

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 6650 / 2009

POONAM CHAND MODI

Vs.

JAWAHARLAL NEHRU KRISHI VISHVA VIDYALAYA,
JABALPUR
& TWO ORS.,

* * * * *

ORDER

(18/1/2011)

The petitioner before this court, a retired Physical Training Instructor, has filed this present petition being aggrieved by an order dt. 16/4/09, passed by the respondents, rejecting the claim of the petitioner for grant of selection grade of Rs.3700 – 5700 revised as Rs.12,000 – 18,300. The petitioner has stated before this court that he has passed MA in the year 1966 and has obtained a Diploma in Physical Education in the year 1968 and was appointed on the post of Physical Training Instructor on 5/11/1969. The petitioner has further stated that he was granted the benefit of senior pay scale of Rs.3,000 – 5000 w.e.f. 1/1/86 by an order dt. 15/1/90. The petitioner has further stated that

he was entitled for grant of selection grade of Rs.3700 – 5700 w.e.f. 1/1/94. However, the same was not granted and persons junior to the petitioner who were holding similar qualifications like the petitioner were granted the benefit, namely; Shri S.B. Tiwari w.e.f. 1/4/97 by an order dt. 10/2/99 and one Shri B. K. Pathak was also granted the same benefit. It has also been stated that Shri S.B. Tiwari and Shri B. K. Pathak were much junior to the petitioner. The petitioner has further stated that being aggrieved by non-grant of selection grade, the petitioner came up before this court by filing a writ petition and the same was registered as WP No. 1683/2000 and this court vide order dt. 25/8/2000 has directed the respondents to dispose of the petitioner's representation within a period of 3 months. The petitioner has further stated that his representation was turned down by an order dt. 30th September 2000. The petitioner has also brought to the notice of this court that he was communicated an adverse ACR and the same was also expunged by an order dt. 24/10/96. The petitioner has further stated that a request was made by the petitioner to

disclose the reasons for non grant of selection grade vide letter dt. 28/11/2000 and as no reason was assigned, the petitioner was left with no other choice except to file another writ petition and the same was registered as WP No. 213/2001. This Court while passing an order in WP No. 213/2001 has directed the respondents to consider the case of the petitioner fairly and objectively, applying the same criteria which was adopted in the year 1991 in the case of similarly situated persons and it was also observed that in case the petitioner is found unsuitable, reasons should be assigned for his unsuitability. The order passed by this court was not complied with and therefore the petitioner was forced to file a contempt petition ie., Contempt Petition No. 497/2006. The Contempt Petition was disposed of by an order dt. 17/11/2006 as vide order dt. 25/9/06 the case of the petitioner was rejected by the respondents stating therein that he does not fulfill the requisite guidelines framed by the Indian Council of Agriculture Research. The petitioner has also stated that the other junior persons who were also not fulfilling the criteria prescribed by the Indian Council of

Agriculture Research were granted the benefit of higher pay scale and it was only the petitioner who was singled out. The petitioner has further stated that another writ petition was preferred before this court and the same was registered as WP No. 8052/06, wherein it was categorically stated that his juniors having the same educational qualification were considered and granted selection grade and this court has vide order dt. 5/2/09 directed the respondents to consider the case of the petitioner for grant of selection grade keeping in view the case of Shri S.B. Tiwari and Shri B. K. Pathak. A direction was also issued to grant all consequential benefits to the petitioner in case he is similarly situated. The petitioner after the disposal of the WP No. 8052/06 has preferred a representation before the authorities on 3/3/09 and now the representation of the petitioner has been rejected on the ground that the petitioner has never applied for grant of selection grade under the Career Advancement Scheme. Petitioner has further stated that the respondents while rejecting the case of the petitioner have admitted that Shri Shri B. K. Pathak and Shri S.B. Tiwari were having

similar qualifications and were granted selection grade. The petitioner has also enclosed information furnished by the University to the petitioner under the Right to Information Act, 2005 wherein it has been stated that the Notifications issued under the Career Advancement Scheme were never brought to the notice of the petitioner. The petitioner has prayed for quashing of the impugned order passed by the respondents dt. 16/4/09. The petitioner has also prayed for issuance of appropriate writ, order or direction directing the respondents to grant the benefit of selection grade to the petitioner as has been granted to other identically placed juniors having similar qualifications. The petitioner has also prayed for grant of interest. The petitioner has also brought on record applications submitted by him from 1994 onwards and the application of the petitioner which is enclosed at Page 64 reflects that it was forwarded by the Dean on 16/3/99.

A reply has been filed in the matter and the first ground raised by the respondent University is that the present writ petition is barred by principles of *res judicata*.

The respondent University in its reply has admitted the existence of Career Advancement Scheme which provides for placement of Physical Training Instructor in the senior pay scale of Rs.3000 - 5000 and selection grade of Rs.3700 – 5700. It has also been stated that for award of selection grade a Physical Training Instructor was required to possess Ph.D., Degree or an equivalent published work and it has also been stated that in case of the petitioner as he was not having Master's Degree in physical education, he was not entitled to the benefit, as prayed by him. Respondents have also stated that for award of Selection Grade, applications were invited from time to time in response to the Notification issued by the University and the applications were placed before the Committee and the suitability of the petitioner was considered by the said Committee in its meeting held on 27/12/89, 3/8/91, 27/2/93, 26/11/95 and 1/2/97. However, he was not found fit for award of Selection Grade of Rs.3700 – 5700. Respondents have also stated that the Board in its Meeting held on 21/12/98 has relaxed the eligibility criteria for grant of higher pay scale of

Rs.3700 – 5700 and a Notification was issued on 17/12/97. Candidates were required to submit their application latest by 30th January, 1998 and the stand of the respondents is that the petitioner did not submit any application for grant of selection grade pursuant to the Notification dt. 17/12/98. The respondents have stated that the petitioner as he has not submitted an application for grant of selection grade, his name was not considered by the selection committee and junior Shri S.B. Tiwari and Shri B. K. Pathak who were holding similar qualifications were recommended for grant of selection grade and they have been granted the selection grade accordingly. Respondents have prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record.

The petitioner before this court was appointed on 5/11/69 as a Physical Training Instructor and was conferred with the benefit of senior pay scale of Rs.3000 – 5000 w.e.f. 1/1/86 vide order dt. 15/1/90. The petitioner was not granted the benefit of selection grade whereas one Shri S.B. Tiwari

and Shri B. K. Pathak, Physical Training Instructor who were holding similar qualifications like the petitioner were granted benefit of selection grade. It is pertinent to note that Shri S.B. Tiwari and Shri B. K. Pathak were admittedly junior to the petitioner. The petitioner being aggrieved by non-grant of selection grade submitted a representation to the authorities on 16/3/99 followed by a reminder dt. 11/5/99 and as nothing was done in the matter, a writ petition was preferred ie., WP NO. 1683/2000 and the same was disposed of by this court vide order dt. 25/8/2000 (Annexure P/10). The following order was passed by this court :

WP NO. 1683 OF 2000

25/8/2000

Heard Shri S. P. Wakte, counsel for the petitioner on the question of admission.

Petitioner was directed to serve copy of the petition together with Annexures on Shri V. K. Dube, standing counsel for respondent No.1. He appeared and took notice on behalf of the respondents.

The only grievance in this petition of the petitioner is that despite representation sent by the petitioner to respondents on 16/3/99 and a reminder in this regard sent on 11/5/99, the same

has not been decided. Shri Dube appearing for respondents informed the Court that if the petitioner's representation is still pending then the same shall be considered and disposed of by the respondents within a period of 3 months from today under intimation to the petitioner.

Thus, this petition stands disposed in the light of the contention raised by the learned counsel for the respondents. Parties to bear their own costs. Cc in 2 days.

The respondents pursuant to the order passed by this Court have rejected the petitioner's representation by an order dt. 30th September 2000 and the petitioner was informed that he was not found suitable in the meetings held on 27/12/1989, 3/8/91, 27/2/93, 26/11/95 and 1/2/97. The petitioner being aggrieved by order dt. 30th September 2000 again came up before this court and the writ petition preferred by the petitioner was registered as WP No. 213/2001. This court after hearing the parties at length has passed the following order :

3. The respondents in the return have submitted that the Indian Council of Agriculture Research and the State Government Agriculture Department sanctioned the revised scale of pay to

the Teachers, Librarians and PTIs vide order dated 9/3/89 w.e.f. 1/1/86 and PTIs have been covered in the aforesaid scheme named as Career Advancement Scheme and as per the aforesaid Scheme the PTIs would be entitled to be placed in the senior scale of pay of Rs.3000 – 5000 and Selection Grade of Rs.3700 – 5700 if they fulfill the qualification mentioned in the Scheme. The petitioner was also granted the pay scale of Rs. 3000 – 5000/- however, he was not granted the Selection Grade of Rs.3700 – 5700 because he did not fulfill the aforesaid criteria mentioned in the Scheme and as per the Scheme PTIs would be granted Selection Grade of Rs. 3700 – 5700 if he fulfills the criteria except the Ph.D., Degree. This Court ordered production of record of the case of the petitioner with regard to grant of Selection Grade of Rs. 3700 – 5700. From the record it is clear that the case of the petitioner was considered on 3/8/91, 27/2/93, 26/11/95 and 1/2/97 but he was not found fit. In the proceedings of 3/8/91 it was mentioned against the petitioner that he was not recommended for higher pay scale, neither the criteria of promotion was mentioned nor the reasons were mentioned that on what basis he was not found fit. Similarly, in 1993 it was mentioned that the petitioner was not recommended for higher pay scale because he did not had Masters degree in Physical Education and in 1995 and 1997 the same reason has been mentioned.

4. The learned counsel for the petitioner has submitted that non mentioning the reasons by DPC with regard to non – promotion is arbitrary and illegal and the petitioner fulfills the criteria of Masters Degree. The Selection committee does not explained what was the criteria of Masters degree. Contrary to this, the learned Senior counsel for the respondents have stated that as per the ACR also the record of the petitioner was not good and as per the Scheme it must be consistently good and he did not had the qualification of Master degree hence, he was not promoted.

5. From the facts stated above, it is clear that the Committee which considers the case of the petitioner in the year 1991 did not assigned any reasons for non – promotion of the petitioner after going through the case file. It is also clear that it has also not been mentioned that what was the criteria adopted by the Committee. Hence, in such circumstances it cannot be said that the Committee considered the case of the petitioner fairly and objectively along with other similarly situated persons namely Shri B.K.Pathak and Shri S.B. Tiwari. Subsequently although it has been mentioned by the DPC that the petitioner did not had a Master degree. However, as per the petitioner for PTIs the Master degree means M.A. Plus Diploma in Physical Education and he has the aforesaid qualification. In view of the above facts and circumstances of the case, in my opinion the petitioner

has not been considered fairly and objectively by the Committee.

6. Consequently, the petition of the petitioner is disposed of with the following directions :

a). That the respondents are directed to consider the case of the petitioner fairly and objectively applying the same criteria which was adopted in the year of 1991 and subsequently with regard to similarly situated persons and that if the petitioner be not found suitable it must be assigned that on what basis the petitioner be not found suitable for grant of Selection Grade.

b). The respondents are further directed to consider the fact that MA plus Diploma in Physical Education constitute Master degree and for that purpose the respondents have to pass a reasoned order. If the petitioner be found suitable for grant of Selection Grade after adopting the other criteria, proper orders be passed in the case of the petitioner.

It is pertinent to note that a detailed and exhaustive reply was filed by the respondents Vishva Vidyalaya in the aforesaid case and the respondent Vishva Vidyalaya took a stand that the petitioner was not fulfilling the eligibility criteria, meaning thereby, was not holding a Master's degree in the subject of physical education and therefore he was not

granted the benefit of Selection Grade. There was no whisper in the return filed by the respondents that the petitioner did not apply pursuant to the Notifications issued by the Vishva Vidyalaya for grant of higher pay scale under the Career Advancement Scheme and therefore as there was no mention of the aforesaid fact, this court directed reconsideration of the case of the petitioner afresh. The respondent Vishva Vidyalaya in spite of there being an order passed by this court, did not consider the case of the petitioner and therefore a contempt petition was preferred and the same was registered as Cont. Pet. No. 497 / 2006. During the pendency of the contempt petition an order was brought to the notice of this court dt. 25/9/06 wherein the case of the petitioner was considered and rejected and therefore the contempt petition was disposed of by this court with a liberty to prefer a fresh writ petition. Pursuant to the order passed by this court the respondents have passed a detailed speaking order and it is again noteworthy to mention that though the order was passed in the year 2006, there is no whisper in the order that the petitioner has not

applied in response to the Career Advancement Scheme after the qualifications were relaxed by the Vishva Vidyalaya. Not only this, the respondents while passing the aforesaid order dt. 25/9/06 have also not at all referred the cases of Shri S.B. Tiwari Shri B. K. Pathak who were having similarly qualifications like the petitioner and who were granted the benefit of selection grade by an order dt. 10/2/93. The petitioner as permitted by this court again came up before this court by filing a writ petition and the same was registered as WP NO. 8052/06 (s). The reply was filed in the aforesaid case and in the reply it was again nowhere stated that the petitioner has not applied for grant of Selection Grade pursuant to relaxation of qualifications. This court on 5/2/09 in WP NO. 8052/06(s) has passed the following order :

The petitioner claims that he was appointed on the post of Physical Training Instructor vide order dt. 5/11/1969 (Annexure P/3) by the respondents Jawaharlal Nehru Krishi Vishwavidyalaya and has been retired as Sports officer.

2. According to the petitioner, though he was entitled for grant of Selection Grade as was granted to his

juniors namely Shri B. K. Pathak and Shri S.B. Tiwari vide order dt. 10/2/1999 (Annexure P/7) he has not been extended the benefit of Selection Grade. According to him, in the seniority list of Coach / Physical Training Instructors / Senior Sports Officer as on 1/9/1989 (Annexure P/8) his name is at Sl.No.2 whereas the name of Shri B K Pathak is at Sl.No.3 and the name of Shri SB Tiwari is at Sl.No.5. In the circumstances, the respondents ought to have been granted the Selection Grade to the petitioner as has been granted to the aforesaid two employees.

3. Today when the matter came up for hearing it has been prayed by the learned counsel for the petitioner that this petition may be disposed of directing the first respondent to consider and take appropriate decision in regard to the petitioner's claim with a further direction to the first respondent that in case the petitioner is similarly qualified as Shri BK Pathak and Shri SB Tiwari then his case for Selection Grade be also treated at par and he be granted consequential benefits.

4. The aforesaid prayer has not been opposed by Shri SC Bagadia, learned Senior counsel appearing for the respondent.

5. Accordingly, I am inclined to dispose of this petition directing the first respondent to examine the petitioner's claim and in case it is found that Shri BK Pathak and Shri SB Tiwari were also having the same

qualification which the petitioner was having at the time when they were promoted the petitioner's case be also considered at par, so as to avoid discrimination with him. Let necessary exercise be completed and in case the petitioner is found to be similarly placed, the consequential benefits be extended in his favour within 3 months from the date of receipt of copy of this order.

The respondents were directed to consider claim of the petitioner and it was also observed that in case it is found that Shri S.B. Tiwari Shri B. K. Pathak were holding similar qualifications, the petitioner's case be also considered to avoid discrimination. The respondents have now passed the impugned order dt. 14/6/09. The respondents have assigned the solitary reason for the first time by taking a somersault and have stated that the petitioner has never applied for grant of selection grade under the Career Advancement Scheme.

It is not disputed that the petitioner is holding similar qualifications like Shri S.B. Tiwari Shri B. K. Pathak. The respondents have stated in their impugned order that on 21/12/98 the qualifications for grant of selection grade were

relaxed and applications from Shri S.B. Tiwari Shri B. K. Pathak were received and therefore they were granted the benefit of selection grade by an order dt. 10/2/99. The petitioner has enclosed an application submitted by the petitioner to the University and the application submitted by the petitioner was recommended by the Dean on 16/3/99. Not only this under the Right to Information Act, Public Information Officer has furnished copies of the applications preferred by by the petitioner from time to time and such applications are dt. 10/1/92, 22/1/94, 14/7/94, 19/6/95 and 8/8/96. Not only this, the petitioner has approached this court also claiming selection grade immediately after an order was passed granting the benefit to his juniors in the year 2000 and after 4 rounds of litigation for the first time, in order to circumvent the orders passed by this court, the respondents with a defiant attitude has made a lame excuse before this court that the petitioner has not applied for grant of selection grade. It is really unfortunate that the petitioner who is a retired employee, aged about 70 years and who has been subjected to discrimination is being harassed by the

respondents by rejecting his case on some pretext or the other. In the present case, it is an admitted fact that Shri S.B. Tiwari Shri B. K. Pathak were holding similar qualifications which the petitioner is holding and now the case of the petitioner has been rejected only on the ground that he has not applied for career advancement scheme. This Court is of the considered opinion that such an excuse after a decade on the part of University is not at all tenable. Not only this, the petitioner has been informed under the Right to Information Act that he was never informed about the relaxation in the conditions relaxed by the University in its meeting dt. 21/12/98. This Court is of the considered opinion that the petitioner's case deserves to be considered in the same manner and method in which the cases of Shri S.B. Tiwari Shri B. K. Pathak were considered by the respondents – University. The plea of *res judicata* canvassed by the learned counsel for the respondent is again of no help to the University. The matter has not been decided at any point of time on merits and every time this court has remanded the matter to the respondents to consider the case of the

petitioner on merits as has been done in the case of Shri S.B. Tiwari Shri B. K. Pathak and therefore in all fairness the respondents deserves a command to consider the case of the petitioner within two months from the date of receipt of the certified copy of this order for grant of selection grade. It is needless to mention that the petitioner, if found fit by applying similar parameters which has been applied to Shri S.B. Tiwari Shri B. K. Pathak will be entitled for all consequential monetary benefits which have been granted to Shri S.B. Tiwari Shri B. K. Pathak. The aforesaid exercise of passing necessary consequential orders and granting monetary benefits shall also be completed within three months from the date of consideration of the case of the petitioner. In the present case, the respondents have not considered the case of the petitioner in spite of there being a categorical direction issued by this court on 5/2/2009. This is the fifth round of litigation and therefore this Court is of the considered opinion that in the present case a cost of Rs.5000/- has to be awarded in the peculiar facts and circumstances of the case.

Resultantly the impugned order dt.16/4/2009 is hereby quashed. Writ petition stands allowed with Costs Rs.5000/-. It is made clear that in case the case the order passed by this Court is not complied within the aforesaid period, the petitioner shall also be entitled for interest @ 8.5% p.a., from the date of entitlement till the amount is actually paid to the petitioner.

(S. C. SHARMA)
J U D G E

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