

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5375 of 2008**

- Bahala Ram, aged about 51 years, Son of late Shri Kamdeo, Head Master, Girl's Primary School Jhit, Tahsil Patan, District Durg (C.G.)

---- Petitioner**Versus**

1. State Government of Chhattisgarh, Through the Secretary, School Education Department, D.K.S Bhavan, Raipur (C.G.)
2. District Education Officer, Durg (C.G.), District Durg (C.G.)

---- Respondents

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondents/State	:	Shri Jitendra Pali, Deputy Advocate General.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****01.02.2019**

1. Heard learned counsel for the Petitioner and learned Deputy Advocate General for the State.
2. Petitioner was granted promotion on the post of Head Master, Primary School by virtue of a notification dated 18.08.2008 issued by the office of the District Education Officer, Durg. Notification is Annexure P/2 to the writ application.
3. Petitioner joined on 28.08.2008 and started discharging his responsibilities when all of a sudden another notification dated 03.09.2008 was issued withdrawing the benefit of promotion, copy of which is Annexure P/1 and is the impugned order in the writ application.
4. Submission of the counsel for the Petitioner is that it is a unilateral decision of the Respondent-authorities without any opportunity of hearing or show cause and since the impugned order has civil consequences, therefore, it needs to be set aside.

5. The stand of the State however, is that the mistake had crept into the initial notification granting benefit of promotion to the Petitioner.
6. It is their case that the Petitioner was working as an Assistant Teacher in Education District, Bemetara. He sought voluntary transfer to Education District, Durg. Since it was a voluntary transfer, therefore, it is the date of joining of the Petitioner in the Education District, Durg which is required to be counted for seniority in the gradation list. However, by oversight and lack of proper inputs, his initial date of appointment at Bemetara i.e. 01.11.1985 was taken into consideration and that is how even though he was not within the zone of consideration, the notification included his name, giving him the benefit of promotion.
7. The impugned order does not reflect the position in so many words. However, in column 4 of Annexure P/1, there is an indication that the Petitioner was transferred from District Bemetara on 21.07.1988 and that will be the date from which he would be counted for the purpose of seniority within the Education District, Durg.
8. Since the factual position is not disputed, therefore, even though the impugned order dated 03.09.2008 is not be very happily worded, but there is no irrationality involved in such a decision because the Petitioner is not the only person but many other persons who names figure in the impugned order dated 03.09.2008, that position is reflected.
9. A person can claim benefit of promotion only when he fulfills all the eligibility. If a mistake is committed in grant of such a benefit in the very first place, it can surely be corrected and in this case, it seems that in about two weeks time, the error was identified and the corrigendum or the notification dated 03.09.2008 came to be issued.

10. In the above factual background, therefore, we are not impressed by the submission of the counsel for the Petitioner that the notification contained in Annexure P/1 could not have been issued without notice or show cause. The opportunity of notice or show cause will serve no purpose even if the said notification is quashed and the matter is remitted back because the end result will remain the same that the Petitioner did not have the requisite seniority in the gradation list to be conferred benefit of promotion in the Education District of Durg.
11. Writ application has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice