

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 14th OF SEPTEMBER, 2022

WRIT PETITION No. 20237 of 2022

BETWEEN:-

MS SNADHYA VYAS D/O DR. G.S. VYAS, AGED ABOUT 55 YEARS, OCCUPATION: GOVT. SERVANT 2-B, SHALIMAR TOWNSHIP, A.B. ROAD, INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRASHANT UPADHYAY, ADVOCATE)

AND

1. WOMAN AND CHILD DEVELOPMENT DEPARTMENT THROUGH PRINCIPAL SECRETARY MANTRALAYA, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)

2. M.P. PUBLIC SERVICE COMMISSION THROUGH ITS CHAIRMAN RESIDENCY AREA, DISTRICT INDORE. (MADHYA PRADESH)

3. COMMISSIONER DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT, 4TH FLOOR PARYAVAS BHAWAN, DISTRICT BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

This petition coming on for admission this day,

JUSTICE VIVEK RUSIA passed the following:

O R D E R

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the constitutional validity of Rule 7 of the M.P. Public Services (Promotion) Rules, 2002 (in short Rules of 2002).

02. The facts of the case reveal that the petitioner was initially appointed to the post of District Woman & Child Development Officer in the year 1993. The grievance of the petitioner is that at the relevant point of time she was denied the promotion to the post of Joint Director despite being senior in the gradation list because of the criteria of promotion i.e. merit-cum-seniority in the Rules of 2002. The petitioner was communicated the ACRs for the years 2016 – 17 and 2017 – 18, in which she was awarded Grade Good (A) by downgrading from Grade A+ by the Approval Officer.

03. According to the petitioner, Rule 7 of the Rules of 2002 prescribed for merit-cum-seniority / selection-cum-seniority arbitrarily which has resulted in the supersession of senior eligible employees / officers by the junior. Only for the promotion of officers from Class – I to Class – I, the criteria is merit-cum-seniority, whereas for other promotions i.e. from Class – IV to Class – III, Class – III to Class – II and Class – II to Class – I the criteria is seniority-cum-merit. It is further stated that the Government of India, Ministry of Personnel, Public Grievance & Pensions after examining the relevant issues has issued a Circular

dated 08.02.2022, whereby selection-cum-seniority criteria have been revised that there should be no supersession in the matter of selection (merit) and promotion at any level. The Government of Madhya Pradesh for the employees of the Finance Department has made separate Rule namely ***the Madhya Pradesh State Finance Service (Gazetted) Recruitment & Conditions of the Service Rules, 2018*** (in short Rules of 2018), in which by way of explanation it has been added that any junior members of service on the basis of years of service completed by him shall not be eligible for the appointment before a senior person in the higher pay scale of the service, therefore, because of the *differentia* and classification adopted by the Government of Madhya Pradesh in the Rules of 2002, unfair treatments to the senior employees are being given which violate their rights under Articles 14 and 16 of the Constitution of India. Therefore, a writ in the nature of Mandamus be issued by declaring Rule 7 of the Rules 2002 as *ultra vires* / unconstitutional and further direction to apply Rule 6 i.e. seniority-cum-merit for promotion Class – I to Class – I (Higher Pay Scale).

04. We have heard the learned counsel for the petitioner and perused the record.

05. Rule 6 of the Rules of 2002 provides for promotion on the basis of seniority subject to fitness and Rule 7 provides that where the promotions are to be made on the basis of merit-cum-seniority, the zone for consideration, that is the number of public servants to

be considered in the ratio of 1: 4. Rule 4 of the Rules of 2002 provides for promotion from Class – IV to higher pay scale to Class – IV, Class – IV to Class – III, Class – III to the higher pay scale of Class – III, Class – III to Class – II, Class – II to Class – II to the higher pay scale of Class – II and Class – II to Class – I posts shall be made on the basis of seniority-cum-merit subject to fitness. Only promotion from Class – I to Class – I to a higher pay scale shall be made on the basis of merit-cum-seniority. As per proviso, promotion from the post of Sub Engineer to Assistant Engineer in the Public Works Department, Water Resources Department, Public Health Engineering Department and Panchayat shall be made on the basis of merit-cum-seniority. Rule 7 is the only criteria for promotion which applies to promotion from Class – I to Class – I higher pay scale as provided under Rule 4(2) of the Rules of 2002. The petitioner is not challenging the validity of Rule 4(2) which differentiates the criteria for promotion from Class – I to Class – I higher pay scale with other classes. Not only for Class – I to Class – I in all the Department but in Public Works Department, Water Resources Department, Public Health Engineering Department and Panchayat promotion from Sub Engineer to Assistant Engineer is based on merit-cum-seniority. The State Government in exercise of the power conferred under Articles 309 r/w Article and 335 of the Constitution of India is having the power to make rules for the promotion of its employees. The competency of the legislature is not in dispute.

05. There is a presumption that the legislature cannot exceed its jurisdiction and the burden of establishing that the act is not within the competence of the legislature or that it has transgressed other constitutional mandates such as those relating to the fundamental right is always on the person who challenges its *vires* as held by the Apex Court in the case of ***Mahmadhusen Abdulrahim Kalota Shaikh v/s Union of India & Others*** reported in (2009) 2 SCC 1.

06. There are the laws made by the State with respect to the matter in List – 2 and the concurrent list in the VII Schedule of the Constitution is within the power conferred by the Constitution. There should not be any repugnancy with the Central Act made by the Parliament. Law enacted by the Parliament and the State Legislature is open to judicial review on the ground of lack of legislative competence and violation of other provisions of the Constitution as held by the Apex Court in the case of ***Public Services Tribunal Bar Association v/s The State of U.P. & Another*** reported in (2003) 4 SCC 104.

07. The contention of the petitioner is that while considering the eligible officer for promotion from Class – I to Class – I to a higher pay scale, there should not be consideration of merit and only the senior person subject to fitness should be promoted. This contention is not based on any provision of the Constitution as promotion is not a fundamental right. The petitioner has suffered supersession because of inadequate ACRs. The petitioner has

placed reliance on the provision of Rule 17 of the Rules of 2018. Although proviso to Rule 17 of the Rules of 2018 speaks that no person junior in the service shall be considered for promotion only on the basis of completing the qualifying length of service prior to that of his seniors. Rule 18(1) & (2) provide for the procedure for preparation of a list which shall be based on merit with proper consideration of seniority and suitability in all respect. Rule 18(4) further provides that list so prepared shall be reviewed and revised on the basis of merit by recording a reason to supersede any person, therefore, by cumulative reading it cannot be said that criteria is purely seniority-cum-merit.

07. So far as the office memorandum dated 08.02.2022 is concerned, it has been issued by the Government of India for all the Central Government Department and not for the State Government and Clause 2.1 excludes the promotion in the level of pay scale of Rs.12,000 – 16,500/- from the criteria of seniority-cum-merit. Hence, we do not find any substance in the writ petition.

In view of the above, Writ Petition stands dismissed in *limine*.

(VIVEK RUSIA)
J U D G E

(AMAR NATH (KESHARWANI))
J U D G E

Ravi