

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 22/07/2019****Judgment delivered on 06/08/2019****Writ Appeal No. 267 of 2017**

*(Arising out of order dated 17/04/2017 passed in Writ
Petition (S) No.3172/2005 by the learned Single Judge)*

Ashok Kumar Jain S/o Late Shri Damodar Jain, aged about
67 years, retired Upper Division Clerk, R/o H.No.25/525,
opposite Shitla Mandir, Kankalipara, Raipur, District Raipur,
(C.G.).

---- Appellant**Versus**

1. State of Madhya Pradesh (now C.G.) Through the Principal
Secretary, Public Health and Family Welfare Department,
Mantralaya, Naya Raipur, C.G.
2. Director, Health Services, Madhya Pradesh, Bhopal.
3. The Chief Medical and Health Officer, Mahasamund, District
Mahasamund, (C.G.).

---- Respondents

For Appellant	:	Mr. Anand Dadariya, Advocate
For State/Respondent	:	Mr. Vikram Sharma, Panel Lawyer

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT**Per Parth Prateem Sahu, Judge****06/08/2019**

1. The appellant/petitioner has assailed the order dated
17/04/2017 passed by learned Single Judge in Writ Petition (S)
No.3172/2005 whereby learned writ Court had partly allowed

writ petition in favour of appellant/petitioner and granted proforma seniority and promotion on the post of Upper Division Clerk (hereinafter referred to as 'UDC') w.e.f. 26/05/1984 denying monetary benefits of service period.

2. Facts of the case in nutshell, are that, appellant/petitioner was initially appointed on the post of Lower Division Clerk (hereinafter referred to as 'LDC') in the Department of Health and Family Welfare on 16/05/1973. During period of service, he competed fresh recruitment process of Assistant Public Relation Officer (hereinafter referred to as 'APRO') in the Office of Publicity and Information under the same Department. After completion of selection process, he was selected and appointed as APRO on 15/01/1982. While working as APRO, appellant/petitioner was suspended on 26/04/1983 which ended with the termination from service on 20/06/1983.

3. Thereafter, appellant/petitioner challenged his order of termination from service by filing a civil suit before the Civil Court, Bilaspur, which was dismissed vide order dated 27/08/1987. Against which, he preferred first appeal. During the pendency of first appeal, Madhya Pradesh State Administrative Tribunal (hereinafter referred to as 'Tribunal') was constituted and appeal preferred by appellant/petitioner was transferred to Tribunal and same came to be decided on 28/04/1992.

4. The Tribunal allowed the original application in part and

directed that the applicant shall be treated to have been reverted back to the post of LDC in his parent Department with effect from the date of order of his termination, but salary for the period he did not work was denied. Relevant portion of order dated 28/04/1992 of the Tribunal is reproduced below :-

“10. Thus after considering the arguments advanced by both the parties and the circumstances of the case, we are of the view that this application deserves to be partly allowed. Accordingly, it is so allowed and it is directed that the applicant shall be treated to have been reverted back to the post of L.D.C. in his parent department. w.e.f. the date of the order of his termination from the post of Assistant Publicity Officer. However, he shall not be entitled to get salary for the period he did not work. He will get the cost of the application. Counsel's fee subject to the maximum of Rs.500/- on being duly certified.”

5. Pursuant to order passed by the Tribunal, appellant/petitioner joined his duty in his parent Department on 23/10/1992. After joining of appellant/petitioner on the post of LDC, new gradation list was published on 31/03/1995 by the Department. Looking to some mistake in the gradation list, he preferred a representation on 23/12/1996 for entering his name in the seniority list and to grant promotion. Subsequently, final gradation list was published showing seniority of LDC's as on

01/11/1997, in which, name of appellant/petitioner has been placed at Sl.No.1. Appellant/petitioner shown to be senior most, he was promoted on the post of UDC on 13/05/1998 on which he joined on 29/05/1998.

6. Thereafter, appellant/petitioner filed a representation for granting him seniority from the back date, which was replied by the Chief Medical and Health Officer vide letter dated 06/03/1999 to appellant/petitioner mentioning therein that his representation was forwarded to the Director Health Services, Raipur vide letter dated 24/09/1998. In subsequent representation dated 16/11/1998, appellant/petitioner has only made a prayer for granting him proforma promotion after re-fixing his seniority above A. A. Khan in the seniority list. Another representation made by appellant/petitioner, which is part of record dated 16/11/1998 again is with respect to providing proforma promotion after re-fixing seniority in the seniority list of UDC. When grievance of appellant/petitioner was not redressed, he filed Original Application before the Madhya Pradesh State Administrative Tribunal, Jabalpur Bench at Raipur seeking following relief(s) :-

“(1) That the Hon'ble Tribunal may be pleased to direct the respondents to give proforma seniority and promotion to the applicant w.e.f. the date his next below junior Shir P.D. George was promoted as U.D.C. i.e. 26/04/84.

- (2) That the Honourable Tribunal may be pleased to direct the respondents to regulate the pay and allowances of the applicant on promotion in accordance with fundamental rule 31-A and the instructions of the Government under such rule accordingly and
- (3) Application may be allowed with costs.”

7. After abolition of Madhya Pradesh State Administrative Tribunal, the cases pending before the Tribunal of the State of Chhattisgarh, has been transferred to the High Court of Chhattisgarh and case of appellant/petitioner was registered as Writ Petition (S) No.3172/2005.

8. After hearing learned counsel appearing for the parties learned writ Court partly allowed the writ petition by impugned order in following terms :-

“7. For the forgoing, the writ petition is allowed. Since the petitioner has already retired as UDC in the month of May 2010, the respondents are directed to accord him proforma seniority and promotion as UDC w.e.f. 26/05/1984 and re-fix his pension etc. as if the petitioner was promoted as UDC w.e.f. 26/05/1984, however, the petitioner would not be entitled for any arrears on any count till the date of his retirement. The petitioner shall be entitled for the arrears of pensionary benefits without interest. Let re-fixation of his pension or the retiral dues be made within a period of three months from today.”

9. Learned counsel appearing for appellant/petitioner submitted that in earlier round of litigation, the Tribunal passed order in his favour and his services have been directed to be continued from the date of his termination on the post which he was holding in the parent Department i.e. LDC, therefore, he is entitled for all benefits including fixation of seniority, promotion and other consequential benefits since the date his juniors were promoted i.e. 26/05/1984. He further submitted that learned writ Court though had allowed writ petition and granted him proforma seniority and promotion on the post of UDC w.e.f. 26/05/1984, but has erroneously denied monetary benefits accrued to him by way of providing him proforma promotion on the post of UDC w.e.f. 26/05/1984. He further submitted that in view of Rule 31-A of the Chhattisgarh Fundamental Rules, he is entitled for promotion as well as all consequential benefits from 26/05/1984. In alternate, he lastly submitted that if that could not be granted, then at least he will be entitled for the benefit from the date of order of promotion passed by the Department promoting him as UDC vide order dated 13/05/1998. In support of his arguments, he placed reliance in the matters of **Pushpa Aggarwal v. U.P.S.C. and others**¹ and **State of Kerala and others v. E.K. Bhaskaran Pillai**².

10. Per contra, learned counsel appearing for the State

1 (1999) 4 SCC 184

2 (2007) 6 SCC 524

submitted that as prior to the date of passing of promotion order by Department, appellant/petitioner did not work on the promoted post, therefore, he cannot be granted monetary benefits for the period which he had not worked and learned writ Court has rightly denied the claim of monetary benefits from back date. He further submitted that proforma promotion as well as seniority was already granted to appellant/petitioner and there was also a direction for re-fixation of his pension and held him entitlement for arrears of pensionary benefits. He lastly submitted that learned writ Court had granted all benefits to appellant/petitioner which he is entitled for in the facts and circumstances of the case.

11. We have heard learned counsel appearing for the parties and perused the record.

12. Looking to the case history of appellant/petitioner that he was reinstated by the order of Tribunal dated 28/04/1992 wherein it has been specifically ordered that appellant/petitioner will not be entitled to get salary for the period he did not work, which finds place in paragraph-10 of the order of Tribunal. This order of Tribunal was not challenged by appellant/petitioner before the higher Court, therefore, the order of Tribunal has become final. In the year 1992 itself, monetary benefits for the period for which appellant/petitioner has not worked, has been denied. In subsequent round of litigation, appellant/petitioner is estopped to claim same benefit which was denied to him in

earlier round of litigation, which become final as it was not challenged.

13. Appellant/petitioner for the first time has challenged the provisional gradation/seniority list of LDC's and made representation for correction of seniority list in the year 1995 itself. Thereafter, following the procedure and considering the objection in the gradation list, Department had published final gradation list/seniority list making it effective from 01/11/1997, in which, appellant/ petitioner has been shown at Sl.No.1.

14. It was not the case of appellant/petitioner that after joining on the post of LDC by virtue of order of Tribunal till 13/05/1998, any other order of promotion on the post of UDC was passed by Department. There is no pleading to this effect in the writ petition nor any prayer has been made to this effect, but prayer in the writ petition is only with respect to give proforma seniority and promotion w.e.f. 26/05/1984 and to regulate pay and allowances as per Rule 31-A of Fundamental Rules. As soon as the seniority list of LDC has been prepared after joining of appellant/petitioner by virtue of order of Tribunal, he being at Sl.No.1 has been immediately granted promotion, on which, he joined and worked on the post of UDC till the date of his attaining the age of superannuation.

15. So far as the reliance placed on Rule 31-A of Fundamental Rules and also sought relief under it is concerned,

it deals with the situation where any Government servant's promotion or appointment was found to be erroneous. Rule 31-A of Fundamental Rules is reproduced herein below for ready reference:-

“[F.R. 31-A.- Notwithstanding the provisions contained in these rules, the pay of a Government servant, whose promotion or appointment to a post, is found to be or to have been erroneous, shall be regulated in accordance with any general or special orders issued by the State Government in this behalf.]

31-A(1)	xxx	xxx	xxx
31-A(2)	xxx	xxx	xxx
31-A(3)	xxx	xxx	xxx
31-A(4)	xxx	xxx	xxx
31-A(5)	xxx	xxx	xxx

(6)

(शासकीय सेवक जिसकी पदोन्नति/नियुक्ति किसी पद पर त्रुटिपूर्ण पाई गई है का वेतन एवं वेतनवृद्धि नियमित करने बाबत शासनादेश)

In pursuance of Fundamental Rule 31-A, the State Government are pleased to decide that, the following provisions shall govern the pay and increments of a Government servant whose promotion or appointment in a substantive or officiating capacity to a post is later found to be erroneous on the basis of facts.

2.	xxx	xxx	xxx
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- | | | | |
|----|-----|-----|-----|
| 3. | xxx | xxx | xxx |
| 4. | xxx | xxx | xxx |
| 5. | xxx | xxx | xxx |

6. In the cases of those Government servants where promotions were/are delayed due to wrong assignment of position in the gradation list which after due consideration is revised and proper place is assigned in the gradation list, he should be deemed to have been promoted to the higher post with effect from the date his junior was promoted and from the date of actual promotion he be allowed the same pay which he would have got but for wrong place in the gradation list. However, in such cases, the person concerned will not be entitled to any arrears of pay and allowances during the period for which they did not perform the duties of the higher post on the basis of the principle of "No work-No pay".

16. In the case at hand, the case of appellant/petitioner is not of erroneous promotion or appointment but it is a claim of non-grant of promotion and its benefits from the date of his juniors were promoted. This situation was dealt with under Rule 31-A(6) of Fundamental Rules.

17. The very Rule relied upon by appellant/petitioner do not support his case, in fact, it specifically provides that though employee will be entitled for promotion on higher post with effect from the date his juniors were promoted, but he will not be

entitled for any arrears of pay and allowances on the principle of “No work No pay.”

18. The case law i.e. **State of Kerala and others** (supra) relied upon by learned counsel appearing for appellant/petitioner is distinguishable on facts and circumstances. In that case, during the period of service of employee, his juniors were promoted, but he was not promoted, which gave cause for litigation and in that facts and circumstances, Hon'ble Supreme Court observed that principle of “No work No pay” cannot be applied as a 'Rule of Thumb'.

19. In the case at hand, on the date of passing of promotion order in favour of his juniors i.e. 26/05/1984, appellant/petitioner was not in role of service, but he was removed from service prior to that date i.e. 20/06/1983 and was prosecuting his case challenging the order of termination. Secondly, monetary benefits was denied by the Tribunal itself while reinstating the appellant/petitioner in service vide order dated 28/04/1992, which was not challenged by him, in fact, it was accepted in the terms of order and in subsequent litigation, he cannot claim relief that was denied to him as it has attained its finality in the Court of law.

20. Therefore, learned writ Court was partly correct in directing the respondents for fixing proforma seniority of appellant/petitioner and granting him notional promotion on the

post of UDC w.e.f. 26/05/1984 i.e. on the date when his juniors were promoted without monetary benefits.

21. Respondent/State has not challenged the order of learned writ Court dated 17/04/2017 granting proforma seniority and notional promotion to the appellant/petitioner w.e.f. 26/05/1984.

22. The appellant/petitioner was promoted on the post of UDC by the Department on 13/05/1998 and joined on 29/05/1998, he would be certainly entitled for fixation of his pay on the date of joining on the post of UDC i.e. 29/05/1998 considering the date of his notional promotion i.e. 26/05/1984. By virtue of order passed in writ petition, salary of appellant/petitioner is to be notionally fixed on the post of UDC w.e.f. 26/05/1984 which will accrue annual increment as per pay scale of UDC. As the appellant/petitioner was promoted on the post of UDC by the Department w.e.f. 13/05/1998, therefore, he is entitled to get his salary fixed on the post of UDC after considering his notional promotion and notional fixation of pay since the date of his joining on the post of UDC.

23. So far as the claim of appellant/petitioner that he is entitled for the interest on arrears of salary is considered, we have perused the relief(s) sought for by appellant/petitioner in writ petition as well as in original application. The appellant/petitioner has not made any specific prayer with regard to grant of interest on arrears of salary, therefore,

relief(s) which has not been sought for by appellant/petitioner, cannot be granted in the facts and circumstances of the case, particularly, when his right was accrued only on 17/04/2017 after his retirement.

24. In view of forgoing discussions, appeal is allowed in part. We uphold the order of learned writ Court granting him proforma seniority as well as promotion on the post of UDC w.e.f. 26/05/1984 and re-fixation of his pension treating the appellant/petitioner to be promoted on the post of UDC w.e.f. 26/05/1984, the entitlement of appellant/petitioner for arrears of pensionary benefit without interest. But, we set-aside the order of writ Court to the extent that the appellant/petitioner would not be entitled for any arrears on any count till the date of his retirement. The appellant/petitioner will be entitled for re-fixation of his pay on 29/05/1998 i.e. the date on which, appellant/petitioner joined the post of UDC by virtue of order of promotion issued by the Department in his favour on 13/05/1998 taking into consideration the notional promotion granted by the writ Court w.e.f. 26/05/1984 and will also be entitled to difference of pay accordingly from 29/05/1998.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge