

(2014) 09 MP CK 0177

Madhya Pradesh High Court (Gwalior Bench)

Case No: W.P. No. 1901/2006(S)

A.P. Tripathi

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Sept. 1, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Sheel Nagu, J

Bench: Single Bench

Advocate: J.P. Kushwah, Advocate for the Appellant; B. Raj Pandey, Govt. Advocate, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Sheel Nagu, J.

This petition filed under Article 226 of the Constitution of India seeking the following reliefs:

"The petitioner prayed that this Hon'ble Court may kindly allow the writ petition of the petitioner and the respondents may kindly be directed to pay the benefit of the promotion in the light of the promotion order Annexure P-6. The respondents may also be directed to revise the pay scale of the petitioner and arrears of pay also be given to the petitioner, his pension may also be revised. The petitioner also prayed that 12% per annum interest upon the arrears of revision of pay. Cost may also be awarded to the petitioner."

2. The foundational factual matrix are that the petitioner was initially appointed as Lower Division Teachers (LDT) in the year 1966 vide Annexure P-2. It is contended by the petitioner that several representations were made for the promotion to the post of Upper Division Teacher (UDT), but to no avail. Instead the petitioner was granted a higher pay scale of UDT i.e. 5000-8000 after completion of 12 years of service under the "krammonati scheme" and later attained the age of superannuation as such, on

30.04.2005.

3. It is further contended by the petitioner that when various notices were sent against non-grant of regular promotion as UDT, the petitioner came to know about the existence of promotion order dated 23.06.2000 (P-6) promoting the petitioner on substantive basis as UDT 5000-8000 and posting him from Middle School J.A. Sindh No. 1 to Higher Secondary School, Khedi Morar. It is lastly contended that based upon this cause of action which arose in 2005-2006 on coming to know of existence of the above said promotion order dated 23.06.2000, the present petition is filed.

4. The State in its return has contended that the regular promotion of the petitioner vide Annexure P-6 in the scale of 5000-8000 on the post of UDT was granted when the petitioner was posted at Govt. Higher Secondary School, Khedi Morar. The State counsel further submits that the said promotion order 23.06.2000 was issued subject to the condition that in case the promotee does not join by 05.07.2000 at the place of transfer i.e. Govt. Higher Secondary School, Khedi Morar in the case of petitioner, the promotion order shall stand automatically canceled. The State counsel further submits that due to non joining of the petitioner on the promoted post for the obvious reason that the petitioner does not want to move on transfer and was already enjoying salary in the pay scale of 5000-8000 received under the krammonati scheme, the order of promotion suffered cancellation.

5. From perusal of the material placed on record, it is evident that as many as 179 teachers of the unreserved categories were promoted by the promotion order dated 23.06.2000 and it is surprising that the petitioner did not know of the passing of this promotion order.

6. Petitioner has tried to justify lack of knowledge in regard to the said promotion order dated 23.06.2000 by placing reliance on P-7, which is the certificate issued by Headmaster, Middle School J.A. Sindh No. 1, Lashkar Gwalior certifying that the said promotion order was not received in the school. Pertinently, the said certificate appears to have been issued some time in 2006 i.e. six(6) years after issuance of the promotion order. Contention of the learned counsel for the State thus is that this certificate is a manufactured document created for building foundation for filing of this petition. This Court is of the view that the Headmaster had no authority to issue such a certificate, that too after a period of nearly six years of the issuance of promotion order P-6.

7. The petitioner appears to have intentionally avoided receiving the regular promotion order dated 23.06.2000 as he was already enjoying salary in higher pay scale i.e. 5000-8000 in which he was promoted by P-7 and also that the petitioner not inclined to move on transfer and wanted to continue at the present place of posting, where he was posted since the initial appointment.

8. In view of the above, no direction as sought can be granted in this petition.

9. In view of the above, this Court is of the considered view that the present petition is sans merit and is therefore dismissed as such.

10. No order as to cost.