

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3360 of 2011**

Komal Singh Chatri S/o Late Shri Nanak Chandra Singh Chatri Aged about 60 Year R/o Behind Basant Complex Seepat Road Sarkanda Tah. And Distt. Bilaspur Cg

---- **Petitioner**

Versus

1. State Of Chhattisgarh through : Secretary Agriculture Department D.K.S. Bhawan, Raipur Chhattigarh.
2. The Director Agriculture Department Labhandi, Raipur Chhattisgarh.
3. The Deputy Director Agriculture Department Labhandi, Raipur
4. Saiyyad Azam Ali S/o (Petitioner not unknown the name of the father), about 54 year; Post Senior A.D.O., R/o Patthalgaon; District Raipur Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. U.K. Singh Chandel, Advocate
For State/Respondent	:	Ms. Sunita Jain, G.A.
For Respondent No. 4	:	Mr. A.K. Prasad, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

29/06/2020

1. The grievance of the petitioner in the present writ petition is the issuance of Annexure P/1 dated 21.12.2010 whereby the respondents have issued an order of promotion to the post of Senior Agriculture Development Officer and in the said order of promotion, the respondent No. 4 has been shown to have been promoted and placed at serial No. 5 with his seniority being reflected as 10 A in the feeder post though he is much junior to the petitioner.
2. The contention of the Counsel for the petitioner in the present writ petition is that the petitioner is senior to the respondent No. 4 in all respect and therefore, it was the petitioner who ought to have been considered for promotion ahead of the respondent No. 4. According to the Counsel for the petitioner, the petitioner was initially appointed as a Gram Sahayak (Rural Agriculture Extension Officer) on

16.08.1978 whereas the respondent No. 4 was appointed on the said post after about a year i.e. 09.07.1979.

3. The further contention of the Counsel for the petitioner is that by virtue of the seniority-cum-fitness, the respondents have issued a promotion order on the post of Agriculture Development Officer from the post of Rural Agriculture Extension Officer on 25.03.2006. Since both the petitioner and the respondent No. 4 were working on the post of Rural Agriculture Extension Officer by virtue of their seniority both of them got promoted by the same order.
4. According to the Counsel for the petitioner, in the gradation list that followed on the post of Agriculture Development Officer published for the years 2008, 2009 & 2010 Annexure P/4, P/5 & P/6 respectively, the name of the respondent No. 4 was not reflected in the seniority list, and therefore, the petitioner never had an occasion to know whether the respondent No. 4 has been placed over him.
5. It was the further contention of the Counsel for the petitioner that though in the promotion list dated 25.03.2006, the name of the respondent No. 4 was reflected much above the petitioner but that would not determine the seniority for the reason that the criteria for promotion made in the year 2006 was seniority-cum-fitness and admittedly the petitioner was senior to the respondent No. 4. The petitioner however was surprised when Annexure P/1 was passed on 21.12.2010 when promotion order by the respondents have been made from the post of Agriculture Development Officer to Senior Agriculture Development Officer, the name of the respondent No. 4 was reflected at Sl. No. 5 and the petitioner was never considered for promotion then. It is this order which is under challenge in the present writ petition.

6. According to the Counsel for the petitioner, pending the petition, petitioner has retired from the service in July, 2011 and the respondent No. 4 has also retired from service w.e.f June 2019, thus both the petitioner and respondent No. 4 stand retired from service.
7. According to the Counsel for the petitioner, petitioner's claim for promotion has been wrongfully denied by the respondents for no fault of his and thereby the petitioner has been put to lose, so far as enjoying the fruits of the promoted post from 21.12.2010 till the date of his retirement is concerned and he has also been put to lose of higher pensionary benefits and retiral dues. According to the Petitioner, the criteria for promotion from Class-3 to Class-3 and from Class-3 to Class-2, under the promotion Rules of the State Government are seniority subject to fitness.
8. It is also the case of the petitioner that there has been nothing adverse against the petitioner on the disciplinary front with which he could have been deprived of the promotion and it is also not in dispute that the petitioner was senior to the respondent No. 4.
9. Under the circumstances, it is requested by the petitioner that the respondents be directed to consider promoting the petitioner also on the post of Senior Agriculture Development Officer from the date his immediate junior respondent No. 4 was promoted and he be granted the consequential benefit.
10. Counsel appearing for the Respondent/State as well as respondent No. 4 submit that, from the return that has been submitted, it appears that the respondent No. 4 has been found to be more meritorious as compared to the petitioner and that is why the promotion that was granted in year 2006, the name of the respondent No. 4 was reflected much above the petitioner in the order of promotion dated 25.03.2006. Further contention of the Counsel for

the respondents is that the petitioner never objected to placing of the respondent No. 4 over and above the petitioner in the order dated 25.03.2006 and thereby the respondent No. 4 has been shown to be senior all along and has been promoted ahead of the petitioner. Thus the petitioner thereafter at a latter stage cannot have any grievance on respondent No. 4 being promoted earlier. With the aforesaid submission, counsel for the respondents/State prayed that the writ petition be dismissed.

11. Having heard the contentions put forth on either side and on perusal of records as has been stated in the preceding paragraphs, admittedly both the petitioner and respondents No. 4 were appointed on the post of Gram Sahayak on 16.08.1978 and 09.07.1979 respectively, this post of Gram Sahayak was subsequently reclassified as Rural Agriculture Extension Officer. The next promotion from the post of Rural Agriculture Extension Officer was to the Post of Agriculture Development Officer, the criteria for the said promotion was seniority subject to fitness. Vide order dated 25.03.2006 both the petitioner as well as respondent No. 4 stood promoted to the post of Agriculture Development Officer. The next promotion from the said post was to the post of Senior Agriculture Development Officer for which the post also the basis or the criteria for promotion is seniority subject to fitness. However, when the next promotion list was published on 21.12.2010 i.e., the impugned order Annexure P/1, the name of the petitioner was not reflected, however the respondent No. 4 did find place in the said list and got promoted on the post of Senior Agriculture Development Officer, which led to filing of the present writ petition.

12. If the criteria for the two promotion that were held in the year 2006 as well as in the year 2010 was seniority subject to fitness, all

that was required to be processed was whether there was anything adverse against the petitioner with which his promotion could be denied.

13. The reply of the respondents that have been filed does not show any material with which the petitioner has been found to be unfit for promotion or was in any manner less meritorious than the respondent No. 4 so far as applying the criteria of seniority-cum-fitness.
14. Admittedly, the petitioner is senior to the respondent No. 4 in the feeder post and both have been promoted vide the same order to the post of Agriculture Development Officer. Only because in the order of promotion of Agriculture Development Officer, the name of the respondent No. 4 happens to be reflected over and above the petitioner by itself would not change. The seniority of these persons, unless the Rules provide for the same, which in the instant case does not provide anything as such the rules or the criteria for promotion was out rightly seniority subject to fitness.
15. So far as the petitioner not raising an objection earlier is concerned the petitioner has brought on record Annexure P/4, P/5 & P/6 i.e. the seniority lists of the years 2008, 2009, 2010 respectively in none of these seniority lists does the name of the respondent No. 4 reflect with which the petitioner could have verified the seniority or compared his seniority with respondent No. 4. The name of the respondent No. 4 was straightway reflected in the order of promotion Annexure P/1 dated 21.12.2010 reflecting his name at Sl. No. 5 showing his position in the seniority list at 10 A in the feeder post. Though in the reply, the respondents have taken a stand that the respondent No. 4's name has been inserted at 10 A, on an

objection/representation that the respondent No. 4 had filed since his name was not reflected in the gradation list of last three years.

16. This contention of the respondents also would be hard to sustain for the reason that when the promotion has been made applying the principle of seniority subject to fitness irrespective of the position of a person in the promotion order on the feeder post. Seniority always would have an upper hand unless there is any other disqualification or unfitness on the part of the senior. It appears that the respondents No. 4 has made a representation for an appropriate seniority taking into consideration the promotion order dated 25.03.2006, which seems to have been accepted by the State Government.

17. This Court does not find it to be a justifiable ground for the reason that so far as seniority is concerned, it is determined in accordance with the provision of the Rules. That in a case of promotion applying the criteria seniority subject to fitness, unless there is a strong ground for declaring a person unfit, it is always seniority that would prevail. Thus, this Court finds that the promotion issued to the respondent No. 4 on 21.12.2010 seems to be improper to the extent of not considering the seniority of the petitioner ahead of the respondent No. 4. The impugned order dt. 21-12-10 needs reconsideration. It is ordered accordingly

18. At this juncture, it is note worthy to mention that pending the writ petition the petitioner as well as respondent No. 4 both have retired from the service from the date the impugned order was passed. The petitioner then had got only about 7 months of time for retirement. The Counsel for the Respondent-State having promoted the respondent No. 4 thereby the petitioner has admittedly lost his

chance for promotion or it can be said that he was denied of his promotion which he would otherwise have got.

19. Under the circumstances, this Court is compelled to pass an order holding that let the respondents consider the case of the petitioner also for promotion to the post of Senior Agriculture Development Officer by comparing petitioner's case with the respondent No. 4. Unless there is any ground for declaring him unfit, the petitioner be also declared/promoted on the said post of Senior Agriculture Development Officer from the date the respondent No. 4 was promoted.

20. It is made clear that if the petitioner on reconsideration is found eligible for promotion, he shall not be entitled for any actual monetary benefits from 21.12.2010 till the date of his retirement. However, he shall be given all notional benefits for this period. However his pensionary benefits and retiral dues be accordingly revised and recalculated and the actual monetary benefits on revision of the retiral and pensionary benefits entirely should be actually given to the petitioner. Let this order be complied with at the earliest preferably within a period of 4 months from the date of receipt of copy of this order.

21. With the aforesaid direction, the writ petition accordingly stands allowed.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha