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WP-208-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 15th OF MAY, 2025

WRIT PETITION No. 208 of 2024

ASHOK KUMAR YADAV

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Aviral Vikas Khare - Advocate for the petitioner.

Shri Kushal Goyal - Dy. A.G. appearing on behalf of Advocate

General.

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ORDER

1. This This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

"a. Appropriate Writ, Direction or order in the nature of mandamus or other, the impugned Gradation list published on 26/12/2022 be quashed to the extent it shows Petitioner much below his juniors in seniority.

b. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be directed to confer benefit of promotion to the Petitioner from the date it was conferred to other identically placed employees.

c. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be directed to confer the benefit of Pay Upgradation and Time Pay Scale to the Petitioner in the same manner and from the same date as has been conferred to other identically placed employees.

d. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be directed to place the Petitioner at his proper position in the seniority list above his juniors at Sr.28.

e. Appropriate Writ, Direction or order in the nature of mandamus



or other, the Respondents be directed to confer all the service benefits to the Petitioner including annual increment, seniority, pay upgradation, future promotions and other amenities as were conferred to other identically placed employees from the date of initial appointment.

f. Appropriate Writ, direction or order in the nature of mandamus or other, the Respondents be directed to determine the salary of the Petitioner after conferring the Pay Upgradation and Time Pay Scale from the due date and also pay arrears of the salary.

g. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be also directed to pay arrears of salary of the promotional post and other consequential benefits.

h. appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be also directed to pay additional interest of 15 percent per annum on the arrears of salary from the date it was due till the actual payment.

i. Cost of this Petition be awarded. j. Any other appropriate relief, which this Hon'ble 'court may deem fit, be awarded to the Petitioner."

2. The petitioner is aggrieved by the gradation list dated 26/12/2022, whereby the petitioner's name has been mentioned at Sr.No.539 despite the fact that his date of initial appointment was 12/06/1990, whereas the person at Sr. No.29 Smt. Afroz Jahan, who was appointed subsequent to the petitioner i.e., on 25/04/1991, has been placed much above the petitioner, this is despite the fact that in the earlier round of litigation, this Court in WP No.2474/2006, vide order dated 27/04/2007, has already directed the respondents to reinstate the petitioner and also extend him the benefits as have been accorded to the similarly situated persons including all the consequential and monetary benefits. Subsequent to the aforesaid order, vide order dated 05/07/2007, it has been informed to the petitioner that all the benefits which have been given to identically placed persons, have been extended to him.



3. The grievance of the petitioner is that the benefits have still not been extended to him from the date of his reinstatement as have been extended to the other identically placed employees, whereas, the respondents' stand in their reply is that the other identically placed employees were reinstated prior in time of the petitioner, hence, the benefit which has accrued to them on account of their earlier reinstatement have not been extended to the petitioner. In para 4 and 5 of the reply, the following averments have been made:-

4. That, it is the contention of the petitioner that he has been denied of promotion on the post of Assistant District Prosecution Officer but it is pertinent to mention here that when the petitioner has qualified with the requisite qualification as per the schedule prescribed or the qualification for being an ADPO, the petitioner has been promoted as ADPO on 24.01.2014. It would not be out of place to mention here that the rule which is prescribed for the promotion of ADPO requires qualification of minimum 07 years of experience on the post of Grade III and as the appointment of the petitioner was earlier cancelled and subsequently, he has been instated in the year 2005 and from the date of reinstatement, the requisite qualification i.e. of minimum 07 years experience has been calculated and accordingly the petitioner had been awarded with promotion on 24.01.2014.

5. That, it is the contention of the petitioner that other employees working on the same post have been granted benefit way much earlier than the petitioner. In this regard, it is humbly submitted that the date of reinstatement of the other employees are different than the petitioner and therefore, the requisite qualification which was required for promotion as an ADPO is to be considered from the date of reinstatement and accordingly, the other employees who have been promoted were also granted promotion on the basis of their date of appointment/reinstatement. The employees whose name were referred by the petitioner, were already reinstated around the year 93-94 i.e. much prior to the petitioner and accordingly, the period of service have been calculated and they have been promoted. Therefore, the petitioner cannot claim



parity with the case of other employees as the date of reinstatement is different and accordingly, the period of service and experience has been calculated. Therefore, it cannot be said that there was any discrimination done on the part of the respondents while granting the promotion to the petitioner.”

4. In rebuttal, counsel for the petitioner has also submitted that the petitioner had already worked for 7 years as Assistant Grade-III which would also be included in his experience as Assistant Grade-III after his reinstatement in the year 2005 and thus, it cannot be said that the petitioner has not completed 7 years on the earlier post, which was a per-requisite for his promotion on the post of ADPO.

5. Heard the learned counsel for the parties and perused the record. It is found that the High Court's initial order was passed on 14/12/2004, whereas, the petitioner has been reinstated on 05/10/2005, and the subsequent order in WP No.2474/2006 was passed on 27/04/2007, wherein, it was also directed that all the consequential benefits be given to the petitioner as in the case of identically placed employees. It is also found that the petitioner was reinstated in the year 2005, whereas, he had already completed 7 years as A.G.-III in the year 2012.

6. In such circumstances, even if the DPC took place subsequent to that, the petitioner ought to have been given all the benefits soon after completion of 7 years as A.G.-III, and his promotion ought to have been given with effect from the said date only. It is also found that the annual increment, back wages, time pay scale and seniority have also not been extended to the petitioner, which he is entitled to receive from the date of appointment.



7. In view of the same, writ petition is hereby *allowed*, and the respondents are directed to give promotion to the petitioner from the date of his completion of 7 years on the post of Assistant Grade-III, and other benefits like annual increment, back wages, time pay scale and seniority be also extended to him from the date of his appointment i.e. 28/11/1990, in accordance with law.

8. Let the aforesaid exercise be completed within a further period of 4 months.

9. Writ petition stands allowed and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

krjoshi