

R.C. Dubey Vs. State of Mp and Others

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Court : Chhattisgarh

Decided On : Aug-05-2011

Judge : Satish K Agnihotri & Radhe Shyam Sharma

Appeal No. : WRIT APPEAL No 320 of 2010

Appellant : R.C. Dubey

Respondent : State of Mp and Others

Judgement :

(APPEAL UNDER SECTION 2(1) OF THE CHHATTISGARH HIGH COURT (APPEAL TO DIVISION BENCH) ACT, 2006.)

1. The instant intra-court appeal arises from the order dated 10.08.2010 (Annexure A/1) passed in W.P.(S) No. 3033 of 2005 (R.C.Dubey v. Principal Secretary, Department of Agriculture, State of Madhya Pradesh, Bhopal and Others) passed by the learned Single Judge.

2. The appellant/petitioner preferred an application before the Madhya Pradesh State Administrative Tribunal, Bench at Raipur, being O.A. NO. 779/1999, which was transferred to this Court and re-numbered as W.P.(S) No. 3033/2005. The appellant challenged the supercession and promotion of his junior i.e. respondent No. 4 on the post of Upper Division Clerk, (Assistant Grade II), on several grounds. The learned Single Judge, after considering all the aspects of

the matter, held that adverse remark in the Annual Confidential Report (for short 'ACR') considered in the Departmental Promotion Committee (for short 'the DPC') held on 25.04.1997, were un-communicated to the appellant. Thus, treating the appellant unfit for promotion was held to be illegal and the State/respondent No. 1 to 3 were directed to consider the case of the appellant for promotion to the post of Upper Division Clerk in accordance with the rules and guidelines and in light of the observations made in the judgment as on the earlier date. However, it was made clear that if the appellant was found fit for promotion from the earlier date, the appellant shall be entitled to all consequential benefits of notional pay fixation, seniority, except the arrears of pay. The appellant has challenged a part of the judgment to the extent where the arrears of pay was denied.

3. Shri Pandey, learned counsel appearing for the appellant would submit that since the direction was to consider the case of the petitioner from the back date when the respondent No. 4 was considered for promotion on the post of Upper Division Clerk, the appellant was entitled to difference of pay also as the appellant was denied promotion on account of consideration of the uncommunicated ACRs.

4. On the other hand, Shri Bhatia, learned Deputy Advocate General appearing for the State/respondent No. 1 to 3 would submit that the appellant was not entitled to difference of salary as he never worked on the post of Upper Division Clerk before the case of the appellant was directed to be considered for promotion to the post of Upper Division Clerk. Thus, on the principle of 'no work, no pay' the appellant was rightly not held as entitled to benefits of arrears of difference of salary between the post of Upper Division Clerk and the Lower Division Clerk.

5. In this appeal, the question which falls for consideration is that whether the appellant is entitled to difference of salary, if the appellant was found fit for promotion in the DPC meeting held as on 25.04.1997. The appellant was granted notional pay and fixation of seniority as a consequence.

6. In *Paluru Ramkrishnaiah and Others v. Union of India and Others*, the Supreme Court upheld the principle of 'no work, no pay' and held that an employee will not be entitled to any pay and allowances during the period he did not perform the duty of higher post although after due consideration he was given proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted, it was held that the employee was not entitled to claim any financial benefit retrospectively.

7. The aforesaid principle of 'no work, no pay' was reiterated by the Supreme Court in *Virendra Kumar, General Manager, Northern Railways, New Delhi v. Avinash Chandra Chadha and Others*.

8. In *State of Kerala and Others v. E.K. Bhaskaran Pillai*, with regard to grant of monetary benefits with retrospective effect, the Supreme Court held that so far as grant of monetary benefit with retrospective operation is concerned, that depends upon case to case. It was further observed as under:

"4..Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not."

9. The Supreme Court, in *Union of India v. B.M. Jha*, observed as under:

"5...However, this Court in *State of Haryana v. O.P. Gupta* and followed in *A.K. Soumini v. State Bank of Travancore* has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay". The learned Division Bench in the impugned judgment has placed reliance on *State of A.P. v. K.V.L. Narasimha Rao*. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of

salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion."

10. In *State of Haryana and Others v. S.K.Khosla and Others*, the Supreme Court held as under:

"2. Heard the learned counsel for the appellants. He brought to our notice a decision of this Court in *State of Haryana v.O.P. Gupta* where under in respect of an identical matter arising out of similar proceedings of even date this Court while setting aside the decision of the High Court allowed the appeal at the instance of the State and held that in the circumstances noticed in that case which are identical as well in the cases before us, the question of payment of arrears of salary with retrospective effect from the notional dates does not arise since, indisputably the respondents had never worked during that period in the promotional post, the settled principle in such cases being, "no work, no pay". The said principle applies with equal force to the cases before us too. Applying the ratio of the said decision these appeals are also allowed and the orders of the High Court are set aside and the writ petitions before the High Court shall stand dismissed. No costs."

11. In the case on hand, DPC meeting was held on 25.04.1997 before creation of the State of Chhattisgarh under Madhya Pradesh Reorganization Act, 2000. The petitioner had not worked on the promoted post of Upper Division Clerk. After carving of the State of Chhattisgarh, even the assets and liabilities have been allocated. Thus, at this stage, the petitioner is not entitled to any relief in the facts of the case and also on the principle of 'no work, no pay' with retrospective effect when the appellant had actually not worked on the promoted post of Upper Division Clerk.

12. In view of the above, we do not find any error in the order dated 10.08.2010 (Annexure A/1), passed by the learned Single Judge.

13. Consequently, the appeal is dismissed. No order as to costs.