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WP-22202-2021

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 2<sup>nd</sup> OF DECEMBER, 2024WRIT PETITION No. 22202 of 2021*DR. (SMT.) KAMLA GAUTAM**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri L. C. Patne - advocate for the petitioner.

Shri Kushagra Jain - Dy.GA for State.

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ORDER

The petitioner is not aggrieved by any particular order, but is aggrieved by illegal and arbitrary inaction on the part of the Respondents in not extending her benefit of Selection Grade Pay Scale of Rs. 3700-5700/- (revised to Rs. 12,000-18,300/- w.e.f. 1.1.1996) w.e.f. 4.3.1998, in accordance with the judgment rendered by this Hon'ble Court in the case of Dr. Pradeep S. Panwar v. State of M.P. & Others [W.P. No. 2020/2016, decided on 4.10.2018] as implemented by Respondent No. 1 - department by issuing clarificatory Circular dated 13.12.2019 read with earlier Circular dated 11.10.1999 and 9.11.1999. The petitioner is further aggrieved by the consequential inaction on the part of the Respondents in not granting the petitioner benefit of Pay Band IV i.e. placement in the pay scale of Rs. 37,400-67,000/- + AGP 9,000/- w.e.f, 1.1.2006, after completion of 3 years of service in the selection grade pay scale or w.e.f. 1.1.2006 whichever is



later, in view of the provisions of Circular dated 14.9.2012 issued by the Respondent No. 1 department.

The respondents have filed the reply and in para 2, they stated that the petitioner is entitled for selection grade pay scale as the same was due to him with effect from 1.4.2007, but in the year 2007 the ACR of the petitioner was "Ga" category, and, therefore, the Committee has not recommended for the same, but the same has already been given to her with effect from 1.4.2010. It is further stated in para 4 of the return that the Committee had considered her case for grant of selection grade pay from 1998, but the petitioner was not found entitled for the same as the ACRS of the relevant period were of Average category.

Counsel for petitioner disputes the aforesaid assertion made in para 2 and para 4 of the return and submits that from Annexure R/1, it is pellucid that the petitioner has been sanctioned selection grade pay scale with effect from 1.4.2004 whereas petitioner was entitled for the same with effect from 4.3.1998. It is further submitted that as per the said order, the IV pay band has been sanctioned to her with effect from 1.4.2010 instead of 1.1.2006. In the Annexure R/1 it is stated that IV pay band had become due to the petitioner on 1.4.2007 but the same was not paid to her because her ACR of year 2007 was of "Ga" category.

Learned counsel for petitioner argued that the aforesaid ACRS which have been taken into consideration for denial of his claim were never communicated to her and she could not get the opportunity to represent against the aforesaid ACRs, therefore, the same could not have been the



basis for rejecting the claim from the aforesaid dates. A specific pleading has been made in para 6.5 in the writ petition, but there is no rebuttal to the same in the reply.

The law relating to consideration of uncommunicated ACRs for promotion or upgradation is no longer res integra. In the case of Gurdial Singh Fijji Vs. State of Punjab & Ors (1979) 2 SCC 368, the court held that the non inclusion of a government servant in the select list on account of adverse entry which was not communicated and the opportunity was not afforded to submit representation, cannot be made basis for denial of the promotion. In the case of Kaluram Patidar Vs. State of MP & Ors WP No.11064/2010 decided on 25.8.2011, this court relying on the judgment passed by the Apex Court in the case of Abhijit Ghosh Dastidar Vs. Union of India (2009) 6 SCC 146 came to the conclusion that the ACRs which have been resulted in denial of the selection grade cannot be considered to be a ground for denying the claim to an employee. In the case of Dev Dutt Vs. Union of India & Ors. (2008) 8 SCC 725, it has been held that non communication of entries in the ACRS of a public servant has civil consequences because it may affect his chance for promotion or get other benefits. Such non communication of adverse ACRS would be arbitrary and violation of Article 14 of the Constitution of India. The same has been followed by a coordinate Bench in the case of Rajendra Kumar Verma vs. State of M.P. 2017(1) MPLJ 391. The division bench of this court in the case Higher Education Department Vs. Dr.(Smt) Kavita Bundela WA No.421/2017 decided on 23.10.2017 has taken the similar view.



The claim of the petitioner for grant of selection pay scale of Rs.3700-5700 (revised to Rs.12000-18300 with effect from 1.1.1996) with effect from 4.3.1998 is based on the judgment in the case of Dr.Pradeep S. Panwar Vs. State of MP WP No.2020/2016 decided on 4.10.2018. In compliance to the said judgment, the State has issued a Circular dated 13.12.2019 dispensing with the requirement of five years service in senior grade pay for grant of selection grade.

Upon perusal of the petition and the reply, the respondents have not replied to the aforesaid averments and submissions of counsel for petitioner that the ACRs which have been considered for rejecting the claim of the petitioner for selection grade for the relevant period were communicated to the petitioner and the petitioner was given an opportunity to represent the same. Further, there is no reply to the submission made by the petitioner that the claim of the petitioner is covered by the judgment passed in the case of Dr.Pradeep S. Panwar (supra) and the Circular dated 13.12.2019 dispensing with five years service in senior grade pay scale requirement for grant of selection grade.

In view of the aforesaid, this court deems it expedient to dispose off the petition with liberty to the petitioner to submit a detailed and comprehensive representation along with the relevant Circular dated 13.12.2019 and the judgments of the Supreme Court and also the judgment passed by this court in the case of Dr.Pradeep S. Panwar(supra) along with the copy of the order passed today within a period of one month before the Principal Secretary, Department of Higher Education, Bhopal. In turn, the



said respondent shall consider and decide her representation for redressal of her grievances taking into consideration the relevant Circulars and judgments passed by this court within a period of two months from the date of filing of the representation. It is reiterated that if the ACRs of the relevant period are not communicated to the petitioner as stated in para 6.5. of the writ petition, an opportunity of hearing is not given to make representation against adverse ACRs, the same shall not be considered for rejecting the claim of the petitioner. If the respondent No.1 finds otherwise and is of the view that petitioner is not entitled for relief claimed by her, the authority shall pass a reasoned and speaking order which shall be communicated to the petitioner.

With the aforesaid, petition is **disposed off**.

(VIJAY KUMAR SHUKLA)  
JUDGE