

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.2612 of 2007

Smt. Abha Agrawal, W/o Satish Agrawal, Aged about 38 years, R/o Awanti Vihar Colony, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Agricultural Department, D.K.S. Bhawan, Raipur, District Raipur (C.G.)
2. Vice-Chancellor, Indira Gandhi Agricultural University, Raipur, District Raipur (C.G.)
3. Indira Gandhi Agricultural University, Through its Registrar, Office at Village Labhandi, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Manoj Paranjpe, Advocate.

For Respondent No.1 / State: -

Mr. Animesh Tiwari, Deputy Advocate General.

For Respondents No.2 and 3: -

Mr. Yashwant Singh Thakur, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/06/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner was promoted on the post of Senior Stenographer on 16-6-1997 and she became eligible for the post of Senior Stenographer Select Grade after completion of five years qualifying service and thereafter, her case was considered on 8-9-2005 vide Annexure P-8 for consideration on the post of Senior Stenographer Select Grade, but she could not be appointed for many reasons including for want of post and again it was considered on 10-3-2006, but again for one or the other reason, she could not be promoted.

Ultimately, she has filed writ petition on 19-4-2007 claiming that the respondent University be directed to consider her case for promotion on the post of Senior Stenographer Select Grade which she is otherwise eligible and she had already completed the qualifying service of five years on the post of Senior Stenographer.

3. Return has been filed by the University stating inter alia that the State Government has sanctioned the setup on 14-7-2006 in which only one post of Senior Stenographer has been created and in fact, no new setup and no new post of Senior Stenographer Select Grade is now available and therefore the petitioner's case cannot be considered on the post of Senior Stenographer Select Grade.
4. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner, would submit that though the petitioner became eligible in the year 2002 for the post of Senior Stenographer Select Grade and twice her name was considered on 8-9-2005 and 10-3-2006, but she could not be ultimately promoted for extraneous considerations, therefore, appropriate direction be issued for considering her case on the post of Senior Stenographer Select Grade.
5. Mr. Animesh Tiwari, learned Deputy Advocate General appearing for the State / respondent No.1, and Mr. Yashwant Singh Thakur, learned counsel appearing for the University, would submit that since on 14-7-2006, a new setup has been sanctioned in which only one post of Senior Stenographer is sanctioned by the State and that has not been questioned in the writ petition and since the post of Senior Stenographer Select Grade is not available in the University, the petitioner's case cannot be considered for further promotion for want of post of Senior Stenographer Select Grade.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. True it is that the petitioner is said to be qualified for consideration on the post of Senior Stenographer Select Grade after completion of five years of qualifying service on the post of Senior Stenographer and though twice she was subjected to consideration, but ultimately she could not be promoted and now, by order dated 14-7-2006, new setup has been sanctioned by the State Government in which the post of Senior Stenographer Select Grade is missing and has not been sanctioned by the State Government.
8. It is well settled law that it is a matter of policy of the authorities to create a post and the court or tribunal has no power to direct creation of post or to prescribe the qualifications for the post and as such, the creation of the post and prescription of qualifications are the legal policy of the Government or the executive policy of the Government. (See Commissioner, Corporation of Madras v. Madras Corporation Teachers' Mandram and others¹.)
9. In the matter of K. Rajendran and others v. State of Tamil Nadu and others², the Supreme Court has clearly held that the power to abolish a civil post is inherent in the right to create it and observed in paragraph 12 of the report as under: -

“12. The power to abolish a civil post is inherent in the right to create it. The Government has always the power, subject, of course, to the constitutional provisions, to reorganise a department to provide efficiency and to bring about economy. It can abolish an office or post in good faith. The action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent. ...”

1 (1997) 1 SCC 253

2 (1982) 2 SCC 273

10. Admittedly and undisputedly, in the present case, the post of Senior Stenographer Select Grade has not been made available in the setup sanctioned by the State Government on 14-7-2006 and though the petitioner's case has been considered, but she could not be promoted for this or that reason and she filed writ petition on 19-4-2007 in which she has admittedly not questioned the non-sanction of the post of Senior Stenographer Select Grade branding the non-creation of the said post as arbitrary, irrational or discriminatory, on the ground that her promotional avenues cannot be reduced by abolishing a post or by not creating a post. As such, no direction in absence of sanctioned post of Senior Stenographer Select Grade on which the petitioner is seeking her consideration, can be issued to the respondent University in absence of the said sanctioned post and in view of the fact that the setup created on 14-7-2006 has not been questioned by the petitioner and even the writ petition has been filed on 19-4-2007 that too after the order dated 14-7-2006 by the State Government is passed not to create the post of Senior Stenographer Select Grade. Therefore, this Court is of the considered opinion that in absence of sanctioned post of Senior Stenographer Select Grade, it would not be justified in issuing direction for consideration of promotion of the petitioner on the post of Senior Stenographer Select Grade.
11. The submission of learned counsel for the petitioner is that similarly situated persons have been promoted on the promotional post though the post is not available as per the setup sanctioned by the State Government, therefore, the petitioner is also eligible to be considered in that manner. If a person has been allowed to be promoted contrary to the setup created by the State Government, no writ can be issued to perpetuate the illegality by directing to consider the case of the

petitioner. However, the petitioner is at liberty to highlight her grievances by submitting a representation that though she is eligible and qualified to be promoted on the post of Senior Stenographer Select Grade for which she was considered, but the same was rejected on extraneous considerations because of which she has suffered prejudice and her promotional avenues have completely reduced on account of non-creation of the post of Senior Stenographer Select Grade which also finds support from the University's letter dated 12-4-2006, and that will be considered by the State Government and the University strictly in accordance with law, without being prejudiced by the order of this Court. The Court has declined to grant relief in favour of the petitioner only because the post of Senior Stenographer Select Grade has not been sanctioned by the State Government.

12. With the aforesaid observations and directions, the writ petition finally stands disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge