

Subhash Kumar Dubey Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-24-2013

Appellant : Subhash Kumar Dubey

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. K.N. Pethia

Judgement :

HIGH COURT OF MADHYA PRADESH : JABALPUR Writ Petition No.16485/2005
Subhash Kumar Dubey Vs. State of Madhya Pradesh and others. PRESENT :
Honble Shri Justice K.K. Trivedi. Shri K.N. Pethia, learned counsel for the
petitioner. Shri Rajesh Tiwari, learned Government Advocate for the
respondents/State.

ORDER

(24.09.2013) By filing this writ petition under Article 226 of Constitution of India, the petitioner initially claimed a relief of direction to the respondents to convene a Departmental Promotion Committee (hereinafter referred to as the DPC for brevity) and to consider the claim of the petitioner for grant of retrospective promotion. The petitioner has also claimed quashment of proceedings of D.P.C. dated 09.05.2005 as also quashment of orders dated 16.05.2005 and 09.12.1998. It is contended by the petitioner that in terms of the provisions of the Rules governing the services, the petitioner had attained the eligibility to be considered for promotion after completing three years of service, but instead of considering

such claim only because on earlier occasion an ineligible employee was promoted on the post of Junior Accounts Officer, the DPC meeting was not convened. 2 After filing of a return by the respondents, indicating that the petitioner was granted promotion in the year 2006 exhaustive amendment was made in the writ petition claiming retrospective promotion w.e.f. year 2001, and it was contended that only because timely the D.P.C. was not held the legitimate claim of the petitioner was not considered. It is thus contended that after quashment of all those proceedings, the respondents be commanded to grant the benefit of promotion to the petitioner with retrospective effect.

2. Initially the return was filed by the respondents saying that since the petitioner has been promoted on the post of Junior Accounts Officer by an order issued in the year 2006, the claim made by the petitioner has been satisfied and the writ petition has rendered infructuous. However, when the amendment was made in the return, by filing an additional return, the respondents have very categorically contended that the petitioner was not entitled to grant of any promotion with retrospective effect in view of the fact that the petitioner has completed the eligibility conditions in the year 2001, and thereafter no DPC was convened for considering the claims of persons like petitioner. It is further contended that there was a considerable change in the setup as State Government took a decision to abolish the divisional office where the posts of Junior Accounts Officers were sanctioned. Since such a decision was taken in the year 1999, divisional offices were abolished, the petitioner had not attained the eligibility till that time to be considered, even if the respondent No.5 was promoted 3 in his division by a divisional committee, such an order of promotion of respondent No.5, cannot be made a ground for grant of retrospective promotion to the petitioner, who was not eligible till the year 2001 for such promotion. Accordingly, it is contended that on merit as well the petitioner has no claim whatsoever and the petition is liable to be dismissed.

3. Heard learned counsel for the parties at length and perused the record.

4. Undisputedly, by now during pendency of the present petition, the petitioner has attained the age of superannuation and has retired. It appears that because of this

reason, the respondent No.5 or any other person has not raised any objection with respect to whatsoever claim is made in the present writ petition as the interest of none of them would be adversely affected, in case any relief is granted to the petitioner. Now to examine the claim of petitioner on merits. It is not in dispute that the service of the petitioner was governed by the Rules known as M.P. Public Health and Family Welfare (Directorate of Health Services) Class-III Ministerial Service Recruitment Rules, 1989 (hereafter referred to as '1989 Rules'). It is not in dispute that the posts of Junior Accounts Officers and the post of Camp Coordinator are included in the said Rules. It is specifically prescribed that there are four sanctioned posts of Junior Accounts Officers which are to be filled 4 in 100% by promotion of the members of service. The channel of promotion is prescribed in Schedule IV of the 1989 Rules. The posts of Junior Account Officers can be filled in by promotion of Assistant Superintendent/ Manager Medical Store/ Auditor/ Camp Coordinator and Accountant (MDT). The Head Clerk division level, Assistant Head Clerks are to be promoted on the posts of Assistant Superintendent/Manager Medical Store/ Auditor/ Camp Coordinator /Accountant (MDT). The only essential qualification and experience prescribed for such promotion is passing of accounts training and three years of service on the Feeder post. The classification as given in the Rules nowhere prescribed that there are different division level posts. It is nowhere prescribed that the setup as indicated in the Schedule of 1989 Rules would be applicable only and only in the directorate of Health services and not at the division level. On the other hand, Schedule I (b) of the 1989 Rules categorically indicates that these posts are at division level as well. Such a classification is prescribed as per Rule 5 of 1989 Rules, where a power is provided to the State Government to increase or reduce the member of services included in the Rules either on permanent or temporary basis.

5. When the stand is taken by the respondents categorically saying that the division level offices of the department were abolished in the year 1999 it means that those posts which were sanctioned at division level, either were shifted in other 5 establishment or to the directorate itself, but this fact is neither explained nor disputed by the petitioner. Now, if there were only four posts of Junior Accounts Officer including the Camp Coordinator the holders of other Feeder posts were also to be considered, it was to be demonstrated by the petitioner that

the post which was required to be filled in by promotion of Camp Coordinator was lying vacant when the petitioner has attained the eligibility, but was not filled in by inaction on the part of the respondents, and any junior to the petitioner was given the benefit of promotion on the said post.

6. The petitioner has contended that he was initially appointed in the year 1971 as Accountant-Cum Store Keeper-Cum Clerk in Family Planning under the Subordinate services of the department. Later on, since he has passed the accounts training examination, he was promoted. Ultimately, the promotion to the post of Camp Coordinator was granted to the petitioner on 22.07.1998. Three years service on the said Feeder post for promotion on the post of Junior Accounts Officer was completed on 21.07.2001. It was to be pointed out by the petitioner that since the post was available for promotion of Camp Coordinator, the petitioner alone was the qualified person for such promotion, but was not promoted, thereby a fundamental right of consideration for promotion was denied to him. However, the pleadings in this respect are silent. What the petitioner has tried to emphasize that the person 6 ineligible to be promoted on the post of Junior Accounts Officer posted in a different division was promoted in the year 1998 and such an order of promotion was bad. How could such a relief be claimed when during existence of the division office, in some other division, some other person was promoted. Such a stand taken by the petitioner is misconceived.

7. From the material available on record, it is clear that the petitioner when approached this Court on earlier occasion, his writ petition was disposed of with a direction to decide the representation of the petitioner by a speaking order. By passing such a speaking order contained in Annexure (P/11), the fact was brought to the notice that in terms of the joint seniority of all the Feeder posts as prepared by the department, the petitioner was not within the zone of consideration even when he completed the eligibility conditions of experience of working of three years on Feeder post in the year 2001 and, therefore, was not considered for promotion. If at the relevant time, the post of Junior Accounts Officer sanctioned in the division where the petitioner was posted become available, before the abolition of the said division office, and no consideration of the claim of petitioner was done for grant of such promotion, it cannot be said that any illegality was committed

since in the year 1999 when the division office was abolished, the petitioner had not completed the requisite years of service on the Feeder post. It is not the case of the petitioner that he was illegally superseded in the matter of promotion on the post of Camp Coordinator. Thus from these facts, it is clear that there was no illegality committed by the respondents in not holding the D.P.C. and not promoting the petitioner.

8. If the minute scrutiny of the 1989 Rules is done, it appears that before abolition of the division office, the posts were separately sanctioned in such divisions. The appointing authority of such post was the division Joint Director. This reflects that such being a Class-III post, only the division level seniority was required to be maintained. Prior to the abolition of the division office, the post of Junior Accounts Officer was not State Cadre post and, therefore, if somebody though junior to the petitioner, working in a different division if was promoted on the post of Junior Accounts Officer prior to the promotion of the petitioner, it cannot be said that any illegality was committed in the matter of such promotion of respondent No.5. Even otherwise, it is not mandatory requirement of the Rules that the D.P.C. should be convened every year. The provisions made in 1989 Rules in this respect are that a D.P.C. shall meet at the interval ordinarily not exceeding one year. The use of word ordinarily means that in exceptional circumstances, even the holding of the D.P.C. can be deferred. As has been pointed out by the respondents in their return, since the division offices were abolished in the year 1999, holding of D.P.C. was deferred for a considerable long time only because the entire setup was to be changed. The allocation and shifting of the post was required to be done. In these circumstances also if timely the D.P.C. was not convened and timely the claims were not considered, it cannot be said that any illegality was committed by the respondents and their action was violative of any mandatory provisions of 1989 Rules.

9. For the discussions made herein above, there is no substance in the present writ petition which fails and is hereby dismissed. However, there shall be no order as to costs. (K.K. Trivedi) Judge b