IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 2801 of 2011

BETWEEN:-

VINOD KUMAR TIWARI S/O LATE BADRI PRASAD, AGED ABOUT 65 YEARS, OCCUPATION: RETD.ASST.DIRECTOR HANDLOOM G 1 SAYA MENSION HARISHANKARPURAM LASHKAR GWALIOR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRASHANT SHARMA -ADVOCTE)

AND

1. **THE STATE OF M.P. TH.PRINCIPAL SECRETARY GRAMODYOG DEPTT. VALLABH BHAVAN BHOPAL (MADHYA PRADESH)**

2. **COMMISSIONER CUM DIRECTOR, HANDLOOM, CIVIL LINES, BHOPAL (MADHYA PRADESH)**

3. **SHRI S.P. TIWARI, ASSISTANT DIRECTOR, HANDLOOM, THR. COMMISSIONER CUM DIRECTOR, HANDLOOM, CIVIL LINES, BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI S.S. KUSHWAHA - GOVT. ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

The present petition under Article 226 of the Constitution of India is directed against the rejection of the representation of the petitioner for non-consideration of his claim for promotion in a DPC conducted on 4.11. 1996

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and thereafter second DPC conducted on 5.9.1998.

Learned Counsel for the petitioner at the very outset placed an order dated 2.01.2008 passed in W.P. No. 2702 of 2006 whereby the order of punishment of stoppage of two increments with cumulative effect and the dismissal of the appeal preferred against the said order, which appears to have been the cause of non-considering the case of the petitioner for promotion on the post of Assistant Director, was quashed and the matter was relegated back to the authorities to pass an appropriate order for imposition of some minor penalty if the authorities think it appropriate. After remitting the matter to the authority, a minor penalty of stoppage of two increments without non-cumulative effect was imposed and as the very reason for non-consideration of the petitioner for promotion had already come to an end in the year 2008 itself, the respondent/competent authority was required to conduct review DPC for considering the case of the petitioner for promotion on the post of Assistant Director but instead of directing for the same the representation of the petitioner was illegally rejected and while rejecting said representatin no reason has been assigned for non-consideration of the petitioner for promotion.

Learned Counsel for the petitioner on the strength of the aforesaid quashment of the major penalty imposed against the petitioner submitted that the competent authority be directed to conduct review DPC and consider the case of the petitioner for promotion on the post of Assistant Director.

Per contra, Shri Kushwaha, learned Govt. Advocate submitted that though impugned order Annexure P/1 dated 9th of August, 2010 does not reflect the reason for non-consideration of the petitioner for promotion but the fact remains that the petitioner was not found fit for promotion in the DPC held on 4.11.1996 and later on held on 05.09.1998 and now at this juncture since the

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petitioner stood retired the effect of order dated 2.1.2008 passed in W.P. 2202/2006 is required to be gone into and for that the petitioner may be directed to file a fresh representation narrating all the factual details alongwith all the relevant documents before the competent authority and in case while deciding the said representation the competent authorities comes to a conclusion that a review DPC is required to be held then appropriate decision in the matter can be taken by the competent authority in that regard.

Heard the Counsel for the parties and perused the record.

From perusal Annexure P/1 dated 9th of August, 2010 i.e. the impugned order herein, this Court finds that in the DPC conducted on 4.11.1996 and 5.9.1998 by the respondent/authorities the petitioner was not found fit and though reason was not assigned which was made the basis for his non-consideration for promotion, now, since the petitioner had retired in the year 2003, just for the purpose of the monetary benefits which could have accrued to the petitioner in the year 1996 or 1998 a review DPC could be directed to be held, for that first it is required to be seen by the competent authority whether the case of the petitioner is fit for his consideration for calling of review DPC, in the light of the order dated 2.1.2008 passed in W.P. No. 2206/2006.

Thus, this Court deems it fit to direct the petitioner to file a fresh representation appending all the requisite documents before the competent authority for said consideration and for conducting of review DPC and in case the competent authority finds that the petitioner is entitle for promotion at par with his juniors in the DPC conducted on 04.11.1996/5.9.1998 then direction for conducting of a review DPC may be issued.

It is needless to observe that the competent authority is free to go into

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aspect of non-consideration of the case of the petitioner for promotion in the year 1996 as well as in the year 1998, apart from imposition of major penalty of stoppage of two increments with cumulative effect which was set aside by this Court in W.P. No. 2206 of 2006 dated 02.01.2008.

Thus, the petitioner is directed to submit fresh representation within 15 days from today and the same shall be considered and decided within eight weeks thereafter and the decision taken on the representation shall be communicated to the petitioner.

With aforesaid observations and directions present petition stands disposed of .

(MILIND RAMESH PHADKE)
JUDGE

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