

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.79 of 2010Order reserved on: 5-8-2021Order delivered on: 17-8-2021

Hemant Kumar Verma, aged 49 years, S/o late Shri Lachchhi Ram Verma, R/o Q.No.52/3720, in front of H.I.G.-107, Sector-1, Pandit Deendayal Upadhyay Nagar, Daganiya, Raipur, Tahsil and District Raipur (C.G.)

---- Petitioner

Versus

Municipal Corporation, Raipur, through the Commissioner, Municipal Corporation, Raipur, Tahsil and District Raipur (C.G.)

---- Respondent

 For Petitioner: Mr. Somnath Verma, Advocate.
 For Respondent: Mr. H.B. Agrawal, Senior Advocate with Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order
 (Through Video Conferencing)

1. The petitioner herein by way of this writ petition seeks appropriate writ / direction commanding the respondent to consider the case of the petitioner for giving promotion on the post of Lecturer (Science Faculty) with effect from 25-7-1990 with all consequential benefits. Appropriate writ / direction has also been sought that the respondent be directed to prepare two separate seniority lists / gradation lists of Upper Division Teacher (UDT) one for Arts faculty and another for Science faculty as on the year 1990 and thereafter year-wise and both the faculties be given promotion on their respective faculties in equal proportion. Lastly, it has been sought that the respondent be directed to consider the representation made by the petitioner vide Annexure P-20.
2. The petitioner was appointed on the post of UDT on 22-2-1984 by the Municipal Corporation, Raipur which he joined on 23-2-1984 and later-

on, the Public Service Commission gave its consent by order Annexure P-5. The petitioner was made permanent by order dated 30-8-1989. The main grievance raised by the petitioner in the writ petition is that he was promoted on the post of Lecturer by order dated 3-9-2008 vide Annexure P-13. It is the case of the petitioner that separate seniority list of Lecturers from Science faculty and Arts faculty ought to have been prepared and because of non-preparation of separate faculty-wise seniority list, he has suffered loss in respect of promotion and seniority, as the Municipal Corporation has promoted the persons belonging to Arts faculty only and on account of non-preparation of seniority list from Science faculty, he has not been given promotion on the post of Lecturer right in time and therefore the respondent is duty bound to prepare gradation list separately of Arts and Science faculties for promotion purpose. It is the contention of the petitioner that the respondent cannot give 100% promotion from Arts faculty, it has to give promotion 50% from Arts and 50% from Science. As such, the petitioner is entitled for promotion to the post of Lecturer from 25-7-1990 with all benefits and therefore appropriate direction be given to the respondent for preparing two separate seniority lists/gradation lists of UDT, one for Arts faculty and another for Science faculty, as on the year 1990 and thereafter year-wise, and the petitioner has also made representation vide Annexure P-20 which has also not been considered and decided, it be directed to be considered and decided.

3. The respondent has filed return opposing the writ petition stating inter alia that seniority list for UDT has been prepared by the respondent as on 1-8-1993 vide Annexure R-1 in which the petitioner stood at serial No.84 as Mathematics teacher. Similarly, seniority list as on 1-1-1998 (Annexure R-2) has also been prepared in which name of the petitioner is at serial No.72 and in another seniority list as on 1-1-2008 (Annexure R-

3), the petitioner's name stood at serial No.56. It has also been pleaded that the seniority position of Mahesh Kumar Varu has not been challenged by the petitioner and as such, the petitioner is not entitled for any relief. No rejoinder has been filed.

4. Mr. Somnath Verma, learned counsel appearing for the petitioner, would submit that the inaction of the respondent in non-granting promotion to the petitioner from 25-7-1990 is highly arbitrary and unsustainable in law and he is entitled for promotion on the post of Lecturer on 25-7-1990 with all consequential benefits. The respondent ought to have prepared separate seniority lists of UDTs for Arts and Science faculties as on the year 1990 and in both the streams, 50-50 UDTs should have been promoted on the post of Lecturer. He would further submit that the respondent has failed to decide the representation of the petitioner Annexure P-20. Referring to various reliefs, Mr. Verma, learned counsel, would submit that appropriate reliefs as claimed by the petitioner be granted. He relied upon the decisions of the Supreme Court in the matter of R.M. Ramual v. State of Himachal Pradesh and others¹, State of Maharashtra etc. v. Bhalchandra Khanderao Joshi and others, etc.² and W.T., Commr. v. Sudin Pandurang Timblo³ to substantiate his submission.

5. Mr. H.B. Agrawal, learned Senior Counsel assisted by Mr. Pankaj Agrawal, learned counsel for the respondent, would submit that the petition suffers from delay and laches, the petitioner claims promotion with effect from 25-7-1990 and the writ petition has been preferred by him on 6-1-2010, as such, the writ petition deserves to be dismissed on the ground of delay and laches. He would further submit that seniority list has been published vide Annexures R-1, R-2 and R-3 on 1-8-1993, 1-

1 AIR 1989 SC 357

2 AIR 1977 SC 1241

3 AIR 1994 SCW 1733

1-1998 and 1-1-2008, respectively, and that cannot be questioned at this point of time after lapse of so many years as it suffers from inordinate delay and laches. He would also submit that the petitioner has not shown that any prejudice has been caused on account of issuance of joint seniority list of Arts and Science UDTs and at no point of time such a question was raised before the Corporation and therefore the writ petition deserves to be dismissed.

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. It is not in dispute that the petitioner was promoted on the post of Lecturer by order dated 3-9-2008 (Annexure P-13) and thereafter he has made representation vide Annexure P-20 on 26-10-2009 that he is entitled for promotion with effect from 17-10-1995 as six UDTs have been given promotion from that day. It appears that the said representation has not been considered and relief has also been sought for direction to consider the representation dated 26-10-2009 (Annexure P-20). The prayer appears to be fair and reasonable. It ought to have been considered by the Municipal Corporation right in time as after granting promotion to the petitioner by Annexure P-13 dated 3-9-2008, he has made representation, but it has not been considered. Accordingly, the respondent is directed to consider the representation dated 26-10-2009 and pass reasoned and speaking order qua the relief claimed in the representation within two months from the date of receipt of a copy of this order. The petitioner is at liberty to make additional representation within two weeks.
8. The petitioner has also claimed for issuance of a direction to the Municipal Corporation for preparation of separate gradation list of Arts and Science faculties. Though the petitioner has raised such a plea in

the writ petition and claimed relief to that effect, but nothing has been brought on record to support the submission that at any point of time, he has made any representation to the Corporation highlighting that separate gradation list be issued for both the faculties, though first gradation list was published as on 1-8-1993 (Annexure R-1), second was published as on 1-1-1998 (Annexure R-2) and third was published as on 1-1-2008 (Annexure R-3). It is pertinent to mention here that the petitioner has not questioned the seniority lists already prepared and no relief has been sought that seniority lists of both the faculties be prepared separately as seniority lists Annexures R-1, R-2 and R-3 have already been issued, but the petitioner has not questioned those seniority lists in this writ petition also, as such, the seniority lists Annexures R-1, R-2 and R-3 issued earlier cannot either be quashed or directed to be separated as they have attained finality. However, the petitioner is at liberty to make representation to the respondent Corporation with regard to publication of separate seniority list / gradation list of Arts and Science faculties as on today and it will be considered by the respondent Corporation in accordance with law on its own merit.

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

Sd/-
(Sanjay K. Agrawal)
Judge