

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6631 of 2011

Hem Raj Vaishya S/o. Late Madhav Pd. Vaishya, Aged about 58 years, R/o. Beside 47 LIG, Nehru Nagar, Bilaspur (Tahsil and District) Chhattisgarh State.

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Revenue Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. Director (Land Records) Old Settlement Office, Gandhi Bhawan, Raipur, District, Chhattisgarh state
3. Shri Arvind Didhraskar, Additional Collector (OSD) Office of Hon'ble Home Minister, Raipur, Chhattisgarh State.
4. Shri Het Ram Kanwar, Dy. Collector, Rajnandgaon, Chhattisgarh State.
5. Shri Dilip Agarwal, Land Acquisition Officer, Indian Oil Corporation, Pipe Line Division, Raipur, Chhattisgarh State.

---Respondents

For Petitioner	:	Mr. K. Raman Nair, Advocate
For State	:	Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/08/2019

1. The relief sought for by the petitioner in the present writ petition is to the quashment of the order Annexure P/1 dated 15.09.2011. Vide the impugned order the respondents authorities have intimated the petitioner that his case was reconsidered by the authorities for promotion to the post of Superintendent of Land Records (SLR) along with the similarly placed persons, who were promoted in the year 1993 and the petitioner from the ACRs has been found to be unfit for promotion. It is this order, which is under challenge in the present writ petition.
2. The brief facts of the case is that the petitioner was working as an Assistant Superintendent of Land Records at District Bilaspur. In the year 1993, the order of promotion on the post of SLR was issued, but the petitioner was not

- found eligible for promotion at that point of time. The petitioner immediately assailed the same by moving the OA No. 2504/1993 before the State Administrative Tribunal in the year 1993 itself. However, down the line the Administrative Tribunal got closed, the matter which were pending there was transferred to this High Court. The application of the petitioner pending before the State Administrative Tribunal also stood transferred to the High Court of Chhattisgarh, where the case was renumbered as WPS No. 798/2005. The said writ petition finally came up for hearing on 30.06.2010 and the writ petition was allowed.
3. Perusal of the order dated 30.06.2010 would reveal that the writ petition was allowed on the backdrop that the respondent authorities were not able to produce the relevant records to substantiate their stand as to under what circumstances, the petitioner was not found fit for promotion. The respondent authorities inspite of repeated opportunities by the High Court failed to produce the relevant records leading to the writ petition being allowed.
 4. Subsequent to the writ petition being allowed, there were a couple of contempt petitions filed, those are contempt petition Nos. 255/2010 and 352/2011, both of which stood disposed of on 31.01.2011 and 10.10.2011 respectively. Subsequent to all these developments, the respondents were able to obtain the ACRs of the petitioner from the State of Madhya Pradesh and finally a review DPC was convened in respect of the petitioner and after due consideration they found the petitioner to be not fit for promotion vide Annexure P/1 which is under challenge in the present writ petition.
 5. The petitioner vide his rejoinder has produced before this Court the ACRs of the year 1987 to 1991. The ACRs for the year 1987 to 1991 i.e. for three years reflects the grading “८” (average). The contention of the petitioner is

that these ACRs which have now been found to be adverse, so far as his promotion avenues are concerned, were never communicated to the petitioner and thus the petitioner never got a chance of representing to the higher authorities keeping for up-gradation of the ACRs or for improvement upon his work in the subsequent years. The petitioner relied upon the judgment of the Hon'ble Supreme Court in the “**Dev Dutt v. Union of India**” **2008(8) SCC 725**, which makes the issuance of the ACRs mandatory under all circumstances.

6. The State counsel opposing the writ petition submits that all that this Court intended while allowing the writ petition on 30.06.2010 was to consider the case of the petitioner in accordance with law and the State authorities have complied with the order by calling for the records of the petitioner, particularly the ACRs of the relevant period and it was found that there were certain entries, which were not up to the mark and which dis-entitled him for and accordingly the Annexure P/1 was passed finding him to be not fit for promotion, thus there is no illegality on the part of the State authorities.
7. According to the State counsel, since the proceedings were drawn in between 1987 to 1991, by that time the judgment of Dev Dutt (supra) has not been pronounced by the Hon'ble Supreme Court and therefore it was not mandatorily required at that point of time for communicating such ACRs to the employee as the entry “॥” (average) is not an adverse entry and thus prayed for the rejection of the writ petition.
8. All said and done, what cannot be brushed aside is the fact that the petitioner himself on obtaining the copies of the ACRS for the year 1987 to 1991 has found that there are three entries which are reflecting “॥” (average). Admittedly, these entries were never communicated to the petitioner at that point of time, which could have provided the petitioner a

chance of making a representation to the higher authorities for up-gradation of the gradings.

9. Under the circumstances, this Court is inclined to apply the principles of law laid down by the Hon'ble Supreme Court in the case of "Dev Dutt" (supra) by directing that since the petitioner now has obtained the ACRs under the Right to Information Act, he be permitted to make a representation before the competent authority within a period of 3 weeks seeking for up-gradation of the ACRs supported with all relevant records, that is there in his possession to justify the up-gradation sought for. The authorities concerned may take a decision on the said representation, which the petitioner shall make within a further period of 90 days from the date of receipt of the representation. The case for grant of promotion to the post of Superintendent of Land Records would be reconsidered pursuant to the outcome of the representation within a further period of 60 days.
10. With the aforesaid observations, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved