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

BEFORE

JUSTICE SUJOY PAUL

ON THE 16th OF AUGUST, 2023

WRIT PETITION No. 4629 of 2020

BETWEEN:-

**JAIRAM THADHANI S/O SHRI KISHANCHAND
THADHANI, AGED ABOUT 55 YEARS, OCCUPATION:
ASTT. GRADE-II, OFFICE OF ASSTT. SOIL TESTING
OFFICER, JASWADI ROAD, KHANDWA (M.P.)
R/O. 70, PADAM NAGAR COLONY, KHANDWA DISTRICT
KHANDWA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ASHOK KUMAR GUPTA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THR THE
DIRECTOR, FARMER WELFARE AND
AGRICULTURE DEPT., VINDHYACHAL BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. JOINT DIRECTOR, FARMER WELFARE AND
AGRICULTURE DEPARTMENT, INDORE DIVISION
INDORE (MADHYA PRADESH)**
- 3. DEPUTY DIRECTOR, FARMER WELFARE AND
AGRICULTURE DEPARTMENT, DISTT. KHANDWA
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RITWIK PARASHAR - GOVERNMENT ADVOCATE)

.....
*This petition coming on for orders this day, the court passed the
following:*

ORDER

With the consent, finally heard.

- 2. The challenge in this petition is mounted to letter dated 14/12/2017**

(Annexure P/9) and order dated 15/01/2020 (Annexure P/12).

3. At the outset, learned counsel for the petitioner submits that he is not pressing his relief in relation to an internal correspondence dated 14/12/2017 (Annexure P/9). He submits that although petitioner has foregone the promotion on the post of Assistant Grade-II to *Lekhpal* (Accountant), the respondents were not correct in not granting him third time scale of pay. The singular contention advanced is that in the relevant policy relating to grant of time scale of pay, there is no mention that if promotion is foregone during the relevant period, the employee will be deprived of time scale of pay.

4 . Shri Ritwik Parashar, learned Government Advocate opposed the prayer and placed reliance on the judgment of Supreme Court in **Civil Appeal Nos.7027-7028 of 2009 (Union of India & others vs. Manju Arora & another)** decided on 03/01/2022.

5. No other point is pressed by learned counsel for the parties.

6. I have heard the parties at length and perused the record.

7. A bare perusal of impugned order dated 15/01/2020 (Annexure P/12) shows that petitioner declined promotion on the post of Accountant and, therefore, he was deprived from the benefit of time scale of pay.

8. In the opinion of this Court, the benefit of *Kramonnati* or time scale of pay is being granted to the stagnating employees, if no promotion is granted to them within stipulated time. For example, as per Circular of State Government relating to *Kramonnati*, if employee has not received any promotion within 12 and 24 years, he gets benefit of financial upgradation. He continues to work on the same post but gets a upgraded scale. Same is the case with grant of 'time scale of pay'. The whole purpose of grant of upgraded scale is to provide upgradation to an employee stagnating for want of promotion.

However, in cases where department has offered promotion and employee has declined it, the department cannot be blamed for the stagnation. If the employee decides to forego the promotion, the continuous stagnation is outcome of such choice. In that case, benefit of *Kramonnati* / 'Time scale of pay' cannot be extended. The Apex Court in the recent judgment in **Manju Arora (supra)** has opined as under :-

"16. We are quite certain that if a regular promotion is offered but is refused by the employee before becoming entitled to a financial upgradation, she/he shall not be entitled to financial upgradation only because she has suffered stagnation. This is because, it is not a case of lack of promotional opportunities but an employee opting to forfeit offered promotion, for her own personal reasons. However, this vital aspect was not appropriately appreciated by the High Court while granting relief to the employees.

17. It may also be observed that when an employee refuses the offered promotion, difficulties in manning the higher position might arise which give rise to administrative difficulties as the concerned employee very often refuse promotion in order to continue in his/her own place of posting.

18. In the above circumstances, we find merit in the submissions made on behalf of the appellants. Consequently, it is declared that the employees who have refused the offer of regular promotion are disentitled to the financial upgradation benefits envisaged under the O.M. dated 9.8.1999. In this situation, the Scottish doctrine of "Approbate and Reprobate" springs to mind. The English equivalent of the doctrine was explained in *Lissenden v. CAV Bosch Ltd.* wherein Lord Atkin observed at page 429,

"..... In cases where the doctrine does apply the person concerned has the choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with knowledge adopts the one he cannot afterwards assert the other"

The above doctrine is attracted to the circumstances in this case. The concerned employees cannot therefore be allowed to simultaneously approbate and reprobate, or to put it colloquially, "eat their cake and have it too". It is declared accordingly for the respondents in the C. A. Nos. 7027-28/2009."

(Emphasis supplied)

9. In view of this judgment, in my view, no fault can be found in the order dated 15/01/2020 (Annexure P/12) whereby 'time scale of pay' was declined because of refusal of promotion during the relevant period. The orders of this Court annexed with the petition will not improve the case of the petitioner in view of recent judgment of Supreme Court in **Manju Arora (Supra)**.

10. The petition is devoid of substance and is hereby **dismissed**.

**(SUJOY PAUL)
JUDGE**