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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 500 of 2018**

(Arising out of order dated 10.05.2016 passed in Writ Petition (S) No.4721 of 2007 by the learned Single Judge)

1. State of Chhattisgarh Through The Secretary, Department of Tribal And Scheduled Castes Development, DKS, Building, Mantralaya, Raipur, Chhattisgarh.
(At Present, The Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Naya Raipur Chhattisgarh. As The Teachers of Tribal Department Have Been Merged Into The Department of School Education Vide Order Dated 01/05/2015)
2. The Collector, Raigarh District Raigarh Chhattisgarh.
3. The Commissioner, Department of Tribal And Scheduled Castes Development, Chhattisgarh, Raigarh (Wrongly Mentioned) Raipur.
(At Present The Director, Directorate of Public Instructions, Indrawati Bhawan, Naya Raipur Chhattisgarh).
4. The Assistant Commissioner, Department of Tribal And Scheduled Castes Development Raigarh, District Raigarh Chhattisgarh.
(At Present, The District Education Officer, District Raigarh Chhattisgarh).
5. The Joint Director, Department of Treasury, Accounts And Pension, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellants**Versus**

Jeevan Lal Choudhary, S/o Ishwar Prasad Choudhary (since dead) represented through his legal representative :

1. Smt. Urmila Devi, Wd/o Late Jeevan Lal Choudhary
 2. Shri Madhusudan Choudhary, S/o Late Jeevan Lal Choudhary
- Both R/o Village Teka, Tahsil And District Raigarh, Chhattisgarh.

---- Respondents

For Appellants/State : Shri Chandresh Shrivastava, Deputy Advocate General
For Respondents : Shri H.S. Patel, Advocate

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

Judgment on Board

Parth Prateem Sahu, Judge

22.01.2020

1. Challenge in this appeal is to the order dated 10.05.2016 passed by the learned Single Judge in Writ Petition (S) No.4721 of 2007 whereby the writ petition filed by the original Petitioner claiming the second time-bound promotion has been allowed in part and directed the appropriate authority to consider the claim of second time bound promotion on completion of 24 years of service.
2. The facts of the case are that, original Petitioner-Jeevan Lal Choudhary was appointed as Upper Division Teacher on 26.06.1977 and after completion of 12 years of service, he was given first time-bound promotion on 01.04.1993 and thereafter, he could not be promoted to the higher post, therefore, he filed writ petition seeking relief that he may be given second time-bound promotion with effect from 01.04.2005.
3. After hearing both the sides, the learned Single Judge allowed the writ petition in part with following directions :

“6. Nothing has been placed before us to demonstrate that subsequent to the order dated 16.10.1985 the Petitioner before his superannuation at any time was substantively promoted to the post of Head Master. The Court therefore is prime facie of the opinion that the Petitioner has made out a claim to be considered

for grant of second time bound promotion.

7. The writ petition is therefore deposed with a direction to the Respondents to consider grant of second time bound promotion to the Petitioner on completion of 24 years of service in accordance with law as claimed from 1.4.2005. Needless to state that in the event of his pension being required to be revised, necessary consequential orders shall be issued simultaneously. If the Respondents are satisfied that there are any arrears of pension to be paid in consequence to the same, that must also be considered and ordered simultaneously. The order be complied within a maximum period of three months from the date of receipt and/or production of a copy of this order.”

It is this order, against which, the State has filed the instant appeal.

4. Shri Chandresh Shrivastava, learned Deputy Advocate General appearing for the State submits that the original Petitioner/employee has already been given promotion with effect from 1994 and he is not entitled for any second time-bound promotion, and therefore, he wants the order to be interdicted. He further submits that during the pendency of this writ appeal, a contempt case was also filed by the wife of the original Petitioner/employee and in that contempt proceeding, arrears of amount of second time-bound promotion was given with a rider that finality of the payment of amount will be subject to outcome of the writ appeal.
5. Shri H.S. Patel, learned counsel for the Respondents submits that order impugned passed by the learned Single Judge has already been complied with, and therefore, no adjudication of this appeal is required any further.
6. We have heard the learned counsel appearing for the parties and perused the impugned order.

7. From perusal of the impugned order, it is explicitly clear that it is not the direction of the learned Single Judge holding the entitlement of the Petitioner therein for second time-bound promotion, but the direction is only to the effect that the claim of the Petitioner therein should be considered in accordance with law as in the opinion of the learned Single Judge, the Petitioner was able to make out a *prima facie* case in support of his claim.
8. By the impugned order, rights of the Petitioner therein was not decided, but the direction was issued for consideration of the claim. Merits of the case was not decided but was left with the Respondents therein/Appellant to consider and pass order on the claim in accordance with law. This being the position, the appeal is not adjudicable. The appeal therefore is dismissed. However, the Appellant/State will be entitled to consider the claim of the original Petitioner/employee afresh in the light of the order passed by the learned Single Judge in Writ Petition (S) No.4721 of 2007 and pass a speaking order in this regard and can also pass consequential order, if permissible under the law.
9. In view of above, writ appeal stands disposed off.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge