure A/5 issued in favour of the applicants. However, promotion of the applicants holding the post of UDC Grade-II to the post of Assistant without considering the private Respondents who were admittedly senior to the applicants in the cadre of UDC Grade-II was an illegality ab-nitio. The private Respondents being senior were required to be considered first for their promotion against the post of UDC Grade-I i.e. Assistant Grade-I irrespective of the pay scales of the promotional post at the time of passing of the order Annexure A/5 dated 6.4.1993, which admittedly has been subsequently enhanced on the recommendation of the Singh Deo Committee to 1400-2340, and which has been further revised to 4500-7000 on the recommendation of the 5th Pay Commission w.e.f. 1.1.1996.

20. In view of the aforesaid situation, if the earlier illegality has been cured by issuing the impugned orders dated 30.10.2000 placed at Annexure P/2 and P/1 by promoting the private Respondents and consequently reverting the applicants then it cannot be said that order Annexure P/1 reverting the applicants is

penal in nature. Admittedly, no one acquires any right on the basis of any illegal order issued in his favour. Illegal orders carry no force. Such orders are supposed to be non-est. In view of this legal position, the applicants were not required to be given opportunity of hearing prior to passing of the impugned orders. This view finds support by the decision of the Apex Court rendered in the case of State of M.P. & Others v. Shyama Pardhi and others; 1996 SCC (L&S) 466. The relevant part of para 5 of the judgment is reproduced as under:-

“Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per-se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question or violation of the principles of natural justice does not arise. The ratio of Shrawan Kumar Jha v. State of Bihar strongly relied on, has no application to the facts of this case.”

21. Looking to the aforesaid legal position even delay in presenting petition has to be ignored as per the principle laid down by the Apex Court in the case of A. Sagayanathan and others v. Divisional Personnel Officer, S.B.C. Division Southern Railway, Bangalore; 1992 SCC (L&S) 665. Before the Apex Court the complaint of the applicants was, that they were not promoted to the higher post although their juniors had been promoted as early as May 1993. Promotion to the higher post was governed by the rule of seniority. The Apex Court held that despite the delay the matter required investigation and accordingly directed the Tribunal to rehear the parties after impleading the necessary parties and to decide the case on merit.”

6. Having heard learned counsel for the parties at length and on perusal of the order passed by the Tribunal, the relevant part of which, has been extracted above, present is not considered to be a case worth differentiation or reconsideration to the one which has already been dismissed by the Division Bench of the Tribunal on a petition filed by

similarly affected persons.

7. If the petitioners and the like candidates were illegally promoted, contrary to the rules governing their promotion, the same has rightly been withdrawn as soon as the illegality was brought to the notice of the Government. If sufficient number of posts were not available and the reversion became necessary, it cannot be said that the petitioners should be allowed to continue on the promotional post despite non-availability of the posts.
8. There is no substance in the Writ Petition, which fails and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

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