**IN THE HIGH COURT OF****ORISSA**

O.J.C. No. 14491 of 2001

Decided On: 02.04.2010

Appellants: **Dr. Akshya Kumar Mohapatra**
**Vs.**
Respondent: **State of****Orissa** **and others**

**Hon'ble Judges/Coram:**
A.S. Naidu and B.N. Mahapatra, JJ.

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**JUDGMENT**

**A.S. Naidu, J.**

1. The petitioner, it is submitted, after being selected by the Governing Body of Hindol College, Khajuriakata in the district of Dhenkanal joined in the post of Lecturer in Oriya on 19.8.1977. The said College is an aided educational institution as defined under Section 3(b) of the Orissa Education Act, 1969. The Governing Body of the College sent the proposal to accept the appointment of the petitioner to the Director, Higher Education Orissa, Bhubaneswar and the Director approved the appointment by order dated 17.3.1989 (Annexure-2).

2. According to Mr. Das, the petitioner was receiving grant-in-aid in the U.G.C. Scale of Pay which was revised time and again as per the stipulations made by the University Grants Commission. The petitioner, thereafter, approached the authorities to grant him the benefit of 'Career Advancement Scheme' i.e. the Scale applicable to Senior Lecturer and Selection Grade Lectures/Readers. The said application having been rejected the petitioner has approached this Court mainly praying to issue direction to opposite party Nos. 1 and 2 to grant the benefits of Career Advancement Scheme and direct the said opposite parties to sanction the Senior Lecturer scale to him w.e.f. 01.6.1995 and the Selection Grade/Reader Scale w.e.f. 01.6.2000 along with arrears.

3. To substantiate such prayer, the petitioner relied upon Clauses 3.7 and 3.8 of the Resolution dated 06.10.1989 (Annexure-3) issued by the Government of Orissa, Education and Youth Services Department. The said Resolution deals with Revision of Pay Scale of Teachers in Colleges and other measures for maintenance of standard in Higher Education. For the sake of brevity and better appreciation, Clauses 3.7 and 3.8 is quoted herein below :

3.7 Every lecturer will be placed in a Senior Scale of Rs. 3,000-5,000/- if he/she has

3.7.1. Completed 8 years of service after regular appointment with relaxation as provided in para 3.6.6.

3.7.2. Participated in two refresher course/summer institutes, each approximately 4 weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the U.G.C.

3.7.3. Consistently satisfactory performance appraisal reports.

3.8 Every lecturer in the Senior Scale will be eligible for promotion to the post of Reader in the revised scale of pay of Rs. 3,700-5,700/- if he/she has :-

3.8.1. Completed 8 years of service in the Senior Scale, provided that the requirement of 8 years will be relaxed if the total service of the lecturer is not less than 16 years.

3.8.2. Obtained a PH.D degree or an equivalent published work

3.8.3. Made some mark in the areas of scholarship and research as evidenced by self-assessment, reports of referees, quality of publication, contribution to educational renovations, design of new courses and curricula, etc.

3.8.4. Participated in two refresher courses/summer institutes each of approximately four weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the U.G.C. after placement in the Senior Scale; and

3.8.5. Consistently good performance appraisal reports.

4. According to the petitioner a conjoint reading of the aforesaid clauses vis-a-vis Section 7-C (4a) of the Orissa Education Actwould lead to an irresistible conclusion that the petitioner is entitled to Senior Lecturer Scale of pay w.e.f. 29.8.1990 and Reader Scale of Pay w.e.f. 29.8.1998 i.e. eight years thereafter. The petitioner having completed Ph.D degree in the mean while, his date of entitlement, it is submitted, is to be propound for three years i.e. instead of 29.8.1998 the petitioner had became eligible to get Selection Grade w.e.f. 29.8.1995. The petitioner also alleges discrimination on the ground that some other equally circumstanced lecturers have been favored with aforesaid benefits whereas the same was denuded to him. On the basis of such submission, it is averred the Director, Higher Education, without properly appreciating the facts and position of law by his order dated 17.8.2000 (Annexure-8) held that the petitioner was not entitled to the benefits under Career Advancement Scheme and it is a fit case where direction should be issued to extend the benefits to the petitioner.

5. After receiving notice a counter affidavit has been filed by opposite party Nos. 1 and 2 denying the averments made in the Writ Petition. It is further averred that the post of the petitioner was approved by opposite party No. 2 on 17.3.1989 to receive 1/3rd grant-in-aid w.e.f. 01.6.1987. The petitioner was, therefore, eligible for Senior Lecture Scale only w.e.f. 01.6.1995. The service particulars and available C.C.Rs of the petitioner were sent to the Government for consideration of the Screening Committee and for placement of the petitioner under Career Advancement Scheme. The Screening Committee and in its meeting held on 24.2.2000, 25.2.2000, 03.3.2000 and 09.3.2000 considered the documents but then did not recommend the case of the petitioner on the ground that there were adverse remarks in the C.C.R. for the year 1991-92 and the C.C. Rs. for the year 1992-93, 1993-94 and 1994-95 were not available. The said decision was communicated to the petitioner on 29.6.2000. It is further averred that though the petitioner joined on 29.8.1977 his services were approved for grant-in-aid only w.e.f. 01.6.1987 and as such his date of joining has to be considered as 01.6.1982 for all acts and purposes. After completion of five years of continuous service against an approved post the petitioner became eligible to receive grant-in-aid w.e.f. 01.6.1987. According to Rules, it is stated the petitioner would be entitled to Career Advancement Scheme after completion of 5 years of service against an approved post and as such he would have been eligible for placement as Senior Lecturer w.e.f. 1.6.1992. It is further averred that since the petitioner acquired Ph.D degree on 18.9.2000, he would be eligible for consideration for Reader Post thereafter in consonance with the Government Resolution dated 19.3.1990. Thus it is stated, the claim of the petitioner, to count his services w.e.f. his date of joining i.e. from 29.8.1977, was not tenable so also the claim of the petitioner for placement as Reader w.e.f. 29.8.1995. It is further stated that the petitioner had not completed Ph.D degree by 29.8.1995. The benefit of three years of service for having Ph.D. degree can only be granted from the date of acquisition of Ph.D degree and not prior to that date. In view of the above information, the Screening Committee did not consider the case of the petitioner.

6. After receiving the counter affidavit, a rejoinder affidavit has been filed by the petitioner mainly asserting that non-availability of the C.C.Rs for a particular period, cannot be a ground for rejection of the claim of the petitioner. It is further averred that the adverse remarks in the C.C.R. for the year 1991-92 having not been communicated to the petitioner should not have been considered by the Screening Committee.

The legal position with regard to uncommunicated C.C.R. entries has been discussed by the Supreme Court in the case of Dev Dutt v. Union of India and Others. reported in AIR 2008 SC 2513. In the said case the Supreme Court held that fairness and transparency in public administration requires that all entries whether poor, fair, average, good or very good in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service, must be communicated to him within a reasonable period so that he can make a representation for its up-gradation. The rule will not apply to military officers because the position for them is different and will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State.

In the case of Vijay Kumar, I.A.S. v. State of Maharashtra and others reported in   : AIR 1988 SC 2060 the Supreme Court observed that denial of Senior Time Scale to the petitioner while granting it to his juniors relying upon the confidential report which was not communicated is unjustified and amounts to arbitrary action.

This Court in the case of Shuvansu Kumar Mohanty v. State of Orissa and others reported in   : 69 (1990) C.L.T. 634 observed that on the basis of un-communicated confidential report, denying the promotion, was not justified and is contrary to the principle of law.

7. Learned Addl. Government Advocate on the other hand submitted that the petitioner worked as an Administrative Bursar for a pretty long period, i.e. since 1990 and there is likelihood that he had destroyed all the records to suite his own purpose. It is further submitted that action is being taken to conduct an enquiry to ascertain the latches done at that level at the College Office. Further it is stated that on the basis of the available records the Screening Committee took a decision and it cannot be held that any illegality or irregularity has been committed.

8. Heard learned counsel for the parties at length Perused the materials available on record diligently. After giving an anxious thought this Court feels that in fact the proposal sent to grant the benefits under the Career Advancement Scheme, as well as sanction of Senior Lecturer Scale of pay to the petitioner w.e.f. 01.6.1995 and the Selection Grade/Reader Scale w.e.f. 01.6.2000 was rejected mainly on the ground that the C.C.R.s of the petitioner for the year 1991-92 was adverse and that the C.C.Rs for the others years i.e. 1992-93, 1993-94 and 1994-95 were not available. It is well settled that the petitioner being a Lecturer was not the custodian of the C.C.R's which are confidential documents. Thus no fault can be found with the petitioner with regard to non-availability of such documents, unless of course on enquiry the authorities come to a conclusion that such C.C.Rs were entrusted to the petitioner. Not considering, justified claim, of the petitioner merely on the ground that C.C.Rs wee not available is unjustified and unreasonable. It appears that some of the employees who were juniors to the petitioner have been favored with the aforesaid benefits. Thus, not allowing the petitioner to enjoy such benefits amounts to arbitrariness. That apart fact remains the adverse remarks made in the C.C.R. for the year 1991-92 was never communicated to the petitioner. Law is no more res integral that unless an adverse C.C.R. entry is communicated to the person concerned, the same cannot be utilized against him.

9. In view of the aforesaid clear position, this Court feels that ends of justice and equity will be better served if this Writ Petition is disposed of directing the Director, Higher Education - opposite party No. 2 to call for the documents from the concerned authorities and dispose of the representation filed by the petitioner de novo in the light of the observation made above, and directs accordingly. The entire exercise shall be completed within a period of three months from the date of communication of this judgment. To facilitate early disposal, liberty is granted to the petitioner to file a fresh application enclosing all relevant documents within a period of three weeks hence.

B.N. Mahapatra, J.

10. I agree.