

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 29/11/2018

Order delivered on:07/01/2019

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1173 of 2016

- Dr. P.C. Gupta S/o. Late P.L. Gupta aged about 72 Years Retired Pathologist, R/o. Doctors Colony, Saraswati Nagar, Behind Medical College, Near Pratap Chowk, Bilaspur Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. State of Madhya Pradesh Through The Secretary, Department of Public Health and Family Welfare, Vallabh Bhawan, Bhopal Madhya Pradesh., Madhya Pradesh
2. The Director, Health Services, Madhya Pradesh, Satpura Bhawan, Bhopal Madhya Pradesh., District : Bhopal, Madhya Pradesh
3. State Of Chhattisgarh Through Secretary, Department of Public Health and Family Welfare, Mahanadi Bhawan, Naya Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. The Director, Health Services, Chhattisgarh, Old Nurses Hostel, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
5. Civil Surgeon Cum Chief Hospital Superintendent, District Hospital, Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondents

For the Petitioner : Mr. Manoj Paranjpe, Advocate.

For the State/Respondent No.1 & 2: Mr. S.S. Rajput, Advocate.

For the State/Respondent No.3 to 5: Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

07/01/2019

1. This petition under Article 226 Constitution of India has been filed with a prayer to quash the order dated 27.2.2016 rejecting the representation of petitioner for grant of pay scale and also for issuance of writ of mandamus to the respondents to consider and grant pay-scale to the petitioner under the provisions of the MP Rules of Pay Scale, 1990.
2. It is submitted by the counsel for petitioner that the petitioner, as a bonded candidate, was appointed as 'Assistant Surgeon' on 26.12.1968 and he has superannuated on 31.12.1997. Despite his sincere services he has been deprived of his legitimate right of grant of seniority and proper pay scale. The petitioner was compelled to file a writ petition before this Court bearing WPS No.2055/2008, which was decided vide order dated 16.11.2011, in which, it was held that petitioner is entitled for seniority on the post of Assistant Surgeon from the date of his initial appointment with all consequential benefits. Despite the aforesaid order and direction, the benefits were not extended to the petitioner.
3. Thereafter the petitioner filed a contempt petition bearing Contempt Case (C) No.451/2012, subsequent to that he was given notional promotion from 15.3.1989, however, he was not paid arrears following the policy of 'no work no pay'. Later on, the order was revised and the petitioner was paid the arrears and the order of the Court was complied with. The petitioner was given pay scale of 3700-5000 with effect from 15.3.1993, however, he was not granted pay-scale Rs.4100-5300/- on completion of 4 years of service and also senior grade, which is contrary to the provisions of the Rules, 1990.

4. Subsequent to this development, the petitioner filed a representation for grant of senior grade of 4100-5300 with effect from 1.1.1997 on completing four years service in senior grade, but the same was not considered. Thereafter, petitioner moved a fresh representation on 10.2.2014 reiterating his prayer for grant of senior grade pay-scale, but to no avail and petitioner was advised by respondent No.5 to make representation before the State Government, leaving no option with the petitioner but to file another writ petition bearing WPS No.2267/14 which was disposed of vide order dated 5.9.2014 with a direction to the petitioner to file a fresh representation before the State of MP for grant of selection pay scale 4100-5300 upon completion of 4 years of service and in turn the State of MP was directed to consider and decide the said representation. It was also directed that pension etc. be revised on that basis.
5. After passing of the above order, petitioner filed representation on 17.9.2014 and when the same did not fetch any response, he sent a reminder dated 24.12.2014 and there was again no response, hence, petitioner again filed Contempt Case (Civil) No.87/2015 before this Court. Subsequent to which the respondents have passed the impugned order dated 27.2.2016 (Annexure-P1) rejecting the petitioner's representation.
6. It is submitted that the impugned order is violative of petitioner's fundamental rights granted under Article 21 of the Constitution of India and the same has been passed without application of mind and contrary to the Rules, 1990. Petitioner had been granted senior grade pay-scale w.e.f. 1.1.1993. The petitioner had completed four years in the senior grade prior to his superannuation, therefore, the impugned order has been passed in total disregard of the entitlement of the petitioner and the Rules. In Sr. No.12 of Annexure A-2 (Part B) of the MP Representation of Pay

Rules,1990, it is clearly provided that on completion of four years of service in senior grade, there is entitlement of pay scale of Rs.4100-5300/-. While rejecting the representation it is mentioned that petitioner was given senior pay scale of 3700-5000 on 15.3.1995 and since on the date of retirement he had not completed 4 years of service in the senior grade, he is not entitled for the senior grade pay of 4100-5300. Therefore, his representation was rejected, which is totally erroneous, arbitrary and malafide, hence, it is prayed that petition be allowed accordingly.

7. On behalf of respondents No.1 & 2 it is submitted that the Writ Petition has no merits and is liable to be dismissed. Respondent No.5 has wrongly and incorrectly passed the order granting senior pay scale to the petitioner with effect from 1.1.1993 which could have been granted only after completion of 6 years of service as specialist in the pay scale of 3000 to 4500. As the petitioner was promoted to the post of Specialist on 15.3.1989, hence, his entitlement for senior pay scale arose in the year 1995 and, therefore, his further entitlement for senior pay scale of selection grade was to be considered in year 1999, but he was superannuated prior to that. It has also been submitted that petitioner was granted notional promotion.
8. Learned counsel for respondents No.3 to 5 have submitted that the grievance of the petitioner is against the State of M.P. as the petitioner has superannuated on 31.12.1997 when the State of C.G. had not come into existence.
9. I have heard both the parties and perused the documents on record filed by both the parties.
10. It has been mentioned in order dated 3.9.2013 that petitioner is promoted in compliance of the order passed by the High Court in WPS No.2055/2008

dated 16.11.2011 and mentioned the reason that Dr. Kamalwala being junior to the petitioner has been promoted on 15.3.1989, hence, the petitioner is also promoted notionally from the same date.

11. There is no mention in this order or in the reply given by respondents about the date on which the persons juniors to the petitioner had superseded him. While considering the notional promotion the petitioner was entitled to be considered from the date when he was superseded as has been held in the judgment of Supreme Court in Union of India & Ors. Vs. K.B.Rajoria reported in (2000) 3 SCC 562. On this point the respondents have maintained silence and ground has been raised that the notional promotion was granted on 15.3.1989, hence, on that basis according to the schedule, the petitioner had not completed 6 years of service before grant of senior scale is an incorrect order. Respondent had all the authority to revise and revoke the same order which was never done and the fact exists that the petitioner was holding the senior pay scale with effect from 1.1.1993.

12. Respondents have not come with clean hands. Without making averment regarding the date of supercession of the petitioner by his juniors and then no action been taken for revocation of the order passed granting the senior scale to the petitioner. Hence, under these circumstances respondents cannot be allowed to take benefits of their past mistakes. The maxim "Commodum Ex Injuria Sua Nemo Habere Debet" applies, that no person can take advantage of his own mistake. The clear position shows that petitioner had completed 4 years of service since the date he was granted senior pay-scale and thus he had the entitlement of the selection grade of 4100-5300. Therefore, taking into consideration the facts and circumstances of the case, the petition deserves to be allowed.

13. Accordingly, the petition is allowed. The impugned order dated 27.2.2016

is quashed and respondents are directed to grant the pay scale of 4100-5300 to the petitioner in accordance with the Rules 1990 from the date on which he has completed completed 4 years of service in senior scale.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha