

(2017) 01 MP CK 0098
MADHYA PRADESH HIGH COURT
Case No: 24186 of 2003

Dr. Smt. Ansuya
Paraste

APPELLANT

Vs

State of Madhya
Pradesh

RESPONDENT

Date of Decision: Jan. 3, 2017

Hon'ble Judges: S K Gangele, Subodh Abhyankar

Bench: Division Bench

Advocate: Sankalp Kochar, Pradeep Singh

Final Decision: Allowed

Judgement

1. The petitioner before this Court is a retired Joint Director of Regional Family Welfare Center, who is aggrieved of the inaction on the part of the respondent in providing her pro-forma promotion under F.R.30 despite the fact that the persons junior to the petitioner were promoted above the petitioner.

2. In brief the facts of the case are that the petitioner initially filed O.A. No.213/99 before the State Administrative Tribunal, Bhopal Bench, which was subsequently converted into Writ Petition No.24186/2003 and transferred to the High Court after abolition of the State Administrative Tribunal. The petitioner filed the aforesaid original application praying following reliefs: -

"I. That the Hon'ble Tribunal kindly be pleased to command the Respondent State to give following proforma promotions in chronological order :

(i) Joint Director, Health Services w.e.f. 07.07.92 when her junior Dr. C.M. Sankhala has been given promotion from 8.7.92 vide Annexure A/16, dt. 20.6.98.

(ii) Director, Health Services w.e.f. 17.10.96 when her junior Dr. L.P. Mathur was promoted vide Annexure A/18.

II. The Hon"ble Tribunal is further requested to direct the Respondent State to fix the pay of the applicant in the light of aforesaid proforma promotion with retrospective effect and pay the arrears of salary and other allowances alongwith interest @18% per annum from the date they have fallen due, till payment is made.

III. Any other efficacious remedy/remedies and/or relief/reliefs, which this Hon"ble Tribunal considers fit, necessary and appropriate, in the circumstances of the case, kindly be granted to the applicant.

IV. Costs of the application together with applicant's counsel fee may kindly be ordered to be taxed against the State Respondent."

3. The case of the petitioner is that the respondents have not considered her representations for giving her pro-forma promotion under F.R.30 despite her being eligible for the same. The petitioner had completed her M.B.B.S. in the year 1968 and was appointed as a Woman Assistant Surgeon at Maternity Home, Kavardha District Durg on 17.2.1969. Her appointment-cum-posting order was issued on 8.7.1969 in continuation of earlier order. Subsequently, the petitioner was selected by the P.S.C. and her inter-se seniority was fixed at Sr. No.209 as per Memo dated 23.6.1970 filed as Annexure A/2-1. The petitioner, during her appointment also obtained her M.D. in Obstetrics and Gynaecology, which is also on record as Annexure A/22 and was promoted as Specialist in Gynaecology and was posted at District Hospital, Seoni on ad hoc basis along with others. Her promotion order is filed as Annexure A/3. She took over as the Gynaecologist at Seoni District Hospital on 5.10.1978. It is further the case of the petitioner that M.P.P.S.C. through an advertisement sought appointment for Class- I Officer and the petitioner being eligible, applied for the same and was selected as Class I Officer and was promoted as Chief Medical & Health Officer in the pay-scale of Rs.3200-4265/- as per order dated 12.1.1993 along with others, which is filed as Annexure A/5. She also completed her probation period on 17.1.1995, which is apparent from the order Annexure A/6 dated 21.3.1996. On 25.6.1996 vide order Annexure A/7 the petitioner was promoted as Joint Director in the pay-scale of Rs.3700-5000/-. In this order, the name of the petitioner appeared at Sr. No.11.

4. Until now there was no dispute or grievance, which could be raised by the petitioner but it all started by an order dated 24.11.1995 passed by the State Administrative Tribunal in O.A. No.1365/1989 which was filed by one Dr. M.K. Joshi who was aggrieved by the seniority assigned to him in the gradation list of Specialists of the Medical Department circulated by the State Government. The applicant Dr. M.K. Joshi's claim was that the Government has erred in determining his position amongst the Specialists w.e.f. 13.7.1989 whereas he was working as a Specialist Grade-I (Pathology) w.e.f. 30.10.1978. Dr. M.K. Joshi had claimed the position at Sr. No.10. It appears that subsequently when another list was issued on 24.2.1992 the applicant Dr. Joshi challenged the same in the aforesaid O.A. No.1365/1989. It is pertinent to mention here that Dr. M.K. Joshi had also impleaded the Specialists shown in the list from Sr. No.11 to 371 in the impugned gradation list as respondent No.3 to 364 in O.A. No.1365/1989, who remained ex parte despite service of notice and the final order was passed by the State Administrative Tribunal on 24.11.1995 with the following observations:-

"14. In the light of the above, we direct that the seniority of Dr. Joshi in the Rank of Specialist Grade-1 should be reckoned w.e.f. 30.10.1978. We are not giving direction to assign him the seniority at Sr.No.10, on the consideration that there may be other officers included in Annex. "X" = A-21, who may have been working as Specialist Grade-1, on ad-hoc basis from dates prior to the appointment of Dr. Joshi as a Pathologist and they may have also worked continuously for more than 10 years. The State Government should consider such cases and rearrange seniority to assign them seniority from the date of continuous officiation. We are making such a direction to avoid future multiple litigation which may be initiated by the officers who are similarly placed as the applicant: - Dr. Joshi.

15. Stability and continuity of seniority in Cadres of Government Servants is sine-qua-non for efficiency. We, therefore, further direct that representation received, within three months of the pronouncements of this order and claiming revised seniority on the analogy of principle laid down in the instant case, may only be entertained.

16. The above direction be implemented within a period of four months. Shri Joshi will not be entitled to any financial benefit, as on his own admission, he has been given full benefits of FR- 24 and annual increments etc. of course as a result of revised seniority, Shri Joshi will have a claim to be considered for higher posts from the date his juniors had been promoted. The State will consider his claim of promotion within a reasonable period, of say six months, from the date of this order."

5. Thus, the State Administrative Tribunal in no unclear terms directed the Government to revive the seniority within a period of four months and it was also mentioned that Shri M.K. Joshi will have a claim to be considered for higher posts from the date his juniors had been promoted. It was further directed that the representations be received within three months from the date of this order and the rearranged seniority be effected. It is pertinent to mention here that Dr. M.K. Joshi was given the rank of Specialist Grade-I w.e.f. 30.10.1978. The aforesaid decision passed in O.A. No.1365/1989 was challenged by the State of Madhya Pradesh in SLP No.16228/1996, which was dismissed by the Hon"ble Apex Court on 9.9.1996.

6. Now reverting back to the facts of the present case, as per Annexure A/1, it is clear that the name of petitioner Dr. (Mrs) Ansuya Paraste finds place at Sr. No.176 whereas the name of Dr. M.K. Joshi, the applicant in O.A. No.1365/1989, finds place at Sr. No.372. It is also apparent that the petitioner has been promoted on the regular promotion as Specialist on 31.5.1989 whereas Dr. M.K. Joshi was promoted on 13.7.1989. Thus there is no dispute that the petitioner was senior to Dr. M.K. Joshi.

7. The contention of the petitioner is that Dr. M.K. Joshi was given the seniority from Sr. No.372 to 9A and his name was placed between Sr. No.9 and 10, who are Dr. K.K. Khare and Dr. C.M. Sankhala respectively as per order dated 4.4.1996 which is filed as Annexure A/12 whereas the name of the petitioner was to be inserted at Sr. No.9A in the seniority list of Specialists dated 24.12.1992. The further grievance of the petitioner is that on 18.10.1996 Dr. L.P. Mathur, who was at Sr. No.13 in the seniority list dated 24.12.1992 (Annexure A/1) was promoted to the post of Director, Health Services and on 24.10.1996 Dr. M.K. Joshi was promoted to the post of Chief Medical Officer and he was given the seniority w.e.f. 1.11.1989 which was the date on which his junior Dr. L.P. Mathur was promoted and as such Dr. M.K. Joshi was ordered to be placed below Dr. K.K. Khare and above Dr. A.K. Agrawal at Sr. No.11. Since there was specific order by the State Administrative Tribunal in O.A. No.1365/1989 (Dr. M.K. Joshi Vs. State of M.P.) for re-arranging seniority, the Government issued a circular in this behalf inviting objections from the affected Specialists within a period of one month from 4.2.1997. It is also contended by the petitioner that while the proceedings were going on, Dr. C.M. Sankhala also filed O.A. No.2073/1993 which was decided on 24.10.1997 whereby he has been ordered to be placed below the name of Dr. M.K. Joshi but above Dr. A.K. Agrawal vide order (Annexure A/15). In this order it was ordered by the State that Dr. Sankhala shall also be entitled for the pay and allowances in view of the order dated 24.10.1997 passed in O.A. NO.2073/1993. Since Dr. Sankhala was also retired hence he was given notional promotion as Joint Director vide Annexure A/16 on 20.6.1988 and has also been given all the benefits. The petitioner submitted her representation Annexure A/9 on 16.3.1998 after procuring the copy of the order dated 4.2.1997 (Annexure A/8) whereby the representations were invited. The petitioner came to

know about the circular dated Annexure A/8 on 10.3.1998 and promptly submitted her representation Annexure A/9 on 16.3.1998 after procuring the copy of the circular, which actually was never received, from the Department, which was to be furnished to her as per the order passed by the Tribunal on 24.11.1995. Despite her representation, the same was not considered and no order was passed. The petitioner has further submitted that she has worked diligently throughout her entire service period which until 1999 for 30 years and has contended that the State Administrative Tribunal vide order dated 24.11.1995 (Annexure A/23) in para 14 has directed that the seniority of Dr. M.K. Joshi in the rank of Specialist Grade-I shall be reckoned w.e.f. 30.10.1978 whereas the petitioner was already on the said list as ad-hoc Specialist w.e.f. 5.10.1978 which is reflected in Annexure A/3 read with Annexure A/4, hence she is entitled for promotion prior to his juniors Dr. M.K. Joshi, Dr. L.P. Mathur and Dr. C.M. Sankhala.

8. In return the respondents have refuted the contentions made by the petitioner and have stated that the petitioner has been assigned the proper seniority as per rules and has also been awarded the requisite pay scale for which she became entitled. It is further submitted by the respondents that the representation of the petitioner was decided on 16.8.1999 which is filed as Annexure R/1 and since she has already been granted Senior Pay-scale and the selection grade w.e.f. 1.1.1986 and 1.1.1990 respectively, hence the petition has become infructuous. It is also submitted by the respondents that in the order dated 24.11.1995 passed by the State Administrative Tribunal passed in O.A.No.1365/1989, it was directed to the State to consider the representation within three months of the pronouncement of the order but the petitioner submitted her representations in November, 1998 hence she cannot claim any benefit emanating from the aforesaid order.

9. Heard the learned counsel for the parties and perused the record.

10. From the record, it is apparent that the petitioner Dr. Ansuya Paraste was appointed as Woman Assistant Surgeon on 17.2.1969 whereas Dr. M.K. Joshi was appointed as Assistant Surgeon on 22.9.1970 which is apparent from the seniority list of J.D. as on 1.4.1999. It is also apparent that the petitioner was promoted as ad-hoc Specialist on 29.9.1978 (Annexure A/3) whereas Dr. M.K. Joshi was promoted as ad-hoc Specialist on 10.10.1978 (Annexure A/23). Thereafter on 30.10.1978, Dr. M.K. Joshi joined as Specialist and on 13.7.1989 Dr. M.K. Joshi was considered as regular Specialist vide Annexure A/1. Thereafter on 25.1.1991 Dr. L.P. Mathur was also promoted on the post of Chief Medical Officer by giving him seniority w.e.f. 1.11.1989 (Annexure A/14) and similarly Dr. L.P. Mathur was promoted to Joint Director on 8.7.1992 vide Annexure A/17. In O.A. No.1365/1989, Dr. M.K. Joshi claimed that his name may be placed at Sr. No.10 below Dr. K.K. Khare and above Dr. Sankhla which was decided on 24.11.1995 and the State Administrative Tribunal ordered that the seniority of Dr. M.K. Joshi in the rank of Specialist Grade I should be

reckoned w.e.f. 30.10.1978. It is also apparent that the State Government was also directed to rearrange the seniority to assign them seniority from the date of continuous officiation. It is also apparent from the order dated 16.08.1999 which is said to be passed in respect of the representation of the petitioner dated 23.7.1999, that the petitioner's promotion has been declined on the ground that her seniority list was considered from 15.7.1991 as Chief Medical Officer hence her name is not considered in the list dated 1.4.1992 which was prepared in respect of specialist category on 5.9.1998. Thus the petitioner's representation has not been rejected on the ground that she has not submitted her representation within three months time as directed by the State Administrative Tribunal vide order dated 24.11.1995. It is true that the petitioner was given higher pay-scale but it is equally true that her name was never considered for promotion for which she has continuously made her representations before the concerned authority. The respondents in their reply has not addressed to the aspect of discrimination which was meted out to the petitioner and has not replied to the grievance of the petitioner that her junior Dr. M.K. Joshi was given preference in promotion over and above her claim and despite being informed of the same the Government has clearly discriminated the petitioner. The petitioner has submitted her representations on 16.3.1998 (Annexure A/9), 29.8.1998 (Annexure A/10) and 20.11.1998 (Annexure A/11) but none of her representations made any impact on the Government, which only demonstrates Government's apathy towards an honest employee.

11. In the result, on the basis of the discussion as above this petition deserves to be allowed and is accordingly allowed. We find that the petitioner has made out a case for pro-forma promotion and she is found entitled for the same, which has long been denied to her, hence we direct the respondents to give a pro-forma promotion to the petitioner on the post of Joint Director w.e.f. 7.7.1992 i.e. a day earlier to her junior Dr. C.M. Sankhala was promoted vide Annexure A/16 with all consequential benefits and further the petitioner be given a proforma promotion on the post of Director, Health Services w.e.f. 17.10.1996 i.e. a date earlier to her junior Dr. L.P. Mathur was promoted vide Annexure A/18 with all the consequential benefits. It is further directed that all other consequential benefits resulting from the petitioner's promotion be also given to her within a period of six weeks from today.