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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6479 of 2014

D.S. Dandotia, S/o Rameshwar Prasad Dandotia, aged about 56 years, R/o 27 Kholi, Bilaspur, P.S. Civil Lines, Distt. Bilaspur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Water Resource Department, Govt. of C.G., Mahanadi Bhawan, Naya Raipur, Raipur, C.G.
2. Secretary, Water Resource Department, Govt. of C.G., Mahanadi Bhawan, Naya Raipur, Raipur, C.G.
3. Engineer-in-Chief, Water Resource Department, Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission, Through Chairman, Shankar Nagar Road, Bhagat Singh Square, Raipur, Dist Raipur, Chhattisgarh – 492001.
5. P.K. Paul, S.D.O. E&M, R/R, Water Resource Department, Behind Kali Mata Mandir, Raipur, Distt. Raipur, Chhattisgarh.
6. Sanjay Pathak, S/o Late R.P. Pathak, aged about 43 years, Occupation Service, presently posted as Executive Engineer, Water Resources Department, Bilaspur C.G.

---- Respondents

For Petitioner: Mr. Saurabh Dangi, Advocate.

For State/Respondents No.1 to 3: -

Mr. Varun Sharma, Panel Lawyer.

For PSC/Respondent No.4: -

Mr. Afroj Khan, Advocate.

For Respondent No.6: -

Mr. Malay Shrivastava, Advocate.

For Respondent No.5: -

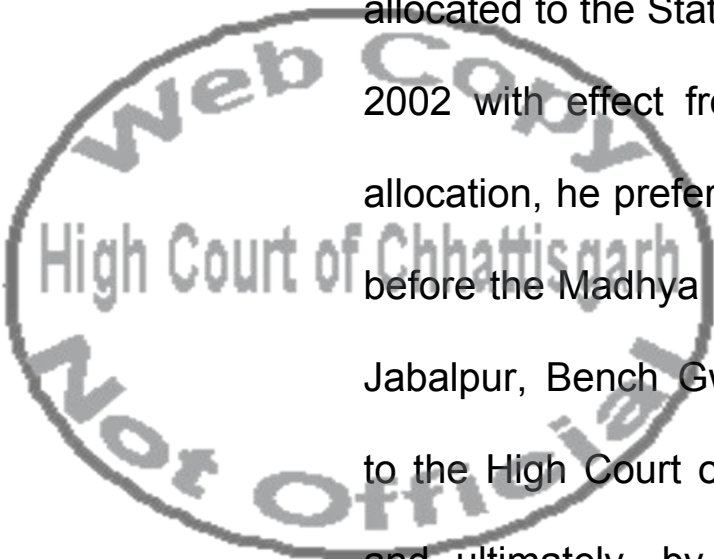
None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

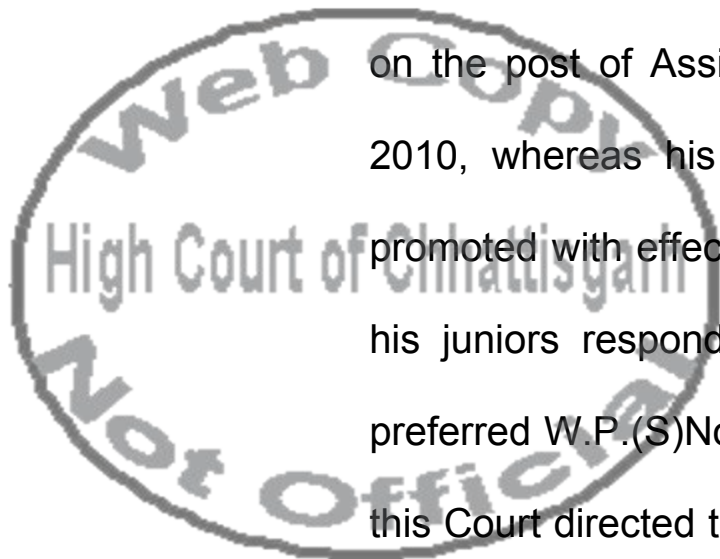
17/12/2015

1. The petitioner is a duly appointed Sub Engineer working in the Water Resources Department appointed by the erstwhile State of Madhya Pradesh. Upon reorganisation of the erstwhile State of Madhya Pradesh, he was allocated to the State of Chhattisgarh by order dated 16-9-2002 with effect from 1-11-2000. Against his order of allocation, he preferred Original Application No.1237/2002 before the Madhya Pradesh State Administrative Tribunal, Jabalpur, Bench Gwalior, which was later-on transferred to the High Court of Madhya Pradesh, Bench at Gwalior and ultimately, by order dated 21-2-2004 (in the Lok Adalat), the High Court of Madhya Pradesh, directed the petitioner to make representation to the Central Government and directed the Central Government to decide the representation of the petitioner. The Government of India, Ministry of Personnel, PG & Pensions, by its order dated 5th July, 2006, rejected the representation of the petitioner and thereafter, the Chief Engineer, Water Resources Department, Bhopal, by order dated 17-7-2007 relieved the petitioner and directed him



to submit his joining to the Chief Engineer, Water Resources Department, Raipur, Chhattisgarh and ultimately, he was actually relieved on 6-8-2007 and he submitted his joining on 13-8-2007 to the State of Chhattisgarh which was accepted on 21-8-2007 and thereby he joined in the State of Chhattisgarh and since then working in the State of Chhattisgarh.

2. The petitioner was promoted in the State of Chhattisgarh on the post of Assistant Engineer with effect from 29-9-2010, whereas his claim was that he is entitled to be promoted with effect from 13-1-2006, the date from which his juniors respondents No.5 & 6 were promoted. He preferred W.P.(S)No.1352/2014 before this Court in which this Court directed the competent authority to consider the representation of the petitioner in accordance with law. The State of Chhattisgarh – respondent No.1 by its order Annexure P-1 in its meeting of the Departmental Promotion Committee (DPC) held on 22-9-2014 considered the case of the petitioner and held that since the petitioner did not join the State of Chhattisgarh earlier and joined only on 13-8-2007, therefore, he is not entitled for proforma promotion on the post of Assistant Engineer with effect from 13-1-2006.



3. Feeling aggrieved against the order passed by the respondent No.1 not promoting the petitioner with effect from 13-1-2006, the petitioner has filed the instant writ petition holding the non-promotion with effect from 13-1-2006 as arbitrary and against his right to be considered on the promotional post fairly and objectively.
4. The respondent State as well as the PSC has filed return opposing the writ petition stating inter alia that the petitioner did not join on the post of Sub Engineer right in time and only joined on 13-8-2007, therefore, he is not entitled for proforma promotion / consideration on the promotional post of Assistant Engineer with effect from 13-1-2006.
5. Private respondent No.6 has filed his separate return stating inter alia that the petitioner took birth in the cadre of Sub Engineer in the State of Chhattisgarh only with effect from 13-8-2007, the date on which he joined in the State of Chhattisgarh, and no interim order was operating from October, 2002 to 21-2-2004 in favour of the petitioner, therefore, he is not entitled for proforma promotion with effect from 13-1-2006 as such, he is not entitled for proforma promotion.
6. I have heard learned counsel for the parties and also

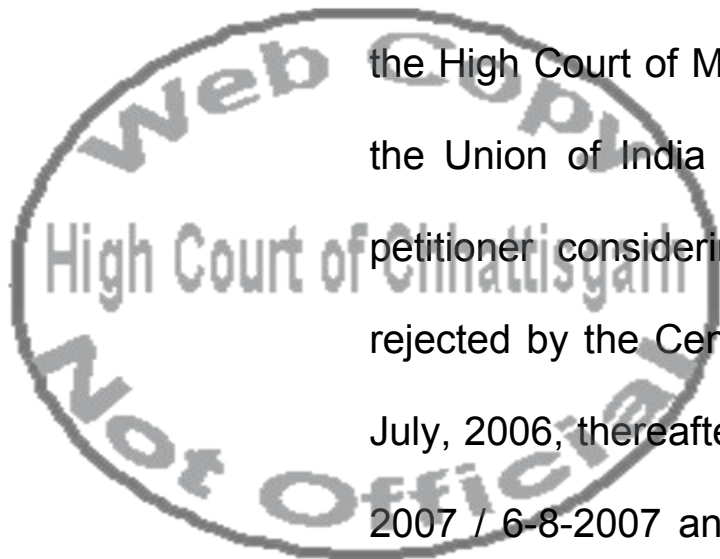


considered the rival submissions made therein and also gone through the record with utmost circumspection.

7. It is not in dispute that the petitioner was allocated to the State of Chhattisgarh upon reorganisation with effect from 1-11-2000 by order dated 16-9-2002 to which he did not join and filed an original application in the State Administrative Tribunal which was subsequently transferred to the High Court of Madhya Pradesh in which the High Court of Madhya Pradesh on 21-2-2004 directed the Union of India to consider the representation of the petitioner considering his grievance which came to be rejected by the Central Government by order dated 5th of July, 2006, thereafter, the petitioner was relieved on 17-7-2007 / 6-8-2007 and ultimately, he joined in the State of Chhattisgarh on 13-8-2007.

8. The question for consideration is whether joining of the petitioner on the post of Sub Engineer subsequent to rejection of his representation by the Central Government on 13-8-2007 in the State of Chhattisgarh, will be deemed to be with effect from the date of his allocation i.e. with effect from 1-11-2000 or with effect from the date of his joining i.e. 13-8-2007.

9. The petitioner's services were finally allocated to the State



of Chhattisgarh in exercise of the power conferred under Section 68 (2) of the Madhya Pradesh Reorganisation Act, 2000 with effect from 1-11-2000. Section 68 (2) of the Madhya Pradesh Reorganisation Act, 2000, states as under: -

“(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in subsection (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have take effect.”

10. By virtue of the aforesaid provisions, date of final allocation of service will be date of allocation to the successor State. In the present case, date of allocation of the petitioner's services to the State of Chhattisgarh is 1-11-2000 by order dated 16-9-2002.

11. The submission of learned counsel for respondent No.6 is that the petitioner took birth in the cadre of Sub Engineer in the State of Chhattisgarh with effect from 13-8-2007, therefore, he is not entitled for consideration on promotional post of Assistant Engineer with effect from 13-1-2006 deserves non-acceptance. The fact remains that the petitioner was allocated to the State of Chhattisgarh with effect from 1-11-2000, which he questioned before the State Administrative Tribunal, which

was subsequently transferred to the High Court of Madhya Pradesh and the High Court of Madhya Pradesh on 21-2-2004 directed the Union of India to decide the representation which came to be rejected by order dated 5th July, 2006 and the petitioner was only relieved by the State of Madhya Pradesh on 17-7-2007 / 6-8-2007 to which he joined immediately in the State of Chhattisgarh on 13-8-2007. Therefore, upon rejection of the petitioner's representation, the order of his allocation as it is would come into force by virtue of Section 68 (2) of the Madhya Pradesh Reorganisation Act, 2000 and his date of allocation will be the date of allocation to the State of Chhattisgarh. Apart from this, the order passed by the Madhya Pradesh High Court in the original application filed by the petitioner herein also clearly records that the employees / employee who were continuing by interim order shall be permitted to continue in the State in the same cadre till the decision of the representation. The fact remains that the petitioner was relieved by the State of Madhya Pradesh for joining in the State of Chhattisgarh only on 6-8-2007. Therefore, there was no occasion for the petitioner to join in the State of Chhattisgarh prior to 6-8-2007.



12. In the matter of R.R. Bhanot v. Union of India and others¹ dealing with liability in case of reorganisation of a State i.e. the Punjab Reorganisation Act, 1966, Their Lordships of the Supreme Court have held in no uncertain terms that liability of pensionary benefits is of the State to which the employee is finally allocated with retrospective effect even though he has not worked in the Government of that State and observed in paragraph 9 as under: -

“9. We are of the view that the stand taken by the Punjab Government is wholly unjustified. As stated above the order dated March 20, 1969 prematurely retiring the appellant from service was quashed by the Himachal Bench of the Delhi High Court by its judgment dated September 29, 1969. As a consequence the appellant continued in service till December 31, 1970 when he attained the age of superannuation. It is not disputed that the appellant was finally allocated to the State of Punjab with effect from November 1, 1966. The net result would be that the appellant shall be deemed to be continuously serving the State of Punjab with effect from November 1, 1966. He had joined service in the erstwhile State of Punjab on September 30, 1937. On March 20, 1969 when he was prematurely retired by the State of Himachal he had already served the Government for about 32 years. He was undoubtedly entitled to the grant of pension and other post-retiral benefits. Simply because the appellant failed to submit joining report to the State of Punjab after the judgment of the Himachal Bench of Delhi High Court, he could not be denied his right to pension and other benefits to which he was entitled on his attaining superannuation. It was for the State of Himachal Pradesh to have reinstated the appellant in

1 (1994) 2 SCC 406

service after the High Court judgment and thereafter relieved him to join the State of Punjab. In any case the appellant, having been finally allocated to the State of Punjab, it is the State of Punjab which has to give pension and other retiral benefits to the appellant.”

13. At this stage, it is pertinent to notice the proviso to Section 69 (1) of the Madhya Pradesh Reorganisation Act, 2000 which provides as under: -

“69. Provisions relating to other services.—

(1) Nothing in this section or Section 68 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Madhya Pradesh or to the State of Chhattisgarh under Section 68 shall not be varied to his disadvantage except with the previous approval of the Central Government.”

14. The proviso to Section 69 (1) of the M.P. Reorganisation Act, 2000 clearly mandates that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Chhattisgarh and by the proviso to Section 69 (1) of the said Act, conditions of service applicable before the appointed day allocated to the State of Chhattisgarh shall not be varied to his disadvantage except with the previous

approval of the Central Government.

15. The right to be considered for promotion fairly and objectively is a condition of service whereas, chances of promotion are not condition of service. Way back in the year 1973, the Constitution Bench of the Supreme Court in the matter of **Ramchandra Shankar Deodhar and others v. The State of Maharashtra and others**² held as

under: -

“12.....It is now well settled by the decision of this Court in State of Mysore v. G.B. Purohit, C.A. No.2281 of 1965, D/- 25-1-1967 (SC) that though a right to be considered for promotion is a service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service....”

16. Thereafter, in a decision in the matter of **M.D. Shukla and others v. The State of Gujarat and others**³, while dealing with the States Reorganisation Act – the Bombay Reorganisation Act, 1960, the Supreme Court has held that public servant allotted to another State, his conditions of service applicable immediately before the allotment cannot be affected to his disadvantage except with approval of Central Government and observed as under: -

“8. It is necessary first to examine the scheme of Sections 115 and 116 of the States Reorganisation Act, 1956. Section 115 was intended to provide for the conditions of service of employees who

² AIR 1974 SC 259

³ AIR 1971 SC 117

immediately before November 1, 1956 were serving in connection with the affairs of a State and were allotted to serve in connection with the affairs of another State. Power to fix the conditions of service was reserved exclusively to the Central Government. For that purpose the Central Government was authorised to establish one or more Advisory Committees to advise the Government on the division and integration of the services in the new States and for ensuring fair and equitable treatment to all persons affected by the provisions of Section 115 and for proper consideration of any representation made by those persons. By the proviso to sub-section (7) of Section 115 a guarantee was given to every allotted public servant that his conditions of service shall not be varied to his disadvantage except with the previous approval of the Central Government. Section 116 provided for the continuance of officers in equivalent posts.

11. It is clear that the conditions of service applicable immediately before the appointed day in the case of any person who is allotted to another State cannot be varied to his disadvantage except with the previous approval of the Central Government. This protection could not be removed by the rules made by the State subsequent to November 1, 1956, unless the previous approval of the Central Government was obtained thereto.”

17. Similar is the proposition laid down by the Constitution Bench of the Supreme Court in the matter of **Mohammad Shujat Ali and others v. Union of India and others**⁴.

18. Therefore, the petitioner is entitled to be considered fairly and objectively for promotion in the State of Chhattisgarh with effect from the date from which his juniors –

⁴ AIR 1974 SC 1631(1)

respondents No.5 & 6 were considered and non-consideration of the petitioner's case for promotion with effect from 13-1-2006 in the State of Chhattisgarh would be hit by the proviso to Section 69 (1) of the M.P. Reorganisation Act, 2000, as once he is allocated to the State of Chhattisgarh, his allocation will take effect from the date of his allocation i.e. 1-11-2000 irrespective of the date of his joining, as he has been relieved only on 6-8-2007 to join in the State of Chhattisgarh. Even otherwise, the petitioner's condition of service i.e. right to be considered for promotional post at par with his juniors is fully protected by the proviso to Section 69 (1) of the M.P. Reorganisation Act, 2000 and cannot be varied to his disadvantage without prior approval of the Central Government.

19. As a fall out and consequence of aforesaid discussion, the order passed by respondent No.1 to the extent of holding that the petitioner is not entitled to be considered for promotion with effect from 13-1-2006, is hereby quashed. Respondent No.1 State is directed to convene meeting of the review DPC and to consider the case of the petitioner for proforma promotion on the post of Assistant Engineer with effect from 13-1-2006 and pass consequential order.

20. The writ petition is allowed to the extent indicated herein-
above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6479 of 2014

D.S. Dandotia

- Versus -

State of Chhattisgarh and others

HEAD NOTE

Service conditions of the allocated employee to Chhattisgarh cannot be varied to his disadvantage without prior approval of Central Government.

छत्तीसगढ़ को आवंटित कर्मचारी के सेवा नियम उसके अहित में बिना केन्द्रीय शासन के पूर्व अनुमोदन के परिवर्तित नहीं किए जा सकते।

