THE HIGH COURT OF MADHYA PRADESH
W.P.No.19767/2017
(Vishnu Prasad Verma vs. Industrial Court of M.P.)

Gwalior, Dated : 31.01.2019

Shri B.P. Singh, Counsel for the petitioner.

Shri B.M. Patel, Government Advocate for the respondent/State.

This petition under Article 226 of the Constitution of India has been filed challenging the order dated 4.2.2004 by which the petitioner has been granted the benefit of Kramonnati w.e.f. 7.4.2002 to 3.5.2003 only.

It appears that the petitioner was granted promotion by order dated 24.4.2003 on the post of Daftari. The said promotion was refused by the petitioner by letter dated 3.5.2003. After refusal of promotion by the petitioner, impugned order was passed sanctioning the first Kramonnati in favour of the petitioner w.e.f. 7.4.2002 but since the petitioner had forgone his promotion on 3.5.2003, therefore, the benefit of said Kramonnati was extended only upto 3.5.2003.

Challenging the grant of kramonnati for a limited period, it is submitted by the Counsel for the petitioner, that once, a right has accrued in favor of the petitioner, then the petitioner cannot be deprived of the same, on the ground that the petitioner had forgone his promotion.

Per contra, it is submitted by the Counsel for the respondent, that Kramonnati is a stagnation allowance. Where a person was

granted promotion, and if he has forgone the same, then it can be said that the concerning employee has waived his right to get the kramonnati. The counsel for the State in support of his contention has relied upon the circular dated 23.9.2002.

It appears that some of the employees, after getting the benefit of kramonnati, were lateron granted promotion, but they consciously forwent the same, and it appears that in the light of the above mentioned circular, the kramonnati granted to those persons was withdrawn. Accordingly, the Division Bench of this Court in the case of **Lokendra Kumar Agrawal vs. State of M.P. & Anr.** reported in **2010(2) MPHT 163 (DB)** has held as under:-

> "5. From the facts of the case, it is clear that the appellant was granted the benefit of time bound promotion pay scale, i.e., pay scale of Rs. 4500-7000, after considering the case by the duly constituted committee. He was granted the aforesaid pay scale w.e.f. 19th October, 2005. Thereafter, appellant was promoted on the post of Head Clerk and he had foregone the said promotion. Consequently, the benefit of time bound promotion granted to the appellant has also been withdrawn. However, the appellant was considered by a duly constituted committee for the purpose of grant of benefit of time bound promotion and thereafter the aforesaid benefit was extended to the appellant. In our opinion, subsequent withdrawal of benefit of time bound promotion of the appellant amounts to reduction in pay of the appellant and it could not be done without holding a proper enquiry because the reduction of pay amounts to penalty. Appellant has not committed any misconduct. He has simply

> foregone his promotion. In such circumstances, the department can withdraw the benefit of promotional post from the appellant, however, the benefit of time bound promotion granted to the appellant earlier could not be withdrawn because time bound promotion was granted to the appellant as upgradation of pay after completing certain period of service and withdrawal of the aforesaid benefit amounts to violation of Article 311 (2) of the Constitution.
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> 6. In our opinion, the learned Single Judge has committed an error by holding that the respondents can withdraw the benefit of time bound promotion because the appellant refused to join on the promotional post. On account of refusal to join on the promotional post the appellant has already been suffered by foregoing the benefit which could have been accrued to the appellant due to his promotion on the next higher post. However, under the Executive instructions issued by the Department the benefit of time bound promotion of the appellant could not be withdrawn because it would amount to reduction in pay and the aforesaid action is in violation of Article 311 (2) of the Constitution because the reduction of pay could only be ordered as a consequence of penalty."

It is submitted by the Counsel for the State that thereafter, the Finance Department has issued a circular dated 24.1.2008 clarifying the situation which reads as under:-

> ''13. इस योजना के अंतर्गत उच्चतर वेतनमान का वित्तीय लाभ लेने के पश्चात यदि कोई कर्मचारी बाद में नियमित पदोन्नति स्वीकार करने से इंकार करता है तो उसे पूर्व से स्वीकृत उच्चतर वेतनमान के अंतर्गत वित्तीय लाभ वापिस नही लिया जायेगा। परन्तु बाद में उसे कोई उच्चतर वेतनमानों का वित्तीय लाभ देय नही होगा।''

It is submitted by the counsel for the petitioner that the case of

the petitioner is squarely covered by the judgment passed by this Court in the case of **Lokendra Kumar Agrawal (supra)** and the order dated **21.8.2008 passed by this Court in the case of (Parties Name) W.P.No.8402/2018.**

Whereas it is the submission of the Counsel for the State that the case of the petitioner is distinguishable from the facts of other cases. In those cases, the benefit of kramonnati was granted and later on the employees were promoted and in such circumstances, it was held that the benefit cannot be withdrawn even if the promotion is forgone, however, in the present case, the petitioner was granted promotion, but the same was forgone by him and at a later stage, the benefit of kramonnati was granted w.e.f. back date, which was prior to the date of grant of promotion. Although a right had already accrued in favor of the petitioner on 7-4-2002, but as he had voluntarily and consciously relinquished his right prior to grant of Kramonnati, therefore, doctrine of "waiver" would apply and the petitioner is not entitled to claim the benefit of kramonnati.

Considered the submissions made by the parties.

The judgments on which reliance has been placed by the counsel for the petitioner, are distinguishable for the simple reason that in those cases the benefit of Kramonnati was granted and

thereafter at a later stage the concerning employee forwent their promotions. Here in the present case, the petitioner has forgone his promotion prior to passing of an order granting the benefit of Kramonnati w.e.f. back date. The petitioner while foregoing his promotion was well aware of the circular dated 23.9.2002.

The respondents have relied upon the circular dated 23.9.2002, in which it is clearly mentioned that in case if a person forgoes his promotion then he would not be entitled for Kramonnati. The circular dated 23-9-2002 is reproduced as under :

''मध्य प्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

क्रमांक एफ.1–1/1/वेआप्र/99

भोपाल, दिनांक 5 जुलाई, 2002
23 सितम्बर, 2002

प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मंडल, म.प्र., ग्वालियर,
समस्त विभागाध्यक्ष,
समस्त संभागायुक्त,
समस्त कलेक्टर,
समस्त मुख्य कार्यपालन अधिकारी जिला पंचायत,
मध्यप्रदेश।

विषयः– शासकीय सेवकों के लिये क्रमोन्नति योजना।
संदर्भः– इस विभाग का ज्ञाप क्रमांक एफ 1–1/1/वे आप्र/99, दिनांक 31.03.2001 एवं दिनांक 9.4.2001.

संदर्भित ज्ञापन द्वारा ये निर्देश जारी किये गये थे कि ''जिन पात्र कर्मचारियों ने उच्च पदों पर पदोन्नति लेने से या पदोन्नति पद पर जाने से इंकार किया है, वे कर्मचारी क्रमोन्नति योजना के पात्र नहीं होंगें। उन्हें उक्त योजना का लाभ प्राप्त नहीं होगा। ''

2. शासन के ध्यान में यह बात आई है कि कुछ शासकीय सेवक क्रमोन्नति योजना के लाभ प्राप्त होने के बाद पदोन्नति छोड़ देते है, क्योंकि उन्हे उच्च वेतनमान का लाभ क्रमोन्नति योजना के

अंतर्गत पूर्व से ही प्राप्त होता रहता है।

3. क्रमोन्नति योजना, पदोन्नति नहीं मिल पाने के कारण एक वैकल्पिक एवं तदर्थ व्यवस्था है जो शासकीय सेवक को लम्बी अवधि तक पदोन्नति नहीं मिल पाने के एवज में दी जाती है।

4. राज्य शासन द्वारा विचारोपरान्त यह निर्णय लिया गया है कि ऐसे शासकीय सेवक, जिन्हें क्रमोन्नति का लाभ दिया गया है, को जब उच्च पद पर पदोन्नत किया जाता जाता है और वह ऐसी पदोन्नति लेने से इंकार करता है तो उसे प्रदान किए गए क्रमोन्नति वेतनमान का लाभ भी समाप्त कर दिया जावे। साथ ही, पदोन्नति आदेश में भी इसका स्पष्ट उल्लेख किया जावे कि यदि शासकीय सेवक इस पदोन्नति का परित्याग करता है तो उसे पदोन्नति के एवज में, पूर्व में प्रदान किए गए क्रमोन्नति वेतनमान का लाभ भी समाप्त कर दिया जावेंगा।

5. यह आदेश वित्त विभाग के पृष्ठांकन क्रमांक 1031/1399/02/आर/चार, दिनांक 23.09.2002 द्वारा महालेखाकार, मध्यप्रदेश , ग्वालियर को पृष्ठांकित किया गया है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,

हस्ता /–

(के.एल. दीक्षित)

अपर सचिव,

मध्यप्रदेश शासन,

सामान्य प्रशासन विभाग''

Stagnation is a situation in which something stays the same and does not grow and develop. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is an acceptable reason for pay differentiation, therefore, Krammonati is granted to an employee by way of stagnation allowance, as the employer is not able to provide promotional avenues to its employees. Thus, in order to avoid work frustration amongst the employees, stagnation allowance is given by awarding higher pay scale. Now the only question for consideration is that whether an employee can waive this right, by refusing promotion or not?

A person may refuse promotion for various reasons. A person

may not be interested in taking additional responsibilities attached to the promoted post or he might be already getting higher pay scale or he may not be interested to go to the place of posting etc. In the present case, the petitioner was posted at Gwalior and by order dated 24-4-2003, he was promoted to the post of Daftari and was posted in Labour Court, Damoh. The petitioner by his letter dated 3-5-2003 had forgone his promotion on the ground that Damoh is situated at a distance of 500 Km.s and since, he would not get much financial benefit, therefore, the family of the petitioner would get disturbed. Thus, the petitioner had forgone his promotion, primarily because he was not interested to join at Damoh.

The Supreme Court in the case of **Kanchan Udyog Ltd. Vs. United Spirits Ltd.,** reported in **(2017) 8 SCC 237** has held as under :

> **"22.** The learned Single Judge framed an issue also with regard to waiver, estoppel and acquiescence, then answered it in the negative in a singular line, without any discussion. Waiver and acquiescence may be express or implied. Much will again depend on the nature of the contract, and the facts of each case. Waiver involves voluntary relinquishment of a known legal right, evincing awareness of the existence of the right and to waive the same. The principle is to be found in Section 63 of the Act. If a party entitled to a benefit under a contract, is denied the same, resulting in violation of a legal right, and does not protest, foregoing its legal right, and accepts

compliance in another form and manner, issues will arise with regard to waiver or acquiescence by conduct. .....

23. Waiver by conduct was considered in *P. Dasa Muni Reddy* v. *P. Appa Rao*, observing as follows: (SCC p. 729, para 13)

"*13*. Abandonment of right is much more than mere waiver, acquiescence or laches. … Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question."

24. Waiver could also be deduced from acquiescence, was considered in *Waman Shriniwas Kini* v. *Ratilal Bhagwandas & Co.* observing as follows: (AIR p. 694, para 13)

"*13*. … Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing

> unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied."

The Supreme Court in the case of **All India Power Engineer Federation Vs. Sason Power Ltd.,** reported in **(2017) 1 SCC 487** has held as under :

> **"19.** At this juncture, it is important to understand what exactly is meant by waiver. In *Jagad Bandhu Chatterjee* v. *Nilima Rani* this Court held: (SCC pp. 446-47, para 5)
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> "*5.* In India the general principle with regard to waiver of contractual obligation is to be found in Section 63 of the Contract Act. Under that section it is open to a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of it any satisfaction which he thinks fit. Under the Indian law neither consideration nor an agreement would be necessary to constitute waiver. This Court has already laid down in *Waman Shriniwas Kini* v. *Ratilal Bhagwandas & Co.*, SCR p. 226 that: (AIR p. 694, para 13)
>
> > '*13.* … waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right.'
>
> It is well known that in the law of pre-emption the general principle which can be said to have been uniformly adopted by the Indian courts is that acquiescence in the sale by any positive act amounting to relinquishment of a pre-emptive right has the effect of the forfeiture of such a right. So far as the law of pre-emption is concerned the principle of waiver is based mainly on Mohammedan Jurisprudence. The

contention that the waiver of the appellant's right under Section 26-F of the Bengal Tenancy Act must be founded on contract or agreement cannot be acceded to and must be rejected."

20. In *P. Dasa Muni Reddy* v. *P. Appa Rao*, this Court held: (SCC p. 729, para 13)

"*13.* … Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. Some mistake or

> misapprehension as to some facts which constitute the underlying assumption without which parties would not have made the contract may be sufficient to justify the court in saying that there was no consent."

The Supreme Court in the case of **Sonel Clocks and Gifts Ltd. Vs. New India Assurance Co. Ltd.** reported in **(2018) 9 SCC 784** has held as under :

> **"13.** It is a well established position that waiver is an intentional relinquishment of a right. It must involve conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. It is an agreement not to assert a right. To invoke the principle of waiver, the person who is said to have waived must be fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (See para 41 of *State of Punjab*.) There must be a specific plea of waiver, much less of abandonment of a right by the opposite party."

The Supreme Court in the case of **Babulal Badriprasad Varma Vs. Surat Municipal Corpn.** Reported in **(2008) 12 SCC 401** has held as under :

> **"48.** Significantly, a similar conclusion was reached in *Krishna Bahadur* v. *Purna Theatre* though the principle was stated far more precisely, in the following terms: (SCC p. 233, paras 9-10)
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> "*9*. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of

> action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.
>
> *10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein*. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. *Statutory right, however, may also be waived by his conduct*."
>
> (emphasis supplied)

(See also *Bank of India* v. *O.P. Swarnakar*.)

49. In *Ramdev Food Products (P) Ltd.* v. *Arvindbhai Rambhai Patel* this Court observed: (SCC pp. 761-62, paras 73-74)

> "*73*. The matter may be considered from another angle. If the first respondent has expressly waived his right on the trade mark registered in the name of the appellant Company, could he claim the said right indirectly? The answer to the said question must be rendered in the negative. It is well settled that what cannot be done directly cannot be done indirectly.
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> *74*. The term 'waiver' has been described in the following words:
>
> '1471. *Waiver*.—Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. … A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the

> stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration. …
>
> It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration."

Thus, it is clear that “Waiver” is the voluntary relinquishment or surrender of some known right or privilege.

If the facts and circumstances of the case are considered, then it is clear that the petitioner was aware of the fact that if forgoes his promotion, then he would not be entitled to claim Kramonnati, but still he decided to forgo his promotion. The judgments on which the reliance has been placed by the petitioner are distinguishable because in those cases the employees had forgone their promotion after grant of Kramonnati, and it was held that if the benefit of kramonnati is withdrawn, then it would result in reduction of pay, therefore, the principle of estoppel has no application in those case.

Thus, it is held that although the right of kramonnati had

already accrued in favor of the petitioner on 7-4-2002, but before the same could be declared and could be granted, the petitioner was promoted, which was forgone by him for the simple reason, that he was not inclined to join at Damoh, which according to the petitioner was about 500 Kms. away from Gwalior. Thus, it can be said that the petitioner had "waived" his right of getting kramonnati, which had already accrued to him.

Under the facts and circumstances of this case, this Court is of the considered opinion that the respondents did not commit any mistake by refusing to extend the benefit of Kramonnati to the petitioner, after his refusal to accept the promotion, for the simple reason because the Kramonnati is granted in order to encounter the situation of stagnation but where the employee is not the victim of stagnation and if he voluntarily and consciously decides not to take the promotion, then he cannot claim the benefit of Kramonnati.

Accordingly, this petition fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

(alok)