

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2409 of 2011

Ayodhya Singh Thakur, S/o Shri Jai Shri Thakur, aged about 48 years, posted as Assistant Grade-II, Krishi Upaj Mandi Samitee, Takhatpur, District Bilaspur.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Department of Agriculture, DKS Bhawan, Mantralaya, Raipur (CG).
2. Managing Director, Chhattisgarh Rajya Krishi Vipnan Mandi Board, Purani Ganj Mandi Parisar, Raipur (CG).
3. Joint Director (Personal), Chhattisgarh Rajya Krishi Vipnan Mandi Board, Raipur (CG).
4. Deputy Director, Chhattisgarh Rajya Krishi Vipnan Mandi Board, Raipur (CG).

---Respondents

For Petitioner	:	Smt. Renu Kochar, Advocate.
For State	:	Ms. Sunita Jain, Govt. Advocate.
For Respondent 2 to 4	:	Shri B.D. Guru, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02.07.2020

1. Challenge in the present writ petition is to the order (Annexure P/6) dated 02.04.2011 passed by the respondent No.2. The said order is an order of promotion promoting the persons belonging to Assistant Grade-III being promoted to the post of Accountant in the Mandi Board.
2. During the course of hearing, on perusal of record it has been found that though it is an order of promotion and the order of promotion reveals that there are around 40 persons who were promoted to the post of Accountant. However, none of these promoted persons have been made party in the present writ petition.
3. Today when the matter was heard, the learned counsel for the respondents No.2 to 4 submits that the said order dated 02.04.2011 (Annexure P/6) had been immediately acted upon and all the 40 persons

have assumed the promoted post and were discharging their duties since then. In the absence of none of these 40 persons as party respondent in the present writ petition, this court is of firm view that the writ petition would not be maintainable as in their absence if the writ petition is allowed, it would have a serious repercussions of the 40 persons being reverted it back to their original post losing their promotion without getting an opportunity of defense or hearing by this court.

4. The Supreme Court has time and again settled this issue by holding that unless the beneficiary of an order is made a party, a petition seeking quashment of the said order would not be maintainable.
5. In case of **State of Rajasthan Vs. Ucchab Lal Chhanwal**, 2014 (1)SCC 144, in paragraphs 11 to 14 discussing on the said issue, the Supreme Court has held as under:

“11. In this context, we may refer with profit to the decision in Vijay Kumar Kaul and others v. Union of India and others wherein it has been held thus: -

“Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardies their interest. When they have not been impleaded as parties such a relief is difficult to grant.”

12. After so stating this Court referred to the decision in Indu Shekhar Singh v. State of U.P. wherein it has been held thus: -

“37.....56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.”

38. In Public Service Commission v. Mamta Bisht this Court while dealing with the concept of necessary parties and the effect of non- impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

“9. ... in Udit Narain Singh Malpaharia v. Board of Revenue[8], wherein the Court has explained the distinction between necessary party, proper party

and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat[9], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot[10] and Sarguja Transport Service v. STAT[11].)

10. In Prabodh Verma v. State of U.P.[12] and Tridip Kumar Dingal v. State of W.B.[13], it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”

13. In J.S. Yadav v. State of Uttar Pradesh and another[14] it has been held as follows:-

“31. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.”

14. In the case at hand the dispute relates to promotion which will have impact on inter se seniority. The learned counsel for the respondents assiduously endeavoured to convince us that they are agitating the grievance with regard to their promotion and it has nothing to do with the persons junior to them who had been promoted. Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponement, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice. On this singular ground the directions issued by the writ court as well as the Division bench pertaining to grant of promotion to the respondents are quashed. To elaborate, as far as the conclusion of the High Court relating the circular is concerned, it is unexceptionable and we concur with the same.”

6. The Supreme Court again has reiterated the said principle and ratio in **Ranjan Kumar Vs. State of Bihar & Others**, 2014(16)SCC187.

7. Applying the same analogy, this court is of the opinion that the present writ petition in its present form at this juncture would not be maintainable for the same reason.
8. Accordingly, the writ petition stands disposed of. However, the right of the petitioner stands reserved, if he so wants, to challenge the same.

Sd/-
(P. Sam Koshy)
Judge

inder