

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6445 of 2008**

Smt. Rajini Sharma, Aged about 41 years, W/o Mr. Ajay Sharma,
Lecturer(English), Maya Ram Surjan Girls H.s. School, Coubey Colony,
Raipur, C.G., Resi. Of "Sonia Kunj" House No. 116, Ram Sagar Para,
Raipur, C.G.,

---- Petitioner**Versus**

1. Govt. Of Chhattisgarh through : The Secretary, School Education
Department, Mantralaya, D.K.S. Bhawan, Raipur, C.G.
3. Commissioner, Directorate Of Public Instruction, Chhattisgarh Raipur,
(C.G.)
4. District Education Officer, District- Raipur (C.G.)
2. Additional Director, Directorate Of Public Instruction, Chhattisgarh, Raipur

---- Respondents

For Petitioner	:	None
For State	:	Mr. Jitendra Pali, Dy. AG

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/07/2019**

1. The challenge in the present writ petition is to the impugned order Annexure P-6 dated 10.10.2008 whereby the respondents have cancelled the promotion order issued in favour of the petitioner on 27.09.2008.
2. The facts of the case is that the petitioner was initially appointed as Upper Division Teacher (UDT) on 31.03.1987 in the Tribal Welfare Department of the respondents. Subsequently, the petitioner moved an application opting for change of department and accordingly the petitioner was granted mutual transfer from the Tribal Welfare

Department to Education Department vide order dated 10.11.1995. The petitioner joined Education Department as Upper Division Teacher on 05.12.1995. The petitioner worked on the said post uninterruptedly when vide the order dated 27.09.2008 the petitioner was promoted from the post of Upper Division Teacher to the post of Lecturer. Based on the promotion order the petitioner gave joining on 30.09.2008. However, barely after about 10 days time, respondent issued Annexure (P-6) dated 10.10.2008 cancelling the promotion which the petitioner was granted on 27.09.2008.

3. The petitioner immediately challenged the same through the present writ petition and petitioner has been given an interim protection by this Court vide order dated 19.11.2008. Pursuant to which the petitioner till date is discharging her duties as a Lecturer, If not, further promoted in between pending the writ petition before this Court.
4. The ground raised by the petitioner is that the order of cancellation of promotion was issued without affording any opportunity of hearing to the petitioner and therefore the same is in violation of principles of natural justice. The other ground that the petitioner has raised is that no reason whatsoever has been assigned by the respondent as to why the promotion order to the petitioner had to be cancelled. The cancellation order only reflects that the petitioner does not have the eligibility criteria for promotion. However, the respondents have not been able to pin point the eligibility part which the petitioner does not possess so far as the petitioner is concerned. It was also the contention of the petitioner that since the petitioner for all practical purposes has been treated as an employee of the Education

Department, the petitioner is entitled for the seniority from the date the petitioner has joined the Education Department i.e. from 05.12.1995 onwards. The petitioner again in her rejoinder has submitted that persons juniors to the petitioner also have been promoted along with the petitioner and that their promotion have not been cancelled therefore the cancellation of the promotion of only the petitioner amounts to violation of Article 14 and prayed for quashment of the impugned order.

5. The State counsel on the other hand justifying the action on the part of the respondents submits that since the petitioner was substantially an employee of the Tribal Welfare Department, the petitioner cannot have the seniority period that she has rendered in the Tribal Welfare Department. Moreover, as per the impugned order, it has been reflected that petitioner does not have eligibility criteria for promotion. Thus prayed for rejection of the writ petition.
6. Having heard the contentions put forth on either side and on perusal of records what is an admitted position is that admittedly the petitioner has joined the Education Department from the Tribal Welfare Department on 05.12.1995. Since 05.12.1995, the petitioner has worked in the Education Department, the petitioner was granted promotion on the post of Lecturer no 27.09.2008 along with other candidates also. The impugned order dated 10.10.2008 reflects the cancellation of only the petitioner from the said list whereas the persons junior to the petitioner who were also granted promotion along with the petitioner, their promotion have not been cancelled.
7. It is also pertinent to mention that before cancellation of the appointment, respondent have not granted the opportunity of hearing

to the petitioner which was necessary for the reason that petitioner had already assumed the duties on the promotional post. What is also reflected from the records that neither in the impugned order dated 10.10.2008, nor in the reply that the State Government has filed have they been able to show as to what is the ineligibility so far as the petitioner is concerned. From the Gradation List enclosed along with rejoinder it reflects that the persons who are junior to the petitioner in the Education Department have been granted promotion to the post of lecturer along with the petitioner.

8. Taking into consideration all the factual matrix of the case, this Court is of the opinion that the impugned order so far as the cancellation of the promotion of the petitioner vide order dated 10.10.2008 (Annexure P-6) is not sustainable and the same deserves to be and is accordingly stands quashed/set-aside with consequences to follow.
9. The Writ Petition, accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Rohit