

Dinesh Kumar Khare Vs. State of Madhya Pradesh and anr.

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Court : Madhya Pradesh

Decided On : Aug-08-2005

Reported in : 2006(1)MPHT185; 2005(4)MPLJ10

Judge : A.K. Shrivastava, J.

Appeal No. : Writ Petition No. 5978/2003

Appellant : Dinesh Kumar Khare

Respondent : State of Madhya Pradesh and anr.

Advocate for Def. : Ashok Agrawal, Govt. Adv.

Advocate for Pet/Ap. : Sanjay Sanyal and ;Girish Kekre, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.K. Shrivastava, J.

1. This petition was originally filed before the State Administrative Tribunal at Jabalpur on 14-12-1989. However, on account of abolition of the Tribunal, this petition has been received by this Court for its adjudication.

2. By this petition, the petitioner is seeking following reliefs :-

(i) The operation of the impugned order (Annexure R-1) may kindly be stayed as also the transfer made thereunder and the same be declared null and void.

(ii) The respondent Nos. 1 and 2 be directed to not to give effect to the new Scheme of October, 1989 in so far as it related to abolition of the Time Bound Promotion Scheme with retrospective effect.

(iii) (a) That the applicant is entitled to seniority as Reader from 1985 with all benefits thereunder.

3. Plain and simple case of the petitioner is that after completing requisite years of qualifying service under the Time Bound Promotion Scheme the petitioner was promoted on the next higher pay scale vide order Annexure R-2, dated 28-1-1987/31-1-87. In pursuance to the said Scheme the petitioner was benefited by the next higher pay scale which was being enjoyed by the Reader. Thereafter, vide order dated 29-11-89 regular promotion to the post of Reader was given to the petitioner and he was directed to be posted at Govt. Engineering College, Sagar. The contention of learned Counsel for the petitioner is that not only under Time Promotion Scheme, the petitioner was benefited by next higher pay scale of the promotional post of Reader, but in fact he was also promoted to the post of Reader and, therefore, if under the regular promotion order which is the outcome of the DPC, the promotion should be on the next higher post, i.e., post of Professor. In support of his contention, learned Counsel for the petitioner has placed heavy reliance on the decision of the Supreme Court in the case of Dwijen Chandra Sarkar and Anr. v. Union of India and Ors. : (1999)ILLJ338SC . On these premised submissions, it has been submitted by the learned Counsel for the petitioner that impugned order Annexure R-1, dated 29-11-89 by which petitioner has been directed to be promoted on the post of Reader and posted at Sagar be quashed.

4. On the other hand, Shri Agrawal, learned Govt. Advocate has submitted that the idea behind Time Bound Promotion Scheme is that the employees who have completed requisite years of qualifying service but have not been promoted, in order to benefit them, next higher grade is being provided to them, but it would not mean that if regular promotion order which is the outcome of the DPC, is provided

to them they will not opt the same and will not join the place of their posting.

5. After having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

6. The contention of the learned Govt. Advocate could have some sanguity in case next higher grade of the promotional post would have only been given to the petitioner, but, in the present case the situation is otherwise and facts are quite distinguishable. In the present case not only the next higher pay scale of the promotional post was given to the petitioner under the Time Bound Promotion Scheme, but in fact he was also given literal and actual promotion to the post of Reader from the post of lecturer vide order Annexure R-2, dated 28-12-87/31-12-87. The matter would have been quite different if the petitioner would not have been benefited by the promotional post of Reader. In that situation there may have some case in favour of respondents. However, as discussed hereinabove and which is not at all in dispute that under the above Scheme not only grade of the promotional post of Reader was given to the petitioner, but in fact he was promoted to the post of Reader and if that is the position, the view of this Court is that if at all any promotion is to be accorded to the petitioner, he should have been promoted to the next higher post, i.e., Professor. In this context it will be fruitful to rely the decision of the Supreme Court in the case of Dwijen Chandra Sarkar (supra), wherein in Para 20 the Apex Court has held as under :-

20. In our view, the Tribunal was in error and its order is set aside. The appellants will be entitled to the higher grade from the date they completed 16 years of service-- computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P & T Department. They will be so entitled as long as they remain in the post of Assistant and till their normal promotion to a higher post according to the Rules. The difference between the emoluments in the grade as due to them and the amount which was actually paid to them, shall be computed and be paid within a month from the date of this order. There will be no order as to costs. (Emphasis supplied)

In this case the Supreme Court has categorically held that the employees shall be entitled to be benefited by the pay scale as provided under the Time Bound

Promotion Scheme till they are promoted to a higher post according to the Rules.

7. If the ratio decidendi of the case of Dwijen Chandra Sarkar (supra), is tested on the touchstone of the present factual scenario it would reveal that this decision is squarely applicable in the present case. If at all any promotion is to be accorded to the petitioner on the basis of regular DPC, it should be to the next higher post, i.e., post of Professor.

8. Looking to the totality of the facts and circumstances of the present case, the view of this Court is that the impugned order Annexure R-1 so far as it relates to the petitioner can not be allowed to remain stand and the same is hereby quashed.

9. The petition is allowed with no order as to costs.

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