

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 4048 of 2020

Ashok Kumar Tiwari S/o Late Shri B.P. Tiwari Aged About 61 Years
Executive Engineer, Water Resources Division, Kota, District Bilaspur
Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Water Resources Department , Mahanadi Bhawan, Mantralaya , Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. Chief Engineer Water Resources Department Shivnath Bhawan, North Block Sector 18, Naya Raipur, Atal Nagar, District Raipur Chhattisgarh.
3. Shri Devendranath Gidroniya Superintending Engineer O/o Chief Engineer Water Resources Department, Shivnath Bhawan, Naya Raipur, Atal Nagar District Raipur Chhattisgarh.
4. Shri Prasoon Kumar Sharma Superintending Engineer (Admn.), O/o Chief Engineer Water Resources Department, Shivnath Bhawan, Naya Raipur, Atal Nagar, District Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Shri Prafull Bharar, Sr. Advocate along with Shri Keshav Dewangan, Advocate.
For Respondent-State	:	Ms. Akanksha Jain, Dy. Govt. Advocate.

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

09.09.2021

1. The petitioner through the present writ petition has claimed for consideration of his case for promotion from the post of Executive Engineer from the date his immediate juniors were promoted in the State of Chhattisgarh. The claim is also for a further promotion as has been granted to the immediate juniors i.e. respondents No.3&4 on the post of Superintendent Engineer.
2. The facts of the case is that, the petitioner was appointed under the erstwhile State of Madhya Pradesh on the post of Assistant Engineer (Adhoc). Subsequently, the petitioner appeared in the recruitment process conducted by the Public Service Commission in the year, 1983 and got

selected and the petitioner's name was placed at serial No.151 in the merit list. The respondents No.3&4 who were also selected in the same recruitment process were placed at serial Nos. 159 and 166 respectively. With effect from 01.11.2000 the erstwhile State of Madhya Pradesh stood divided and a new State of Chhattisgarh was carved out in accordance with MP Re-organization Act, 2000. On creation of the new State, the manpower from the two States had to be distributed proportionately and in the course of allocation the petitioner was allocated to the State of Madhya Pradesh. Another person namely Vijay Shankar Awasthy in the same cadre and in the same post was allocated to the State of Chhattisgarh. The petitioner wanted to be allocated to the State of Chhattisgarh and at the same time Vijay Shankar Awasthy wanted to be allocated in the State of Madhya Pradesh itself.

3. It appears that both the petitioner as also Vijay Shankar Awasthy had approached the Madhya Pradesh High Court for an appropriate relief in this regard and the High Court of Madhya Pradesh finally directed the Government of India to pass appropriate orders in case of the petitioner and Vijay Shankar Awasthy in the light of mutual request being made by the two officers in respect of their allocation.
4. Pursuant to disposal of the writ petition by the MP High Court, the Govt. of India finally vide order dated 30.05.2005 allocated the petitioner to the State of Chhattisgarh and at the same time Vijay Shankar Awasthy also stood allocated to the State of Madhya Pradesh.
5. Upon the order of Govt. of India dated 30.05.2005, the Govt. of Madhya Pradesh issued Annexure P/5 dated 28.07.2005 towards compliance of order of the Govt. of India and thereafter the petitioner came and resumed

his duties in the State of Chhattisgarh. That, initially when the gradation list were published since the petitioner was not allocated finally in the State of Chhattisgarh, his name was not reflected in the gradation list published by the State of Chhattisgarh. The petitioner thereafter, since he did not find his name in the gradation list, started making representations to the department for his name to be included in the gradation list. The department accepted the representation of the petitioner and published the provisional gradation list vide Annexure P/7 whereby the name of the petitioner was placed at serial No.1569 and the names of respondents No.3&4 were placed at serial Nos. 1575 and 1582 respectively. However, subsequently when the final gradation list was published the name of the petitioner again got missed from the said list.

6. The petitioner again submitted a representation to the respondent No.1 for necessary corrections to be made in the gradation list and for grant of consequential benefits. Meanwhile, the respondents No.3&4 on account of unamended gradation list since their names existed in the gradation list in the State of Chhattisgarh all along, got promoted to the post of Executive Engineer on 12.04.2012 (Annexure P/2). The petitioner still continues pursuing his claim for proper reflection of his name in the gradation list and for granting proper seniority in the State of Chhattisgarh reckoning his services that he has rendered in the State of Madhya Pradesh also. After much persuasion, vide order dated 01.01.2020 the respondents finally have accepted the representation of the petitioner and have ordered for grant of proper seniority to the petitioner as on 01.04.2018 and 01.04.2019 and the petitioner has been placed at serial No.222-A and the respondents No.3&4 have been placed at serial Nos.223 and 227 respectively.

7. The said order has not been questioned, challenged or subjected to a judicial review either before any of the higher authorities in the department or before any competent court of law. Thus, the same has attained finality. However, meanwhile the petitioner was granted promotion w.e.f. 10.06.2015 and that too by creating a supernumerary post. At the same time, the respondents No.3&4 meanwhile got promoted to the post of Superintendent Engineer vide order dated 26.06.2020. It is thereafter that the present writ petition has been filed for proper consequential benefits to the petitioner including that of promotional benefits at par with the immediate juniors i.e. respondents No.3&4 and for grant of proper seniority ahead of respondents No.3&4 in the light of rectification of the gradation list and thereby placing of the petitioner in the gradation list over and above the respondents No.3&4.
8. The State upon notice being issued by this court have filed the response opposing the petition on the ground that the same has been filed at a belated stage and further that the claim of the petitioner cannot be accepted in the light of the circulars of the State Govt. dated 29.04.2005, 03.10.2006 and that of 17.04 (year not reflected in the reply).
9. As regards the aspect of delay laches, this court is of the opinion that perusal of pleadings and the documents enclosed along with the writ petition would show that there has been a continuous and uninterrupted correspondence between the petitioner and the department and there has been also frequent publication of the gradation list where in the provisional list the name of the petitioner was reflected, however, in the final gradation list his name got excluded from the entire list itself. That finally the promotion given to respondents No.3&4 on 26.06.2020 is when the

petitioner finally approached this court and as such it cannot be said that the petition suffers from delay laches. Moreover, the respondents themselves vide their order dated 01.01.2020 (Annexure P/11) in the course of publication of the gradation list, accepting the contention of the petitioner for being senior over and above the respondents No.3&4, have published the gradation list showing seniority as on 01.04.2018 and also as on 01.04.2019 and in the course the petitioner's name has been incorporated at serial No.222-A i.e. over and above the respondents No.3&4 which has since attained finality.

10. The fact that the respondents have rectified the gradation list granting proper seniority to the petitioner in the gradation list, the question now which requires to be considered is will the petitioner not be entitled for consequential benefits in the light of the gradation list being made and the petitioner being placed over and above the respondents No.3&4 in seniority list? This would also negate the second objection of the respondents as regards circulars of the State Govt. dated 29.04.2005, 03.10.2006 and 17.4. The fact that respondents State themselves accepting the contention of the petitioner have published the gradation list granting due seniority to the petitioner placing him over and above the respondents No.3&4 in the gradation list would make the circulars relied upon by the State counsel becoming inconsequential. Having rectified the gradation list, the petitioner would be entitled to be considered at par with the persons immediate juniors i.e. respondents No.3&4.

11. It goes without saying that once when the State has accepted the grievance of the petitioner so far as proper seniority is concerned and have rectified the gradation list vide Annexure P/11 which has since

attained finality, there is no reason why the petitioner would not be entitled for the consequential benefits which has accrued in the light of the rectification in the gradation list.

- 12.** Now the petitioner has been granted promotion by creating supernumerary post on 10.06.2015. It now needs to be reconsidered by the State authorities for considering promotion of the petitioner from a back date i.e. the date when his immediate juniors i.e. respondents No.3&4 were promoted on the post of Executive Engineer vide order dated 12.04.2012. The petitioner has a justifiable case for claiming for consequential benefits in the light of the gradation list that has been published vide Annexure P/11 dated 01.01.2020 which till date was in disputed state of affairs. The respondents are therefore expected to take a decision on the claim of the petitioner for being promoted to the post of Executive Engineer, if not, at par with the private respondents from 12.04.2012 and also for further consideration of promotion to the post of Superintendent Engineer with effect from the date the respondents No.3&4 were promoted i.e. from 26.06.2020.
- 13.** The pleading would show that the petitioner has got just about few months of service left for his retirement and therefore the respondents No.1&2 are directed to ensure that the claim of the petitioner for promotion from the date his immediate juniors were promoted be processed and considered at the earliest within a period of 45 days from the date of receipt of copy of this order and within the same period of time the respondents should also consider the further consequential relief to the petitioner for promotion to the post of Superintendent Engineer, if not earlier then at least from the date the respondents No.3&4 were promoted i.e. 26.06.2020.

- 14.** The respondents would be at liberty to consider the consequential benefits to the petitioner by granting notional benefits and notional fixation and the actual benefits to be floated from the date of issuance of the fresh order that would be passed by the respondents.
- 15.** The writ petition to that extent stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder