

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR
W.A. No.515/2020

Smt. Premlata Raikwar

Vs.

The State of M.P. & others

Coram:

Hon. Shri Justice S.A.Dharmadhikari

Hon. Shri Justice Vishal Mishra

Reserved on : 3/9/2020

 Shri R.P.Singh, Advocate for the appellant.

Shri M.P.S.Raghuvanshi, Additional Advocate General for
 the respondents/State.

J U D G M E N T

29/09/2020

Per Dharmadhikari, J

In this appeal preferred under section 2(1) of Madhya Pradesh Uchacha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, challenge has been made to the order dated 14/2/2020 passed by learned Single Judge in W.P. No.22795/2019, whereby the prayer for grant of benefit of timescale has been refused.

2. Petitioner/appellant had filed the writ petition seeking following reliefs:-

“(7.1) पिटीशनर की पिटीशन स्वीकार करते हुए, पिटीशनर को विभाग में 12 वर्ष की सेवा उच्च श्रेणी शिक्षक (यू.डी. टी)/ शिक्षक संवर्ग में पूर्ण करने उपरांत दिनांक 22.07.2010 से प्रथम क्रमोन्नत/वरिष्ठ वेतनमान 5500-175-9000 पुनरीक्षित वेतनमान 9300-34800+3600 ग्रेड पे स्वीकृत करते हुए वेतनमान का पुर्ननिर्धारण कर अंतर की राशि प्रदान/भुगतान एक माह में ब्याज सहित प्रदान किए जाने के आदेश/निर्देश प्रदान करने की कृपा करें।

(7.2) अन्य उचित रिट, आदेश अथवा निर्देश न्याय हित में पिटीशनर के पक्ष में जारी करने की कृपा करें, प्रकरण व्यय रेस्पोंडेन्ट्स से दिलाये जाने की कृपा करें।”

The learned Single Judge, while deciding the writ petition held that appellant/petitioner had consciously waived his right of getting *Kramonnati* by refusing to accept the promotion. While relying on the decision of this Court in the case of **Vishnu Prasad Verma Vs. Industrial Court of M.P. (W.P. No. 19767/2019 decided on 31/1/2019)**, the writ Court held that the appellant/petitioner was promoted on the post of Headmaster which was forgone by him, as a result of which, he had waived his right to get the benefit of *Kramonnati* which became due to him subsequent to his promotion.

3. The facts of the case lie in a narrow compass. Appellant/petitioner was appointed on the post of Assistant Teacher on 4/10/1989. On 25/9/1998, he was promoted to the post of Upper Division Teacher (“UDT” for short) and was granted seniority w.e.f. 22/7/1998. He completed 12 years of service in the cadre of UDT on 22/7/2010. Prior to that, he was promoted to the post of Headmaster on 10/7/2009, but because of some personal difficulties, he had forgone the promotion. The respondents refused the grant of timescale (*Kramonnati*) after completion of 12 years of service in the cadre of UDT by the petitioner on the ground that he had forgone his promotion. While adjudicating upon the point in issue, learned Single Judge framed the following question:-

“Whether a person who has consciously and deliberately forgone his promotion prior to becoming entitled for grant of *Kramonnati* is eligible for *Kramonnati* on the ground that he could not be promoted even after putting 12 years of service in a

particular cadre and whether after forgoing the promotion, an employee can claim *Kramonnati* subsequent to the date of promotion order ?”

After appreciating the material available on record, the learned Single Judge has dismissed the petition as indicated above, aggrieved whereof, this intra Court appeal has been filed.

4. Learned counsel for the appellant/petitioner contended that the case of the appellant is squarely covered by the judgment of this Court in the case of **Lokendra Kumar Agrawal Vs. State of M.P. & another (2010 (2) MPHT 163 (DB))** and the appellant is entitled to grant of *Kramonnati* after completing 12 years of service in the cadre of UDT. In support of his contention, learned counsel has placed reliance on decision of co-ordinate Bench of this Court at Indore in **W.A. No.939/2017 (Finance Department & Others Vs. Gendalal Arniya)**, as well as, that rendered in **W.A. No.21/2017 (The State of M.P. & Others Vs. Kanhaiyalal Jaitpuriya)**.

The second contention is that the learned writ Court has passed three different orders almost in identical cases involving the same issue in W.P. Nos. 22052/2019 and 22355/2020. In one case notices have been issued while the other one has been disposed of with direction to decide the pending representation and the third case being the present one has been dismissed by the order impugned. It is submitted that such a situation would give rise to clear possibility of contradictory judgments being rendered in identical matters. For this, learned counsel has relied upon the decision in the case of **Bir Bajrang Kumar Vs. State of Bihar (AIR 1987 SSC 1345)**, wherein the Apex Court has observed as under:-

“After going through the record of the case it appears that one of the cases involving an identical point has already been admitted by the High Court but another identical petition was dismissed by the same High Court. This, therefore, creates a very anomalous position and there is a clear possibility of two contradictory judgments being rendered in the same case by the High Court.”

It is submitted that the learned writ Court by applying the principle of waiver has held that voluntary relinquishment and surrender of some known right or privilege has dis-entitled the appellant/petitioner to claim the benefit of *Kramonnati*. However, the said principle has been applied in identical matters in different way by twisting the concept of waiver. It is also submitted that the case of **Vishnu Prasad Verma (Supra)** has been set aside by a Division Bench of this Court in W.A. No.721/2019 vide order dated 19/8/2019 and, therefore, the impugned order based thereupon is liable to be set aside.

5. On the other hand learned Additional Advocate General submitted that the facts in the case of **Lokendra Kumar Agrawal (Supra)** are different to those in present appeal, inasmuch as in that case, petitioner therein had been granted timescale w.e.f. 19/10/2005 and thereafter had been promoted on the post of Head-clerk, which had been forgone by him. Consequent to foregoing of such promotion, the timescale granted to him was also withdrawn. It was in this context that it has been held that on account of refusal to join on the promotional post he had already suffered by forgoing the benefit and, therefore, on the basis of executive instructions the benefit of timescale could not have been withdrawn because the

same would amount to reduction in pay and the aforesaid action was held to be in violation of Article 311(2) of the Constitution of India, whereas in the present case the appellant was promoted on 10/7/2009 as Headmaster which was forgone by him. After forgoing such promotion, he completed 12 years of service on 22/7/2010. Therefore, it is submitted that he is not entitled to grant of timescale.

So far as the contention of the appellant, relying on decision in the case of **Bir Bajrang (Supra)**, in respect of three different orders passed by the learned Single Judge is concerned, it is submitted by learned Additional Advocate General that the said ratio is not applicable to the present facts and circumstances since the learned Single Judge in W.P. No.22355/2019 has disposed of the writ petition with liberty to the petitioner therein to file a detailed representation which is to be considered and decided in accordance with law within three months and in W.P. No.22052/2019 notices to respondents have been issued, whereas in the case of **Bir Bajrang (Supra)** one petition had been admitted and the other one was dismissed by the same High Court. It was in this context that the Apex Court had observed that there was clear possibility of contradictory judgments being rendered by the High Court in same case. So far as the applicability of ratio in **Vishnu Prasad Verma (Supra)** is concerned, it is submitted that the learned Single Judge has rightly relied upon the same by holding as under:-

8. The question is no more res integra. This Court in the case of Vishnu Prasad Verma vs. Industrial Court of M.P. By order dated 31.1.2019 passed in W.P.No. 19767/2017 has held as under:

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।

विषय:- शासकीय सेवकों के लिये क्रमोन्नति योजना।

संदर्भ:- 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 होंगे। 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 हैं, क्योंकि उन्हें 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 जावेगा।

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”

It is submitted that in the aforesaid circular, it is clearly mentioned that if a person forgoes his promotion, he would not be entitled for *Kramonnati*. Accordingly, it is submitted that no interference is warranted in the order impugned.

6. Heard, learned counsel for the parties.

7. In the case of **Vishnu Prasad Verma (Supra)**, the entitlement of *Kramonnati* had accrued in favour of the petitioner therein prior to his refusing promotion. The petitioner therein was promoted as *Daftari* vide order dated 24/4/2003. He gave up his promotion owing to personal difficulty. Later, as per *Kramonnati* scheme, he was found eligible for first *Kramonnati* w.e.f. 7/4/2002, the same was though extended but was confined till 3/5/2003 as the incumbent had later forgone his promotion. It was in in this context that the writ appellate Court in W.A. No. 721/2019 has agreed with the principle of law laid down in **Lokendra Kumar Agrawal (Supra)**

holding that the benefit of *Kramonnati* granted from an earlier point of time could not have been recovered merely because later the incumbent when promoted from some date in future had forgone such promotion. In the present case, the appellant/petitioner was promoted w.e.f. 10/7/2009 which he had forgone. He subsequently became entitled for timescale w.e.f. 22/7/2010 after completing 12 years of service in the cadre of UDT. As such, the facts on which the decision of **Vishnu Prasad Verma (Supra)** was over-ruled are clearly distinguishable from the fact situation in hand. Consequently, the decisions of co-ordinate Benches of this Court in **Gendalal Arniya (Supra)** and **Kanhaiyalal Jaitpuriya (Supra)**, which have been rendered on the basis of **Lokendra Kumar Agrawal (Supra)**, are of no avail to the petitioner. Moreover, the circular dated 23/9/2002 or those referred therein, have not been put to challenge. Besides, if the proposition of the petitioner that even after refusing promotion he can avail *Kramonnati* is accepted, then the *raison d'être* of the financial-upgradation scheme which is to weed out career stagnation of employees, would be frustrated. The day petitioner refused to accept promotion, he could no longer be called a stagnating employee.

In view of the above, no fault could be found with the findings recorded by the learned Single Judge. The appeal fails and is, accordingly, dismissed.

(S.A.Dharmadhikari)
Judge

(Vishal Mishra)
Judge

(and)