

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5355 of 2007**

- Dr. Jhadi Narayan, S/o Late Shri J. Laxmaiya, aged about 48 years, Assistant Professor, Economics, Govt. P. G. College, Dharampura, Jagdalpur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, through Secretary, Department of Higher Education, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Commissioner, Department of Higher Education, Govt. of C.G., Pt. Ravishankar University Premises, Raipur (C.G.)
3. Dr. D. P. Kurrey, Assistant Professor, Economics, posted at Govt. College, Bhilai-3, District Durg (C.G.)

---- Respondents

For Petitioner

Shri Anupam Dubey, Advocate

For Respondent-State

Shri K. K. Singh, GA

Hon'ble Justice Shri Prashant Kumar Mishra**Order On Board****26/09/2019**

1. Petitioner is an Assistant Professor in Economics serving in the Department of Higher Education, Government of Chhattisgarh. He is aggrieved by his supersession in the matter of promotion for the post of Professor (Economics) for which DPC was convened on 23.07.2007 and promotion orders were issued on 10.08.2007.

2. Promotion to the post of Professor in colleges in the Department of Higher Education is governed under the Chhattisgarh Educational Service (Collegiate Branch) Recruitment Rules, 1990 (henceforth 'the Rules, 1990'). Rule 15 read with Schedule 4 of the Rules makes provision regarding promotion to the various posts. Schedule 4 prescribes for eligibility for promotion from the post of Assistant Professor to Professor/Deputy Director. It says that the Assistant Professor working in the senior/selection grade pay scale shall be eligible for promotion to the post of Professor in the pay scale of Rs.3700-5700/-, if he/she has;

- (a) completed 8 years of service in the senior scale, provided that the requirement of 8 years will be relaxed if total service of the Assistant Professor is not less than 16 years for Ph.D. and M.Phil., 13 years and 15 years, respectively;
- (b) obtained a Ph.D. or an equivalent published work;
- (c) made some mark in the area of scholarship and research as evidence by self assessment, reports of referees, quality of publication, contribution to education renovation, design of new course, curriculum etc.;
- (d) participated in two refresher courses/summer institutes each of approximately 4 weeks duration or engaged in other appropriate continuing education programme of comparable quality as may be prescribed by the UGC, after placement in the senior scale; and;
- (e) **consistently good performance appraisal report.**

3. The petitioner contends before this Court that the petitioner satisfies all the eligibility conditions, therefore, he ought to have been promoted along with similarly placed candidates, but the petitioner was kept out of the select list for no fault of his. It is contended that the reason shown for non promotion in para 8 of the return that the petitioner was not found to have consistently good performance appraisal during the last 5 years and as such he was found unfit for promotion does not hold good in view of the law laid down by the Supreme Court in the matters of **Dev Dutt vs Union of India and others**¹ and **Sukhdev Singh vs Union of India and others**².
4. Learned State counsel has reiterated the submission made in para 8 of the return. In compliance of Court's direction, learned State counsel would also place before the Court the minutes of the DPC proceedings dated 23.07.2007.
5. It reveals from the DPC proceedings that the petitioner was found unfit for promotion mainly on the ground that he does not satisfy clause (e) of the eligibility condition, as provided in Sr. No.3 (e) of Schedule 4 of the Rules, 1990. In response to the submission made in para 8 of the return about the petitioner not having consistently good performance appraisal report during the last 5 years, petitioner filed his rejoinder stating that he has never been communicated any adverse confidential report, therefore, the same cannot be considered for denial of promotion. After filing of rejoinder, the State has not filed any additional return to

1 (2008) 8 SCC 725

2 (2013) 9 SCC 566

demonstrate that the petitioner was infact served with the ACR inviting his representation.

6. In the matter of **Dev Dutt** (supra), it has been held that all entries in the confidential report are required to be communicated and uncommunicated adverse entries cannot be taken account of for denial of promotion while considering the merit or suitability of a person by the DPC. The said legal position has been reiterated by the Supreme Court in its subsequent decision in the matter of **Sukhdev Singh** (supra) and now in its latest decision in the matter of **Pankaj Prakash vs United India Insurance Co. Ltd. and another**³.

7. In **Pankaj Prakash** (supra), the Supreme Court held thus in paragraphs 8 & 13:-

- “8. While assessing the rival submissions, we must, at the outset, note that the law laid down by the two-judge Bench of this court in *Dev Dutt* (AIR 2008 SC 2513) has been reaffirmed by three judges in *Sukhdev Singh* (AIR 2013 SC 2741). In *Sukhdev Singh* (supra), this Court held:

"8. In our opinion, the view taken in *Dev Dutt* [*Dev Dutt v. Union of India*, (2008) 8 SCC 725 : (2008) 2 SCC (L & S) 771] : (AIR 2008 SC 2513) that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the

3 AIR 2019 SC 3879

ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."

"13. Admittedly, for one of the years under consideration (2011-12) for the promotional exercise for 2014-15, the appellant was graded a "B", while for the subsequent two years, he was graded an "A". Consequently, the fact that the appellant was given a lower grading for 2011-12 would materially affect whether or not he should be promoted from Scale III to Scale IV for the year in question. The non-communication of the entries is, therefore, a matter in respect of which a legitimate grievance can be made by the appellant, particularly having regard to the position in law laid down in *Dev Dutt* (supra) and *Sukhdev Singh* (supra)."

8. Having considered the law laid down by the Supreme Court and for the fact that there is no denial by the State that the petitioner was not served with any adverse confidential report for the relevant years, which were considered by the DPC, the writ petition deserves to be and is hereby allowed in the following terms:-

- I. Within a period of two months from today, the respondents shall communicate to the petitioner the uncommunicated ACRs of the relevant years, which were taken into account for the promotional exercise in the DPC dated 23.07.2007.
- II. Within a period of one month from the date of receipt of the above, it would be open for the petitioner to submit his objections and representations to the

respondents against the ACRs, if any.

- III. The representation preferred by the petitioner shall be considered within a period of 2 months from the date of receipt of the representation.
 - IV. Based on the decision on the representation, the Competent Authority shall take a decision for grant or denial of promotion to the petitioner on the post of Professor (Economics) w.e.f. 10.08.2007, when other similarly placed candidates were promoted pursuant to the DPC recommendation dated 23.07.2007.
9. It is made clear, if the petitioner is found entitled to promotion w.e.f. 10.08.2007, he shall be entitled to all consequential benefits like seniority and arrears of salary and allowances of the promotional post of Professor (Economics) from 10.08.2007.
 10. Learned State counsel shall immediately inform the Department about this order.

Sd/-
Prashant Kumar Mishra
Judge