

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.5615 of 2008Order reserved on: 17-6-2021Order delivered on: 23-6-2021

Anup Kumar Chaturvedani, S/o Late Shyamlal Chaturvedani, aged about 45 years, Caste Schedule Caste, Occupation Senior Agriculture Development Officer, Block Abhanpur, Distt. Raipur (C.G.), R/o House No.F-2, Vishal Nagar, Raipur, Behind Chhattisgarh Hotel, G.E. Road, Telibandha, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary of Department of Agriculture, D.K.S. Bhawan, Raipur (C.G.)
2. The Commissioner (Production), D.K.S. Bhawan, Raipur (C.G.)
3. The Director, Department of Agriculture Directorate, Raipur (C.G.)
4. K.C. Vishwas, S/o Narendra Nath Vishwas, aged about 51 years, Sub-Divisional Agriculture Officer, Narayanpur, Distt. Jagdalpur (C.G.), R/o P.V. 14, Pakhanjur (Bastar) (C.G.)
5. The High Level Scrutiny Committee, Adim Jati Anusandhan & Prashikshan Sansthan, Pt. Ravishankar Shukla University Premises, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Rajesh Kumar Kesharwani, Advocate.

For Respondents No.1 to 3 / State: -

Mr. Sunil Otwani, Additional Advocate General.

For Respondent No.4: Mr. D.N. Prajapati, Advocate.

ANDWrit Petition (S) No.7156 of 2010

K.C. Biswas, Aged about 52 years, S/o Late Narendra Nath Biswas, Assistant Director, Agricultural, Kanker, Distt. Kanker (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Agricultural Department, D.K.S. Bhawan, Raipur (C.G.)

2. The Commissioner (Production), D.K.S. Bhawan, Raipur (C.G.)

3. The Director, Department of Agricultural Directorate, Raipur (C.G.)
---- Respondents

For Petitioner: Mr. D.N. Prajapati, Advocate.

For Respondents / State: -

Mr. Sunil Otvani, Additional Advocate General.

For Intervener: Mr. Rajesh Kumar Kesharwani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of law and fact is involved in both the writ petitions, they were clubbed together and heard together and are being disposed of by this common order.
2. Petitioner K.C. Vishwas {W.P.(S)No.7156/2010} was appointed on the post of Agriculture Development Officer on 26-6-1983 against General category post and he was promoted to the post of Senior Agriculture Officer under General category post on 5-6-1997 and he continued to be shown as officer under General category in the gradation list as on 1-4-1999 and as on 1-4-2003, however, in the gradation list published on 1-4-2004, he was shown to be member of Scheduled Caste (SC) category and in the year 2006, his case was considered for promotion against SC category on the post of Assistant Director (Agriculture) on which by order dated 30-12-2006, he was selected and appointed on the said post under SC category as SC candidate. Appointment of K.C. Vishwas was questioned by Anup Kumar Chaturvedani {petitioner in W.P.(S) No.5615/2008} stating inter alia that K.C. Vishwas does not belong to SC category, he is general category candidate and he (Anup Kumar Chaturvedani) belongs to SC category and, therefore, K.C.

Vishwas is not entitled and eligible to be promoted on the post of Assistant Director (Agriculture) and thus, his appointment be quashed and he (Anup Kumar Chaturvedani) be appointed on that post and he be given all consequential benefits. Thereafter, on 8-7-2008, notice was issued by the State Government to K.C. Vishwas {petitioner in W.P.(S)No.7156/2010} that why his promotion on the post of Assistant Director (Agriculture) against SC category, be not quashed, as he is not the member of SC which K.C. Vishwas replied that he had applied for caste certificate and it will be filed, and despite the second show cause notice dated 26-7-2010, caste certificate could not be filed and ultimately, on 25-11-2010, the appointment of K.C. Vishwas has been cancelled and he has been reverted to his original post which has been called in question by him in W.P.(S)No.7156/2010.

3. Reply and rejoinder have been filed in both the writ petitions.

W.P.(S)No.7156/2010 (K.C. Biswas v. State of Chhattisgarh and others)

4. The stand of petitioner K.C. Vishwas is that he has not been afforded reasonable opportunity of hearing before revoking his order of promotion, even if the order is erroneous it is not his fault and therefore he would be entitled for the benefit, as he has already relinquished the office on 31-10-2020 on completing the age of superannuation and his case was not considered on the ground that his case has already been considered and interim order is operating in his favour since 7-12-2010 and thus, he is entitled for the benefit of erroneous order in line with the decision rendered by the Supreme Court.
5. Return has been filed holding that admittedly, petitioner K.C.

Vishwas was selected on General category post, he was also promoted on the post of Senior Agriculture Officer under General category and in the gradation list of two years, it has been shown that he is member of General category and therefore his promotion on the promotional post of Assistant Director (Agriculture) under SC category has rightly been annulled on 25-11-2010, as such, the writ petition deserves to be dismissed.

W.P.(S)No.5615/2008 (Anup Kumar Chaturvedani v. State of Chhattisgarh and others)

6. Similarly, in this writ petition, petitioner Anup Kumar Chaturvedani has clearly stated that K.C. Vishwas is not member of SC category and he (Anup Kumar Chaturvedani) was entitled to be promoted by order dated 30-12-2006, therefore, he is entitled to be appointed from that date and all consequential benefits be also granted to him from that date; although he has been granted promotion by order dated 1-10-2013, but for intervening period, he be directed to be considered from that date.
7. Return has been filed opposing the writ petition.
8. Mr. D.N. Prajapati, learned counsel appearing for petitioner K.C. Vishwas in W.P.(S)No.7156/2010, would submit that while annulling the order of promotion, dated 25-11-2010, the petitioner was not given reasonable opportunity of hearing and even the order impugned and the promotion order do not reflect that promotion has been given on reserved category against the reserved category post. He would further submit that even if the order of promotion is erroneous, the impugned order dated 25-11-2010 is liable to be set aside in the light of the decision of the Supreme Court in the matter

of Balbir Singh v. State of H.P. and others¹ and the benefit already granted cannot be taken away on the mistake committed by the State. As such, the writ petition deserves to be allowed and the order dated 25-11-2010 deserves to be set aside.

9. Mr. D.N. Prajapati, learned counsel appearing for petitioner K.C. Vishwas in W.P.(S)No.7156/2010, has also argued before this Court that the petitioner was granted promotion on the post of Assistant Director (Agriculture) by mistaken belief, he never claimed promotion under SC category and as such, the Department itself has given him promotion on the said promotional post under SC category without his asking and now, he retired from service on 31-10-2020, as such, his case is covered by the decision rendered by the Supreme Court in Balbir Singh (supra) being the case of erroneous promotion.
10. Mr. Rajesh Kumar Kesharwani, learned counsel appearing for petitioner Anup Kumar Chaturvedani in W.P.(S)No.5615/2008, would submit that since K.C. Vishwas does not belong to SC category and has wrongly been granted promotion on the post of Assistant Director (Agriculture) with effect from 30-12-2006 and now, that has already been cancelled by order dated 25-11-2010. He would further submit that the promotion of K.C. Vishwas has rightly been annulled and as such the present petitioner – Anup Kumar Chaturvedani is entitled to be considered for the said promotional post with effect from 30-12-2006 to the date of his promotion now made on 1-10-2013 and he is also entitled for all the consequential benefits. He would rely upon the decisions of this

¹ (2000) 10 SCC 166

Court in the matters of Krishna Dani Sinha v. State of M.P. and others² and Chandu Ram Jatwar v. State of Chhattisgarh and others³.

11. Mr. Prajapati, learned counsel for petitioner K.C. Vishwas, would oppose the submission made by Mr. Kesharwani, learned counsel for petitioner Anup Kumar Chaturvedani.
12. Mr. Sunil Otwani, learned Additional Advocate General appearing for the State / respondents in both the writ petitions, would submit that since K.C. Vishwas does not belong to SC category and he was wrongly granted promotion on the post of Assistant Director (Agriculture), therefore, his promotion has rightly been annulled after giving opportunity of hearing to him on 8-7-2008 and 26-7-2010. He would further submit that two show cause notices have been issued to K.C. Vishwas, firstly on 8-7-2008 and secondly on 26-7-2010, which have been replied by him on 23-7-2008 and 29-7-2010, respectively, and thereafter, detailed and reasoned order has been passed on 25-11-2010 and his promotion on the post of Assistant Director (Agriculture) has rightly been cancelled. He would also submit that so far as petitioner K.C. Vishwas is concerned, since he was granted promotion to which he was not entitled, therefore, his promotion has been annulled, as such, no equity lies in his favour and he cannot reap the benefits of the said post to which he was not entitled for. He would further submit that so far as petitioner Anup Kumar Chaturvedani is concerned, now, he has already been extended the benefit of promotion by order dated 1-10-2013, therefore, he is also not entitled for any benefit as

² 2017(II) MPJR 34

³ 2016 LAB.I.C. 889

on the present date. He would rely upon the decision of the Supreme Court in the matter of R.K. Sabharwal and others v. State of Punjab and others⁴ to buttress his submissions. As such, both the writ petitions deserve to be dismissed.

13. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

14. The dispute in both the writ petitions relates to promotion granted to K.C. Vishwas – respondent No.4 in W.P.(S)No.5615/2008 and petitioner in W.P.(S)No.7156/2010, on the post of Assistant Director (Agriculture) by the order of the State Government dated 30-12-2006 by which he was granted promotion on the said post under the reserved category post of SC and thereafter, by order dated 25-11-2010 {Annexure P-1 in W.P.(S)No.7156/2010}, the said promotion order has been cancelled by the Department finding that though he was granted promotion on the post of Assistant Director (Agriculture) under SC category, but he does not belong to that category and he could not produce valid caste certificate that he belongs to SC category. Petitioner Anup Kumar Chaturvedani has questioned the order dated 30-12-2006 in W.P.(S)No.5615/2008, whereas petitioner K.C. Vishwas has challenged the order dated 25-11-2010, finding them to be unsustainable and bad in law.

W.P.(S)No.7156/2010

15. Admittedly and undisputedly, on the basis of the material available on record, it is clear position on record that K.C. Vishwas was firstly appointed on the post of Agriculture Development Officer on 26-6-

⁴ (1995) 2 SCC 745

1983 in General category and on 5-6-1997, he was promoted to the post of Senior Agriculture Officer in General category and in the gradation list of the year 1999 up to 2003, he was shown to be member belonging to General category, but in the gradation list published as on 1-4-2004, he was shown to be member of SC category and he was promoted as Assistant Director (Agriculture) on 30-12-2006 as SC candidate which the State Government has later-on revoked by order dated 25-11-2010 holding that he does not belong to SC category and he failed to produce proper and valid caste certificate.

16. Admittedly, on the own showing of petitioner K.C. Vishwas, he does not belong to SC category and twice he was served with show cause notices on 8-7-2008 and 26-7-2010 to produce caste certificate that he belongs to SC category, but he could not produce the same. Even before this Court, it was not disputed by learned counsel for petitioner K.C. Vishwas that he does not belong to SC category. Therefore, his promotion on the post of Assistant Director (Agriculture) under SC category has rightly been cancelled by order dated 25-11-2010 and he has rightly been reverted to his original post, after affording opportunity of hearing which is strictly in accordance with law and no exception can be taken on the said order passed by the State Government. As such, the order passed by the State Government on 25-11-2010 is strictly in accordance with law and no exception can be taken to the said order by petitioner K.C. Vishwas.

17. Now, the question is, whether petitioner K.C. Vishwas is entitled for the benefit of the decision rendered by the Supreme Court in Balbair

Singh (supra)?

18. In the instant case, the petitioner was granted promotion on 30-12-2006 and it was cancelled by order dated 25-11-2010 by reverting the petitioner to his original post and by interim order, he continued on the post of Assistant Director (Agriculture) and now, he retired from service with effect from 31-10-2020 on attaining the age of superannuation by order dated 23-10-2020. It is the case that on the complaint, the Department, on its own, right in time, served show cause notices to the petitioner twice and thereafter, reverted him to his original post from the post of Assistant Director (Agriculture). The case of Balbir Singh (supra) is not applicable to the facts of the present case, as in that case the Government itself supported the promotion holding to be erroneous under mistaken belief, as such, Balbir Singh (supra) would not help the present petitioner. However, the petitioner is at liberty to make representation to the respondent State for consideration of his case on the post of Assistant Director (Agriculture) in accordance with law from the date on which he was entitled to be promoted on the promotional post of Assistant Director (Agriculture) in General category, as after granting interim order, this petition remained pending before this Court for more than ten years. As such, W.P. (S)No.7156/2010 (K.C. Vishwas) is dismissed with the aforesaid observation / liberty to the petitioner to make representation for consideration of his case on the post of Assistant Director (Agriculture), in accordance with law. If such representation is made within 30 days, the respondent State would consider the same expeditiously preferably within next sixty days keeping in

view the above-stated facts noticed herein-above.

W.P.(S)No.5615/2008

19. Petitioner Anup Kumar Chaturvedani has called in question the order dated 30-12-2006 promoting K.C. Vishwas on the post of Assistant Director (Agriculture) which has already been reverted by the State Government by order dated 25-11-2010 and which has been affirmed by this Court by this order and therefore that part of relief no more survives for consideration. It is the case of the present petitioner that he has already been granted the benefit of promotion on the post of Assistant Director (Agriculture) by order dated 1-10-2013, therefore, he is entitled to be considered for consequential benefits from 30-12-2006 to 1-10-2013 on the promotional post of Assistant Director under SC category. The petitioner is at liberty to make representation to the respondent State within 30 days for considering his case for the promotional post of Assistant Director (Agriculture), if he is eligible and entitled to be promoted on the said post on 30-12-2006, the date on which K.C. Vishwas was considered and granted promotion. If such representation is made within 30 days, the respondent State would consider the same expeditiously preferably within next sixty days keeping in view the above-stated facts noticed herein-above.

20. It is made clear that the representations, if any, filed by both the petitioners will be considered by the State strictly in accordance with law, expeditiously.

21. With the aforesaid observation, W.P.(S)No.5615/2008 is disposed of, whereas W.P.(S)No.7156/2010 is dismissed, reserving liberty in

favour of the petitioners to file representation for redressal of their grievances. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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