

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 5895 of 2016

UMASHANKAR SHARMA

Versus

THE STATE OF MADHYA PRADESH THR AND OTHERS

Appearance:

Shri Shashank Indapurkar - Advocate for the petitioner.

Shri Sohit Mishra – Govt. Advocate for the respondents/State.

Reserved on	:	17/06/2025
Delivered on	:	02/ 07/2025

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

The present petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

"(i) That the impugned order dt.27.8.2013 (Annexure P/1) passed by the respondents whereby the principle of no work no pay was applied may kindly be quashed.

(ii) That a direction may kindly be issued to the respondents to open the sealed

cover proceeding regarding the petitioner and he may be granted the actual benefit of promotion from the date when his juniors were promoted i.e. 1988.

(iii) That since the termination order dt.13.3.1991 (Annexure P/2) is quashed, therefore a direction may kindly be issued to the respondents to grant the actual benefit from the date of termination till the date of retirement after due fixation of salary after granting the promotion and accordingly the arrears of salary and other benefits be also paid to the petitioner.

(iv) That a direction may also be issued to the respondents to pay the interest at the rate of 12% on the amount of pension and pensionary benefits, which have been unnecessarily retrained by the respondents, right from 2005 when the order of termination was quashed up to the date when the actual payment has been made with further directions to the respondents to refund the amount which has been deducted alongwith the interest from the PPO.

(v) That the costs of this petition be also awarded to the petitioner."

2. Short facts of the case are that the petitioner was initially appointed as Agricultural Assistant and in the year 1971 was promoted on the post of Senior Agriculture Development Officer (SADO). Thereafter, his services were transferred to Panchayat Department in the year of 1981 and in the year 1988, his services were repatriated to his parent department and he was again posted as Senior Agriculture Development Officer (SADO). In the meantime, the process of promotion on the post of Assistant Director Agriculture was initiated but on account of departmental inquiry initiated in the year 1983 against the petitioner, the petitioner's case was kept in a sealed cover. Thereafter, on 13.03.1991 the departmental inquiry against the petitioner culminated in his dismissal from service. Against the aforesaid order

of dismissal dated 13.3.1991, the petitioner preferred an original application before the erstwhile SAT, which was registered as O.A.No.3131/1991, which ultimately after demolition of SAT was transferred to this Court and was registered as W.P.No.2639/2003 and was allowed by vide order dated 22.11.2005, whereby his order of termination was quashed and the matter was remanded back to the District Inquiry Officer to hold an inquiry against the petitioner in accordance with law after following the procedure laid down under Rule 14 of the M.P. Civil Services (Classification Control and Appeal) Rules, 1966 and providing opportunity of hearing. It was further directed that the enquiry shall be completed within a period of six weeks from the date of communication of the order, but the said enquiry never commenced after remand, therefore, on 23.04.2010, the District Inquiry Officer gave the opinion to the Commissioner, Bhopal Division Bhopal to close the departmental inquiry because of unnecessary pending of case for years. In pursuance to the aforesaid opinion of the District Enquiry Officer, State Government vide order dated 27.08.2013 dropped the enquiry.

3. Prior to dropping of the enquiry in the year 2001, the

petitioner attained the age of superannuation, therefore, after dropping of the enquiry there was no question of his reinstatement in service. But in wake of dropping of enquiry, the petitioner though was entitled for reinstatement but could not be reinstated due to his superannuation, but was entitled for extension of the actual monetary benefits but the same were also denied on the principle of "*no work no pay*" and further was also liable to be promoted as his recommendations were kept in sealed cover to the post of Assistant Director Agriculture but neither of the two benefits were extended to him, i.e. he was not paid the salary from the date of his termination up to the actual date of retirement nor notional benefits were extended to him, on the contrary a PPO was issued on 04.07.2016 and the retiral dues were paid to him. While issuing the PPO certain amount towards gratuity alongwith interest was also deducted instead of giving interest right from the date of his retirement, which was a mistake on the part of the respondents, as the payment of retiral dues to the petitioner was not due to any delay caused by the petitioner, rather the delay was caused in making the payment of the retiral dues by the respondents, which

required to be compensated with interest. Aggrieved by the aforesaid act of the respondents, the present petition has been filed.

4. Learned counsel for the petitioner while placing reliance in the matter of *Union of India Vs. K.V. Jankiraman* reported in (1991) 4 SCC 109; has argued that when an employee is completely exonerated from a departmental enquiry, meaning thereby that he is not 'found blameworthy in the least and is not even visited with the penalty of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but the respondents not only denied the petitioner the promotion but also denied the payment of salary for the period from the date of his termination to the date of his exoneration from the departmental enquiry, which is *per se* illegal.

5. Learned counsel has further argued that though the termination of the petitioner was found to be illegal and contrary to the provisions of rules and, therefore, was quashed and the matter was remanded back to the competent authority in the year 2005 with

direction to conclude the enquiry afresh within a period of six weeks, which was not concluded rather after some period of time it was dropped by the State itself, he was entitled for actual benefits accrued to the post on which he was working but the said monetary benefits was denied on the principle of "*no work no pay*", which was a perverse approach and as the petitioner was later on exonerated from the departmental enquiry but had completed the age of superannuation, he was entitled for notional promotion and the pay attached to the said post as he could not have been reinstated but that too has been denied which in the light of settled legal position is bad in law. For the simple reason that had the enquiry been concluded within time, certainly the petitioner would have been exonerated and promoted and could have been got the benefit of promotional post, thus, in such facts and circumstances, the petitioner was and is entitled to be promoted or entitled to get benefits notionally of the post of promotion. It was, thus, submitted that the present petition be allowed and the relief as prayed be granted to the petitioner.

6. Learned counsel has also argued that since there was a delay

in payment of retiral dues, the petitioner is entitled for interest thereupon from the date of his retirement till the actual date of payment.

7. *On the other hand*, learned counsel for the respondent/State has argued that the reliefs as claimed by the petitioner are not available to him, for the simple reason that the departmental enquiry which was initiated against the petitioner in the year 1983, after finalizing the penalty of dismissal from service vide order dated 13.03.1991 were remitted back to reinitiate the proceedings as per directions of this Court passed in W.P. No.2639/2003 vide order dated 06.09.2003 but no decision thereafter could be taken on merits in respect of the charges leveled against the petitioner and the matter could not be finalized in absence of adequate evidence, as most of the witnesses were not available either on account of attaining the age of superannuation or they were not alive, therefore, the petitioner got benefited from the charges leveled for want of inadequate evidences, hence proceedings were dropped and this relevant fact could not be ignored while deciding the issue involved and also during this process prior to dropping of the enquiry by the

State on 27.08.2013 the petitioner stood retired on attaining the age of superannuation, therefore, the order dated 13.03.1991 by which he was dismissed from services was cancelled and the status of the petitioner, which existed on 30.09.2009, as per FR 54-B, the suspension period was commuted as working period for all purposes and the matter was decided and settled by applying the principle of "*no work no pay*", thus, *prima facie* there is no infirmity in the impugned order and the petitioner is not entitled for any benefit, as has been claimed. To bolster his submissions, learned counsel has placed reliance in the matter of ***Government of West Bengal & Ors. Vs. Dr. Amal Satpathi & Ors.*** reported in (2024) INSC 906; and has submitted that it is well Settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. Thus, though the right of the petitioner to be considered for promotion is recognized, which is a fundamental right under Articles 14 and 16(1) of the Constitution of

India, he does not hold an absolute right to the promotion itself and the promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Hence, the sealed cover procedure, which has been followed in the case of the petitioner would even not come to his rescue and after the petitioner attaining the age of superannuation could not be opened and the benefit thereof cannot be extended. Thus, it was prayed that the present petition be dismissed being sans merits.

8. Learned counsel for the State while placing reliance in the matter of *Uttaranchal Forest Rangers ASSN. (Direct Recruit) And Others Vs. State Of U.P. And Others* reported in (2006) 10 SCC 346; has argued that retrospective determination of seniority cannot be given to the promotees from a date when they have not even been born in the cadre and, therefore, such seniority cannot be given particularly when that would adversely affect seniority of direct recruits appointed in the meantime.

9. Perused the pleadings and the records and after giving

thoughtful consideration to the submissions advanced by the learned counsel for the parties, this Court finds that there is no force in the arguments, as advanced by the learned counsel for the petitioner that the principle of "*no work no pay*" adopted by the respondents and denying the petitioner the benefit of salary for the period of his termination and reinstatement is bad in law as also denial of the promotion is bad is concerned.

10. The Apex Court in the matter of ***Government of West Bengal & Ors. Vs. Dr. Amal Satpathi & Ors.***(*Supra*) in paragraphs 19 and 21 has held as under:-

19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of Bihar State Electricity Board and Others v. Dharamdeo Das reported in 2024 SCC OnLine SC 1768, wherein it was observed as follows:

“18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in Ajay Kumar Shukla v. Arvind Rai reported in (2022) 12 SCC 579 where, citing earlier precedents in Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty reported in (1991) 2 SCC 295 and Ajit Singh v. State of

Punjab reported in (1999) 7 SCC 209, a three-Judge Bench observed thus:⁴¹ This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in **Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty** reported in 1991 (2) SCC 295, in para 4 of the report which is reproduced below: ‘4..... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.’⁴² A Constitution Bench in **Ajit Singh v. State of Punjab** reported in AIR 1999 SUPREME COURT 3471, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her’s fundamental right. Jagannadha Rao, J.

speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27: is right to be considered for promotion a fundamental right.

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the ‘State shall not deny to any person equality before the law or the equal protection of the laws’. Article 16(1) issues a positive command that: ‘there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State’. It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right. “Promotion” based on equal opportunity and seniority attached to

such promotion are facets of fundamental right under [Article 16\(1\)](#). 27. In our opinion, the above view expressed in [Ashok Kumar Gupta \[Ashok Kumar Gupta v. State of U.P. reported in 13 \(1997\) 5 SCC 201\]](#), and followed in [Jagdish Lal \[Jagdish Lal v. State of Haryana, reported in 14 \(1997\) 6 SCC 538\]](#) and other cases, if it is intended to lay down that the right guaranteed to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under [Article 16\(1\)](#) and this has never been doubted in any other case before [Ashok Kumar Gupta \[Ashok Kumar Gupta v. State of U.P.\]](#), right from 1950.’

“20. In [State of Bihar v. Akhouri Sachindra Nath reported in 1991 Supp \(1\) SCC 334](#), it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in [Keshav Chandra Joshi v. Union of India reported in 1992 Supp \(1\) SCC 272](#), where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in [Uttaranchal Forest Rangers’ Assn. \(Direct Recruit\) v. State of U.P reported in \(2006\) 10 SCC 346](#), in the following words: ‘37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in [Keshav Chandra Joshi v. Union of India reported in 1991 AIR 284](#); held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime.” (emphasis supplied)

21. While we recognize respondent No.1's right to be considered for promotion, which is a fundamental right under [Articles 14](#) and [16\(1\)](#) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.

11. The Apex Court while recognizing the rights of an employee to be considered for promotion has held that though it is a fundamental right under Article 14 and 16(1) of the Constitution but is not an absolute right to promotion itself and the promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Thus, considering the fact that the petitioner was superannuated before his promotion was effectuated, he cannot held to be entitled for promotion or its consideration or to retrospective financial benefits associated for the promotional post, as he did not serve in that capacity. Thus, to the extent of granting of promotion or the notional promotional benefits to the petitioner cannot be accepted and granted, thus, it can be said that it has rightly been rejected by the respondents.

12. So far as the respondents adopting the principle of "*no work no pay*" for reckoning the period the petitioner was out of service is concerned, in the matter of *Union of India Vs. K.V. Jankiramkan (supra)* in paragraph 26, it has been observed that there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of the evidence due to the acts attributable to such employee, in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it.

13. Thus, when the right is vested with the respondents to take decision in the matter, the respondents adopting the principle of "*no work no pay*" cannot be faulted with. Thus, on both the counts the petition has no force.

14. So far as the payment of interest on the delayed payment is

concerned, the petitioner nowhere in the petition has averred that how much delay has occurred in making payment of retiral dues and when the actual dues were paid to him, therefore, this Court without going into the aforesaid aspect grants liberty to the petitioner move appropriate representation before the competent authority narrating the exact details and ask for interest thereupon.

15. With the aforesaid observation, the petition is **dismissed and disposed of** accordingly.

(MILIND RAMESH PHADKE)
JUDGE