

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 406 of 2017**

1. Sanat Kumar Shukla S/o Late Shri Ram Kishore Shukla Aged About 65 Years By Occupation Retd. Revenue Inspector, At Present R/o Eastern Side Of Housing Board Colony, Near SBI Main Branch, Sidhi, District Sidhi, Madhya Pradesh.

---- Appellant**Versus**

1. The State Of Chhattisgarh Through Its Secretary, Ministry Of Revenue, Naya Raipur, District Raipur, Chhattisgarh
2. Commissioner, Land Record, Raipur, Chhattisgarh
3. The State Of Madhya Pradesh, Through Secretary, Revenue Department, Mantralaya, Bhopal, Madhya Pradesh.
4. Ramsharan Agrawal Assistant Superintendent Land Record, Office Of Settlement Officer, Sarguja, Chhattisgarh.
5. Omprakash Pandey Assistant Superintendent Land Record, Office Of Settlement Office, District Mandasaur, Madhya Pradesh.
6. Ramchandra Tripathi Assistant Superintendent Land Record, Office Of Settlement Office, District Bhind, Madhya Pradesh.
7. Ramesh Kumar Pandey, Assistant Superintendent Land Record, Office Of Settlement Office, District Bhind, Madhya Pradesh.
8. R. C. Sinha, Secretary-Cum-Commissioner, Land Records Raipur, Chhattisgarh.

---- Respondent

For Appellant	Shri Parag Kotecha, Advocate
For Respondent/State	Ms. Richa Shukla, Dy. Govt. Advocate

Hon'ble Shri P.R. Ramachandra Menon, CJ
Hon'ble Shri Prashant Kumar Mishra, J

Judgment On Board**By****P.R. Ramachandra Menon, CJ****10/05/2019**

1. Interference declined by the learned Single Judge with regard to the challenge raised by the appellant/writ petitioner in respect of the promotion denied to him and finding him unfit, while giving promotion to the juniors is the subject matter of challenge in this appeal.
2. Heard learned counsel appearing for the parties at length.
3. The appellant herein was working as Revenue Inspector in the services of the first respondent. While so his service was put an end to, quite unceremoniously without conducting any interview, which was sought to be challenged by filing the Original Application (OA) No.3447 of 1993 before the State Administrative Tribunal (henceforth 'the Tribunal') in the State of Madhya Pradesh. The OA was allowed as per the verdict passed on 23-7-1994 and the appellant came to be reinstated in service. The respondents later took steps for promotion and it was accordingly, that the particulars of the appellant were also sought for on 24-4-1997, which was stated as supplied on the very next day.

4. Grievance of the appellant was that on 22-6-1998 the Departmental Promotion Committee (henceforth 'the DPC') was convened and after considering the credentials of the persons concerned, juniors of the appellant were promoted. Denial of promotion to the appellant made him to approach the Tribunal by filing OA No.1365 of 1998. The formation of the State of Chhattisgarh was only subsequent as per the State Reorganization Act, 2000. The OA preferred by the appellant came to be allowed as per Annexure – P/2 verdict dated 23-7-2002 whereby a review DPC was directed to be convened and the claim of the petitioner/appellant was directed to be considered adverting to the Annual Confidential Reports (henceforth 'the ACRs') for the period from March, 1992 to March, 1996 and without adverting to the ACR ending March, 1997. It was also mentioned that, if the aforesaid records were not available, the ACR in respect of the period up to March, 1992, within a span of three years, were to be looked into, to have the matter finalised. According to the appellant, this direction was never complied with, which made him to approach the Madhya Pradesh High Court by filing contempt proceeding bearing Contempt Petition No.2987 of 2005. It is conceded that the said proceeding came to be dismissed as withdrawn on 25-11-2005, as the appellant was advised that he had to move this Court for appropriate reliefs. Accordingly, the

writ petition bearing WP No.203 of 2006 came to be filed before this Court with prayers as given below :

i) The Hon'ble Court may kindly be please to issue the writ in nature of mandamus commanding the respondents to promote the petitioner as Assistant Superintendent Land Record and to place him over respondent No. 4, 5, 6 and 7 in the seniority list.

ii) The Hon'ble Court may kindly be please to issue the writ, order or direction to the respondent to fix the petitioner's pay with retrospective effect from 22/6/1998 and pay him all the arrears and all other consequential benefit with 18% interest.

iii) The Hon'ble Court may kindly be please to punish the respondent No.8 for non-compliance of the order dated 23.07.2002 passed by the learned SAT.

iv) The Hon'ble Courts may kindly be pleased to issue the writ, order or direction by directing the respondents to produce the entire record of the petitioner's case for kind perusal of this Hon'ble Court.

v) Any other relief which this Hon'ble Court deems fit and proper under the facts and circumstances of the case and in the interest of justice.

vi) The cost of the petition may kindly also be awarded in favour of the petitioner.

vii) The Hon'ble Court may kindly be please to issue the writ in the nature of certiorari by quashing/set aside the order dated 3.02.2006 Annexure – P/5.

5. The case projected by the appellant was that denial of promotion to the appellant was without considering the

direction given by the Tribunal earlier and further that it was on the basis of some uncommunicated ACRs. Legal position was also highlighted, to the effect that there could be no action detrimental to the interest of the appellant based on any ACR below the benchmark, which was not communicated.

6. The respondent State contended that the claim of the petitioner/appellant was considered in the review DPC, but he was found unfit and such consideration was strictly in conformity with the direction given by the Tribunal. It was also pointed out that the case of the petitioner with reference to the action allegedly taken based on 'uncommunicated ACR' was not forming part of the pleading in the writ petition and hence the same was not liable to be entertained.
7. The version of the appellant/petitioner was that he had raised such a plea in the 'rejoinder' filed in response to the return/counter affidavit filed by the State. The matter was considered elaborately by the learned Single Judge who made a specific observation with reference to material on record that there was no pleading in the writ petition that the action taken was based on 'uncommunicated ACRs'. With reference to the contention of the appellant that he had raised sufficient pleadings in the rejoinder, the learned Judge observed that such averment in the rejoinder was never liable to be considered as

part of the pleadings in view of the law declared by the Constitution Bench of the Supreme Court in the matter of **M.S.M. Sharma v Sri Krishna Sinha and Others**¹ besides citing various other rulings on the point.

8. It was accordingly that the issue was finally decided by the learned Single Judge holding that the idea and understanding of the petitioner/appellant was rather misconceived and it was not liable to be sustained either on facts or in law. Thus declined interference.
9. We do not find any reason to disagree with the finding rendered by the learned Single Judge. The legal position as declared by the Apex Court supports the finding and reasoning.
10. The promotion given to the juniors i.e. respondents No.4 to 7 in the year 1998 is not liable to be subjected to further scrutiny at this distance of time. Interference is declined.
11. In the result, the appeal stands dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

¹ AIR 1959 SC 395