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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5675 of 2009**

- Smt. Kamla Maheshwari, aged about 60 years, W/o P.N. Maheshwari, R/o C/o Jagdish Pd. Agrawal House, 1st Floor, Near Mahrastraian Teli Dharamshala Ashwani Nagar Mahadevghat Road, Raipur

---- Petitioner

Versus

1. State Of Chhattisgarh, through its Secretary, School Education Department, DKS Bhawan, Raipur
2. District Education Officer, Raipur
3. Uma Shanker Tiwari, Principal, Govt. Higher Secondary School, Nevra, District Raipur
4. T.R. Kashyap, Principal Govt. Higher Secondary School, Kopra, District Raipur

---- Respondent

For Petitioner : Shri Salvik Tiwari, Advocate.
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****24/10/2019 :**

1. The petitioner has prayed for a direction to the respondents to consider her case for promotion from the post of Lecturer to the post of Principal, Higher Secondary School by holding review DPC as also to grant consequential benefits.

2. The petitioner was appointed as Lecturer in November, 1974. She joined on the said post on 18.11.1974. When upon completion of 24 years of service, the petitioner was not promoted, she became entitled for Kramonnati, which was eventually allowed in the year 2010 after the direction issued to the respondents for considering her representation in WPS No.5580/2008.
3. In the meanwhile, the petitioner was promoted on the post of Principal on 7.11.2007, however, she forgone her promotion by refusing to join on the promotional post. Resultantly, the petitioner remained as Lecturer and her juniors were promoted. DPC for considering promotion was again convened on 22.7.2008 and promotion order was issued on 14.8.2008. Thereafter DPC was again convened in the year 2009 and promotion orders were issued on 6.8.2009. In the meanwhile respondent No.3 Uma Shanker Tiwari and respondent No.4 T.R. Kashyap, who were juniors to the petitioner, were promoted on the post of Principal, Higher Secondary School whereas the petitioner's name was left out. Subsequently, meeting of Vibhagiya Kramonnati Samiti was again convened in 2010 and vide order dated 22.2.2010 (Annexure-R/1) the petitioner was allowed second Kramonnati pay scale which is the pay scale equal to the pay scale of the Principal, Higher Secondary School.
4. In the above factual matrix, the petitioner's counsel would contend that

the petitioner was entitled for promotion as soon as her juniors were promoted on 6.8.2009. In the DPC which recommended promotion for which the orders were issued on 6.8.2009 the petitioner's name was wrongly left out for the reason that the petitioner has foregone previous promotion. Placing reliance on sub-rule (15) of Rule 6 of the Chhattisgarh Public Services (Promotion) Rules, 2003 (for short 'the Rules, 2003'), it is argued that after expiry of one year from the date of previous promotion, which was foregone, the petitioner was again entitled for consideration which has been wrongly denied to her.

5. Per contra, learned State Counsel would submit that the petitioner having foregone promotion is not entitled for consideration and as such she cannot allege super-session in the matter. It is also argued that since Kramonnati pay scale which is equal to the pay scale of the Principal, Higher Secondary School was granted vide Annexure-R/1, the writ petition is rendered infructuous.
6. Having heard learned counsel for the parties, I am of the considered view that the petitioner has made out a case for issuance of direction in her favour. Sub-rule (15) of Rule 6 provides as under:-

“(15) When a public servant, whose name is included in the select list, wants to refuse promotion, he may make a written request that he may not be promoted. The Appointing Authority taking relevant aspects into consideration shall consider such request. If the reasons adduced for refusal of promotion are acceptable to the Appointing Authority, the next public

servant in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the public servants who initially refused promotion, on every occasion on which a vacancy arises during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher cadre/part of the service/pay scale of post, such public servant shall lose seniority vis-a-vis his juniors promoted in the preceding year to the higher cadre/part of the service/pay scale of post.

In cases where the reasons adduced by the public servant for his refusal for promotion are not acceptable to the Appointing Authority then he shall enforce the promotion on the public servant and in case the public servant still refuses to be promoted, then even disciplinary action may be taken against him for refusing to obey his order.”

7. Careful reading of the above quoted provision would discern that whenever public servant has refused promotion, he shall not be offered appointment on every occasion on which vacancy arises during the period of validity of the panel and no fresh offer of appointment shall be made in such cases for a period of one year from the date of refusal of first promotion or till the next vacancy arises, whichever is later. Applying the provision, it is to be seen that when the petitioner refused promotion vide order dated 7.11.2007, she could not have been offered appointment for a period of one year or till the next vacancy arises whichever is later. The fact that the next DPC was convened on 22.7.2008 would itself prove that the vacancy arose between 7.11.2007 and 22.7.2008. Thus the maximum period for which the petitioner's

promotion could have been withheld would be one year from 7.11.2007. The next DPC after one year from 7.11.2007 was convened in the year 2009 pursuant to which the order dated 6.8.2009 was issued promoting the respondents No.3 & 4. In this DPC the petitioner was entitled to be considered as by operation of sub-rule (15) of Rule 6 the petitioner's promotion could have been deferred only for one year and not for a period later than that. There is no averment in the return that the petitioner was considered for promotion along with respondents No.3 & 4, who are juniors to the petitioner, when the promotion order was issued on 6.8.2009. The DPC proceeding placed before me would reveal that the criteria for promotion is seniority cum merit. Therefore, if the petitioner was senior to respondents No.3 & 4, it was her right to be considered for promotion when the DPC made recommendation in favour of the persons who were juniors to the petitioner. The fact that the petitioner was subsequently allowed Kramonnati pay scale vide Annexure-R/1 would not make the writ petition infructuous for the reason that the petitioner is entitled to be considered for promotion for the period prior to that which shall affect her pay scale and the pension.

8. For the foregoing, the Writ Petition deserves to be and is hereby allowed. The respondents are directed to hold review DPC to consider the petitioner's case for promotion from the date respondents No.3 & 4 were promoted as Principal, Higher Secondary School. In the event, the

petitioner is found entitled to be promoted, she shall also be entitled to arrears of salary and fixation of her pension, if need be.

9. The needful shall be done within a period of 6 months from today.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve