

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 8th OF SEPTEMBER, 2022

WRIT PETITION NO.22564 OF 2017

Between:-

**DR. KUMAR RATNAM S/O DR.
SARAN BIHARILAL SAXENA,
AGED 52 YEARS, R/O 7-SAPNA
MENSION, GOVINDPURI,
GWALIOR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PAWAN KUMAR DWIVEDI - ADVOCATE)

AND

- 1. STATE OF M.P. THROUGH THE
PRINCIPAL SECRETARY, HIGHER
EDUCATION DEPARTMENT,
GOVERNMENT OF M.P., VALLABH
BHAWAN, BHOPAL.**
- 2. THE COMMISSIONER, HIGHER
EDUCATION, GOVERNMENT OF
M.P., SATPURA BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 3. THE PRINCIPAL, KRG COLLEGE,
GWALIOR**

.....RESPONDENTS

(BY SHRI N. S. TOMAR – GOVERNMENT ADVOCATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:

- i) The order dated 10.04.2017 Annexure P/1 may kindly be quashed to the extent as it relates to the petitioner.
- ii) The respondents may kindly be directed to grant the benefit of Senior Pay Scale w.e.f. 27.11.1993, Selection Grade Pay Scale w.e.f. 27.11.1998.
- iii) Consequent to relief no.ii) the date of Pay Band IV may also be directed to be changed accordingly.
- iv) Consequent to above relief the respondents may kindly be directed to grant the petitioner all consequential benefits including arrears of differences of salary with interest.
- v) Any other suitable direction which this Hon'ble Court deems fit in the facts and circumstances of the case may kindly be passed.

2. It is the case of the petitioner that the respondents have denied the benefit of senior pay scale and selection grade pay scale for the reasons that ACRs of the petitioner for the year 1992 and 1997 were not available and the ACRs of the year 1994, 1995 and 1996 were average. The petitioner has specifically raised a ground that no adverse or average ACRs were ever communicated to him. It is the case of the petitioner that vide order dated 8.11.1989, he was appointed as Assistant Professor

(History) on emergency basis after following the procedure prescribed under the law. Thereafter he was regularized as Assistant Professor (History) w.e.f. 24.12.1998 vide order dated 19.12.2003. Thereafter, he got selected through Madhya Pradesh Public Service Commission for the post of Professor (History) in the year 2012 and he is working as Professor (History) since 1.3.2012. It is the case of the petitioner that recruitment rules provide for senior pay scale as well as selection grade pay scale to the Assistant Professors and others. The State Government after approval from the cabinet issued notification dated 11.10.1999 thereby providing for the implementation of the guidelines of the UGC and prescribed revised pay scale as also criteria for grant of senior and selection grade pay scale. Since the petitioner was eligible for grant of senior pay scale, the State Government granted the said benefit to the petitioner vide order dated 30.11.2006 thereby granting him the benefit of senior pay scale w.e.f. 24.12.2002. Thereafter, by order dated 3.8.2009, selection grade was awarded to him w.e.f. 24.12.2007. The respondents while granting senior and selection grade pay scale to the petitioner, did not count the period of service of the petitioner rendered by him as Emergency Assistant Professor. Accordingly, the petitioner filed W.P. No.6040/2009 and the same was disposed of vide order dated 1.4.2011 in the light of the order passed by the Principal Seat of this Court in the case of **Ramesh Chandra Dixit and others vs. State of M.P.** reported in **2012(3) MPLJ 100**. The said order was challenged by the State by filing W.A.No.732/2012 which too was dismissed by Division Bench by order dated 30.9.2013. The order of the Division Bench was challenged before the Apex Court which too was dismissed by order dated 18.2.2015 and

the respondents were directed to implement the order of this Court passed in the case of **Ramesh Chandra Dixit (supra)**. The petitioner thereafter submitted two representations for grant of benefit of senior pay scale as well as selection grade pay scale from 27.11.1993 and 27.11.1998. The respondents thereafter counted the period of all Assistant Professors which were served by them on emergency service and passed the order dated 30.9.2015 thereby fixing the date of senior and selection grade pay scale as well as implementing the recommendations of 6th Pay Commission. The respondents while passing the impugned order have changed dates of grant of senior pay scale from 24.12.2002 to 1.4.2001 and the date of selection grade was changed from 24.12.2007 to 1.4.2006 and Pay Band IV was changed from 1.2.2012 to 1.4.2009 but while doing so it was remarked in the order that due to non-availability of ACR of the years 1992 and 1997 and as the ACRs of the years 1994, 1995 and 1996 were average, the petitioner is not entitled for grant of benefit from the due date of eligibility for his services. It is submitted by the counsel for the petitioner that no adverse or average ACR was ever served upon the petitioner and he was never given an opportunity to make a representation before the same. Accordingly, this petition has been filed.

3. The respondents have filed their return and submitted that as per the provisions of Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 and in Schedule-IV of the said Rules, it was determined that the benefit of senior pay scale and selection grade pay scale can be extended after considering the ACR of the employee. In the light of the same, the case of the petitioner was considered and it was

found that the performance of the petitioner was not up to the mark. “GA” was given in the Annual Confidential Report of the years 1994, 1995 and 1996 and, accordingly, the benefit of senior pay scale was extended from 1.4.2001 in place of 27.7.1998 and the benefit of selection grade pay was extended from 1.4.2006 in place of 27.7.2003 and the benefit for 4th pay band was extended from 1.4.2009 in place of 27.7.2006 because the performance of the petitioner during the period of 1994, 1995 and 1996 was not upto the mark and was of average category and thus it was stated that the claim of the petitioner has been rightly rejected.

4. Heard the learned counsel for the petitioner.

5. During course of arguments, it was fairly conceded that the ACRs of the petitioner of the years 1992 and 1997 were not available and ACRs of the year 1994, 1995 and 1996 were average.

6. It is the case of the petitioner that none of the ACRs which were of “average category” were ever communicated to the petitioner. It is further submitted that it is well established principle of law that every confidential report whether adverse or not has to be communicated to the employees, so that he can make a representation for upgradation of the same.

7. Heard the learned counsel for the parties.

8. The Supreme Court in the case of **Dev Dutt vs. Union of India and others** reported in **(2008) 8 SCC 725** has held as under:

17. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may

adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.

18. Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

9. Thus, it is clear that every employee has a right to make a representation for upgradation of his ACR because in case where there is a bench mark, then even a good ACR may become adverse. In the present case, it has not been disputed by the respondents that the ACRs of the year 1994, 1995, 1996 were never communicated to the petitioner.

10. So far as non-availability of ACRs of the year 1992 and 1997 is concerned, Madhya Pradesh Public Service (Promotion) Rules, 2002 (in short "Rules, 2002") deals with such a situation. Rule 6(6) of the Rules, 2002 reads as under:

**"6. Promotion on the basis of seniority
subject to fitness.-**

(6) When one or more ACRs are not available for any reason for the relevant period, the Departmental Promotion Committee shall consider the ACRs of the years preceding the period in question.”

11. From the plain reading of the Rule 6(6) of the Rules, 2002, it is clear that if the ACRs of the years 1992 and 1997 were not available with the DPC, then they should have considered the ACRs of preceding year but that was not done by the DPC.

12. Accordingly, this Court is of the considered opinion that the order dated 10.4.2017 (Annexure P/1) *qua* the petitioner cannot be upheld. It is, accordingly, **quashed** *qua* the petitioner. The matter is remanded back with the following observations:

- (i) The petitioner shall personally present the certified copy of this order to the respondent No.2 and 3.
- (ii) Within a period of 15 days from the date of receipt of certified copy of the order, the respondents No.2 or 3 or the competent authority shall communicate the ACRs of the year 1994, 1995, 1996 to the petitioner.
- (iii) The petitioner shall be free to make a representation against the said ACRs.
- (iv) If any representation is made, then the case shall be taken up for upgradation of ACRs and the respondents shall decide as to whether ACRs of the year 1994, 1995, 1996 are required to be upgraded or not.
- (v) Let this exercise be completed within a period of one month from the date of receipt of the representation.
- (vi) The respondents shall try to trace out the ACRs of the year

1992 and 1997. If they are traced, then they shall also be communicated to the petitioner, so that he can make a representation against the same.

(vii) If ACRs of the years 1992 and 1997 could not be traced, then the case of the petitioner shall be considered in the light of the order passed by this Court in the case of **Akhilesh Kumar Singh vs. State of M.P. and others by order dated 12.7.2022 passed in W.P.No.1962/2008.**

(viii) If the ACRs of the year 1994, 1995, 1996 or even ACRs of 1992 and 1997 are upgraded, then the review committee shall be constituted which shall reconsider the case of the petitioner in the light of the revised ACRs of the year 1994, 1995, 1996 as well as ACRs of the years 1992 and 1997 (if available).

13. With aforesaid observations, the petition is finally **disposed of.**

(G.S. AHLUWALIA)
JUDGE

(alok)