



1

WP-19965-2003

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 30th OF JANUARY, 2025WRIT PETITION No. 19965 of 2003*R.K.BEHRE**Versus**THE STATE OF M.P. AND OTHERS*

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Appearance:

Shri Nilesh Kotecha - Advocate for the petitioner.

Shri Prabhanshu Shukla - Government Advocate for the
respondents/State.
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ORDER

Initially the original application being O.A.No.2388/2002 was filed by the petitioner in the erstwhile State Administrative Tribunal and after abolition, the same stood transferred to this Court and re-numbered as Writ Petition No.19965/2003.

2. Being aggrieved by the non-consideration of the candidature of the petitioner for promotion to the post of Additional Director of Agriculture from the post of Joint Director of Agriculture (Engineering) and further promotion to the post of Director of Agriculture and Director, Catchment Area Treatment (CAT) NVDA (Ex-Cadre Post) and carrying out wrong interpretation of the judgment passed by this Hon'ble Tribunal dated 17.08.2000 in O.A.No.2427/1990 and O.A.No.1415/1990, the present petition has been filed.

3. Both these original applications were disposed off observing as under



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"28. In so far as the promotions to the post of Additional Director of the private respondents is concerned, it appears that these have been made from a common gradation list of officers belonging to the two disciplines. The promotions of the private respondents cannot be held to be illegal only because their promotion to the level of Joint Director was not legal or proper. With the passage of time the said promotions to the post of Joint Directors have to be acknowledged and the time clock cannot be set back as far as those promotions are concerned. Therefore, the promotions to the post of Additional Director which too have now taken place more than ten years back cannot be questioned and quashed and more so as most of the actors in the drama have now superannuated. It may also be observed that the petitioners had been promoted to the post of Deputy Directors in the years 1987 and 1986 respectively and, therefore, they were not eligible for consideration for promotion to the post of Additional Director before 1-1-1991 and 1-1-1990. The petitioner No.2 was given the promotion in the year 1990 to the post of Additional Director. The private respondents No.3 and 4 were promoted in the years 1988 and 1989 by which date both the petitioners were not eligible for consideration for promotion. Private respondent No.5 was promoted in the year 1990 and in the same year petitioner No.2 was also promoted to this post. Therefore, he can have no grievance against the promotion of this respondent in the same year. The petitioner No.1 was not eligible for promotion till 1-1-1991 and, therefore, he could have no grievance against the promotion of private respondent No.5 in the year 1990.

29. Under the aforesaid circumstances, we do not consider it appropriate to interfere in the matter at this stage and quash the promotions of private respondents Nos. 3, 4 and 5 as has been mainly prayed in the petition. The petitioners had prayed for their own promotion also to the post of Additional Director which they have already received. Therefore, no direction as regards this relief need either be given. This petition stands disposed off accordingly.

30. In so far as O.A. No. 1415/1990 is concerned, it may be observed that this petition is quite badly drafted. The documents enclosed with it are also not complete so as to enable the Tribunal to appreciate the case. One of the reliefs claimed was to quash order dated 24th March 1990 - Annexure E. Annexure E is not a promotion order, but a gradation list dated 7th March 1990 of Additional Directors of Agriculture as on 1-4-1989. The petitioners were aggrieved by the promotion of the private respondents No. 3, 4 and 5 who are also the private respondents in the other petition for consideration. Therefore, the prayer made for, quashing of Annexure E is not clear or not understandable. Prayer was also made for quashing the order at Annexure E which is the appointing order of private respondent Shri S.R. Singh as the Director of the newly created Directorate of Agricultural Engineering. The said post was equivalent to the post of Additional Director Agriculture. We have already held above that the promotion to the post of Additional Director Agriculture of the said respondent cannot be set aside. Therefore, this prayer cannot be



allowed. The respondents have also subsequently added private respondents No.6 and 7 mentioned above in the cause title, namely, Shri H.G.Saxena and Shri P.N. Mishra, who were promoted as Additional Directors. It is not clear as to on what basis the petitioners are challenging their promotion as the said respondents belong to the same discipline as the petitioners themselves in this case as is seen from a copy of the gradation list filed in the other petition as Annexure A-1. In the said gradation list the said private respondents, namely Shri H.G.Saxena and Shri P.N. Mishra are far senior to the petitioners and, therefore, it is not understood how they could claim relief against them. The cause of action pertaining to the promotion of these private respondents was also different from the cause of action pertaining to the original petition when it was filed against private respondents. No. 3, 4 and 5 and, therefore, too they could not have agitated the promotion granted to the said respondents (respondents No. 6 and 7 in the present petition. As per the said gradation list Annexure A-4 filed in the other petition petitioner B.M. Khare in the present case is one position above Dr. G.S.Kaushal, who is petitioner No.1 in the other petition, but he has claimed no relief with reference to Dr. Kaushal in this case. The petitioner No.2 in the present petition is junior to the said Dr. Kaushal and also to Shri A.B.L. Shrivastava, the other petitioner in the other petition O.A. No.2427/1990 and, therefore, he could not and has not claimed any relief against the said persons in the present petition. The claim. of Dr. Kaushal and Shri A.B.L. Shrivastava in O.A.No.2427/1990 as regards the promotion of private respondents No. 3, 4 and 5 has been already rejected. For the same reasons, the claim of the petitioners in the present case O.A.No.1415/1990 against the said private respondents is also rejected. Therefore, no direction can be given by the Tribunal to the respondent to promote the petitioners in fact petitioner No.1 already stands in the present case. This petition is therefore, rejected.

31. Before parting with the case we would like to observe that the State Government must take steps to remove the anomaly which has been high-lighted above in the recruitment rules so that the rule position becomes clear and there is transparency in the provisions of the rules as to how persons from different branches of the discipline would be promoted and to which post. We may also observe here that the respondent department has already decided to create a Directorate of Agricultural Engineering and posted private respondent No.3, Shri S.R. Singh as the Director in charge of this Directorate in the same scale of pay as that of an Additional Director Agriculture. The State Government having decided to create a separate Directorate now obviously means that the discipline of 'Agricultural Engineering would be treated as separate and distinct from other disciplines of the Agriculture Service and promotions would be made only within this branch of officers belonging to this branch. For this purpose suitable number of posts need to be earmarked. Since a separate Directorate has been created there would obviously be now no justification for promoting officers of the Agricultural Engineering branch on the posts which may be earmarked for the field and extension branch. The two branches/disciplines shall be treated to be distinct and separate upto



the levels of Directors in the respective Directorates. We trust that the respondent State shall take steps forthwith to make the necessary amendment in the rules so that the position becomes clear. It should be possible to make the necessary amendments in the rules within a period of four months from the date of receipt of this order by the respondent State.

Ordered accordingly."

4. After going through the aforesaid, it is apparently clear that the claim raised by the petitioner was virtually rejected in the original applications. However, while disposing off the original applications, the directions were issued to the State Government to take steps to remove the anomaly which has been highlighted in the recruitment rules so that the rule position becomes clear and transparency in the provisions of the rules as to how persons from different branches of the discipline would be promoted and to which post. As far as claim raised by the petitioner is concerned, the same was rejected by the authorities. The reasons are assigned in the order passed in the original application pointing out the fact that there was no challenge to the appointments of Agriculture (Engineering) and Joint Directors. A separate set up was sanctioned for Directorate of Agriculture when the post of Joint Director Engineering was created in the department. Despite making observation that there is an anomaly in the Rules, the claim raised by the petitioner in original application was rejected considering the fact that promotion of private respondents was passed almost two decades back and after a long lapse of time, the said benefit cannot be extended. It is further observed that in an identical Original Application No.2427/1990 as regards to promotion of private respondents No.3, 4 and 5, the claim of the petitioner has already been rejected. The same is the case in hand with respect to the



5

WP-19965-2003

present petitioner. Under these circumstances, no relief can be extended to the petitioner after a long lapse of two decades.

5. The petition *sans* merit and is accordingly dismissed.

(VISHAL MISHRA)
JUDGE

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