



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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 18<sup>th</sup> of OCTOBER, 2024**

**W.P.No.3011/2019**

***Dr.Navin Kumar Jain***

*Versus*

***State of M.P and another***

**Appearance:**

***Shri L.C.Patne, Advocate for the petitioner.***

***Ms. Pranjali Yajurvedi- P.L./G.A. for the State.***

**ORDER**

1] No further time can be granted to respondent/State as on the last date of hearing also time was granted to the respondent/State to file additional reply but till date, the same has not been filed. In such circumstances, their right to file the same stands forfeited and the matter is heard finally.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking following relief:-

“(a) to call for the relevant records of the case from the respondents;

(b) to quash the impugned order dated 13.6.2018 (Annexure P-1) read with order dated 20.6.2018 (annexure P-12) issued by the respondent no.1 in so far as it promotes the petitioner to the post of Professor w.e.f 1.1.2008 by a writ of CERTIORARI or any other appropriate writ, direction or order.

(c) to command the respondents to consider the case of the petitioner for promotion from the post of Assistant Professor to the post of Professor w.e.f 1.1.2004 or atleast w.e.f 1.1.2006 and to grant him all consequential and monetary benefits by a writ of mandamus or any other appropriate writ direction or order



- (d) allow this petition with costs.
- (e) pass such other order as may be deemed appropriate in the fact and circumstances of the case, to grant relief to the petitioner.”

3] The petitioner is aggrieved by orders dated 13.6.2018 (Annexure P-10) and 20.6.2018 (Annexure P-11), passed by the respondent no.1 whereby, the petitioner's name has not been considered for promotion for the post of Professor w.e.f 1.1.2004, whereas, vide order dated 20.6.2018, the persons junior to the petitioner have been granted promotions. The grievance of the petitioner is that he was entitled to be promoted for the post of professor, however, on account of his un-communicated ACRs, the same has been withheld.

4] A reply to the petition has also been filed informing that the petitioner was required to obtain 13 marks from 5 ACRs for the year 1998 to 2003, however, he has obtained 9 marks only.

5] As stated, the petitioner's grievance is that none of the ACRs for the aforesaid years were ever communicated to him, thus he was deprived of making proper representation to the respondents for up-gradation of his ACRs.

6] In support of his submissions, counsel for the petitioner has also relied upon a decision rendered by this Court in the case ***MRS. VEENA JAIN Vs. STATE OF M.P and Others*** passed in **WRIT PETITION No. 30909 of 2023** vide order dated **24th OF SEPTEMBER, 2024** in which also this Court had the occasion to deal with the effect of un-communicated ACRs, and thus, it is submitted that the present case is squarely covered by the aforesaid judgement, and thus the petition be also allowed and the relief be granted.



7] Counsel for the respondent/State has opposed the prayer. However, it is not denied that the aforesaid ACRs have not been communicated to the petitioner by respondent/State.

8] Heard. On due consideration of the submissions and the documents filed on record, it is found that despite specific averments in this regard made in the petition that the ACRs have not been furnished to the petitioner, the reply is silent about it, and despite two opportunities availed by the counsel for the respondent/State, no additional reply has been filed, thus, this Court has no hesitation to hold that the petitioner was not communicated the ACRs from 1998 to 2003, and in such circumstances, the order passed by this Court in the case of **Mrs. Veena Jain<sup>1</sup> (supra)** would come into play. The relevant paras of the same reads as under:-

*“8] Heard. Having considered the rival submissions and on perusal of the record as also the decision rendered by the Division Bench of this Court in the case of Mahfooz Ahmad<sup>2</sup> (supra), the relevant para of the same reads as under:-*

*“36. The uncommunicated ACRs cannot be taken into consideration by the DPC. Under these circumstances, the consideration of ACRs by the DPC which were never communicated to the petitioner; the declaration by the DPC that the petitioner is not found fit for promotion is per se illegal. Although the petitioner has been granted promotion subsequently from a subsequent date but he has sought promotion from the date when the DPC has considered the case of other candidates that is from 11/14.08.2016. The DPC has taken a decision to promote the petitioner to the post of Assistant Registrar vide order dated 02.11.2018 considering the fact that none of ACRs considered by DPC were communicated to the petitioner.”*

*(Emphasis supplied)*

9] Thus, it is apparent that uncommunicated ACRs cannot be taken into account while considering the case of an employee for promotion. Reference in this regard may also be had to the decision rendered by



*the Supreme Court in the case of Abhijit Ghosh Dastidar vs. Union of India and others reported as (2009) 16 SCC 146 in which it is also held that even if a person has received good grade, in that case also it is liable to be communicated to the employee so that he can have a chance to upgrade the aforesaid grade. Thus, when the facts of the present case are tested on the anvil of the aforesaid decisions, it is apparent that the petitioner obtained grade-C in her ACR of 2020, which was, admittedly not communicated to her by the respondent No.1.*

*10] In such circumstances, the petition stands partly allowed and it is directed that the un-communicated ACR of the 2020 of the petitioner cannot be taken into consideration while deciding the case of the petitioner for promotion on the post of Super Time Pay Scale (Director), and accordingly, the respondent No.1 is directed to appoint the petitioner in Super Time Pay Scale (Director) in the regular pay scale of Rs.129700-214300/- w.e.f. 01.01.2023, and restore her seniority by refixing her pay and also release arrears thereof along with interest at applicable bank rates.”*

**9]** In view of the same, the petition stands **allowed**. The respondents are directed to promote the petitioner ignoring the un-communicated ACRs, w.e,f, 1.1.2004 and grant him all the consequential and monetary benefits.

**10]** Let the aforesaid exercise be completed within a period of three months.

**11]** Accordingly, the petition stands **allowed**.

Sd/-

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Das/Joshi**