

A STATE OF MADHYA PRADESH & ORS.

v.

RAMANAND PANDEY
(Civil Appeal No. 9486 of 2014)

B OCTOBER 10, 2014.

[J. CHELAMESWAR AND A.K. SIKRI, JJ.]

Service Law:

C *Promotion – Cancellation of – Respondent, on*
promotion, not joining at the place of transfer and returning
the promotion order – Promotion cancelled – High Court
setting aside the cancellation order on the ground that no
departmental proceedings were pending against respondent
D *– Cancellation did not come because of the reason of*
pendency of any alleged departmental inquiry against the
respondent – Respondent was not interested in joining the
duties at the place of transfer and cancelling the promotion
for that reason cannot be treated as illegal or arbitrary.

E **Allowing the appeal, the Court**

HELD: Insofar as the Department is concerned, the
respondent was duly considered for promotion and was
in fact promoted to the post of ADO. The cancellation did
F **not come because of the reason of pendency of any**
alleged departmental inquiry against the respondent,
which was self created reason given by him. When he
was not served with any charge sheet, there was no
question of withholding his promotion. In any case, the
G **respondent was not interested in joining the duties at the**
place of transfer and cancelling the promotion for that
reason cannot be treated as illegal or arbitrary in the facts
of the instant case. The impugned order of the High Court

is clearly erroneous and against the law. The same is, accordingly, reversed. [para 12,14,15 and 16] [898-F; 900-B; 901-B-F] A

Union of India v. K.V. Janakiraman & Ors. 1991(3) SCR 790 = 1991 (4) SCC 109 - held inapplicable. B

Case Law Reference:

1991 (3) SCR 790 held inapplicable para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9486 of 2014. C

From the Judgment & Order dated 10.7.2012 of the High Court of Madhya Pradesh at Gwalior in W.A. No. 378 of 2012.

Mishra Saurabh, Vanshaja Shukla, Ankit Kr. Lal for the Appellants. D

Prasant Shukla, Nikilesh Ramachandran for the Respondent.

The Judgment of the Court was delivered by E

A.K. SIKRI, J. 1. Leave granted.

2. Matter heard finally as counsel on either side, who were ready to argue the matter, made a specific request in this behalf. F

3. The instant appeal arises out of the judgment dated July 10, 2012 rendered by the Division Bench of the High Court of Madhya Pradesh whereby writ appeal filed by the appellants herein has been dismissed and the order of the learned Single Judge passed in the writ petition, which was preferred by the respondent herein, has been affirmed. The learned Single Judge of the High Court had allowed the writ petition of the respondent in which challenge to the order dated November 25, 2006, whereby the respondent was reverted from the post of Agriculture Development Officer (for short, 'ADO'), was laid. The H

A learned Single Judge held that such a reversion was bad in law and quashed the same with the directions to the appellants herein to restore the promotion of the respondent as ADO from the date he was promoted to the said post, with all consequential benefits.

B 4. The facts gathered from the pleadings are mentioned hereunder in encapsulated form, as narration there of will reflect the precise grievance of the respondent and the circumstances under which the said grievance arose for consideration.

C 5. The respondent was employed in the Agriculture Department of the State of Madhya Pradesh, i.e. appellant No.1 herein. Since 1990, he was posted in District Bhind. In the year 2005, when he was working as Rural Agricultural Extension Officer (RAEO), his turn matured for consideration of his case for promotion to the next post, i.e. ADO. He was considered by the Departmental Promotion Committee for promotion as ADO which adjudged him fit for promotion to the said post. Based on the recommendation of the Departmental Promotion Committee, the competent authority passed orders dated
D December 23, 2005 giving him promotion as ADO. In para 3
E of the promotion order there was a stipulation to the effect that the Deputy Director of the concerned State District/Division, where the promoted employee was working, had to examine
F as to whether any departmental inquiry or prosecution was pending against such an employee or whether he was facing suspension. Instruction was given to the Deputy Director of the District/Division to the effect that in case any such departmental inquiry or prosecution was pending which would affect the promotion, then the promotion order was to be treated as
G cancelled and the concerned employee was not to be communicated the promotion order. In such cases, after decision of the departmental inquiry or after the completion of the period of punishment, reconsideration of the case for promotion was to be made.

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6. The promotion order dated December 23, 2005 of the respondent also contained a stipulation that on promotion he was transferred from the office of Bhind to Sagar and he was supposed to join the promoted post of ADO in the Agriculture Department in District Sagar.

7. After receiving the aforesaid promotion order, the respondent submitted representation dated August 14, 2006 to the Deputy Director stating that a complaint regarding disciplinary proceeding was pending against him and till the said complaint is decided, he was willing to go on leave. It would be relevant to reproduce text of the said representation, which is to the following effect:

"It is to intimate that the plaintiff has been discharged from duty on 06.07.06, which was post of Agriculture Development Officer. Since it was known by the reliable information on 08.07.06 that the farmers have moved complaint as to departmental inquiry against me before the Collector, I shall continue to work on the post of Agriculture Development Officer until the inquiry is disposed of. I myself am ready to take earned leave from the aforesaid date 06.07.06 to *upniyokti* date. The promotion order in original of Directorate, Agriculture Planning is sent back to you.

Therefore, it is requested that my application should be taken into account."

8. On the receipt of the said representation, appellant No.2 passed orders dated November 25, 2006 cancelling the earlier order of promotion. This order reads as under:

"The appointment of Shri Ramanand Pandey, Rural Agricultural Development Officer, Office of the Deputy Director, Agriculture Bhind placed on Serial No.39 of Directorate, Agriculture Order No. A-2/LG/ Pro./R/Est./11-

A 05/6166, Bhopal dated 23.12.05 on the post of Agriculture
Development Officer is hereby cancelled until the next
order.”

B 9. After receiving the aforesaid order, the respondent did
not react thereto by making any representation to the authorities
or questioning the validity of the said order by approaching
some judicial forum. Instead, almost two years after the passing
of aforesaid cancellation order, on October 24, 2008, the
C respondent filed the writ petition before the High Court
challenging the order cancelling his promotion. This writ petition
was contested by the appellants by filing the counter affidavit.
After hearing both the parties, the learned Single Judge allowed
the writ petition and quashed the cancellation order with the
D direction to the appellants to promote the respondent from the
date he was promoted vide promotion order dated December
23, 2005. The sole reason which prevailed with the learned
Single Judge in allowing the petition is that the respondent was
not facing any disciplinary action or criminal case at the time
when the promotion order was issued in his case. The Court
E noted that even in those cases where disciplinary proceeding
or criminal case is pending, the employee is still to be
considered for promotion and only course open for the
Department is to keep the result in a sealed cover. In the instant
case as there was no such departmental proceeding or criminal
F prosecution pending against the respondent, there was no
reason to revoke his promotion. In a short order passed by the
learned Single Judge, the aforesaid reason given in support
can be traced to paragraphs 4 and 5 of the said order. We
reproduce hereunder these paragraphs which would reflect the
mind of the Court in allowing the writ petition:

G “4. It is settled in law that right of consideration for
promotion is a statutory as well as constitutional/
fundamental right from Article 14 and 16 of the Constitution
of India. The said right cannot be curtailed even in case
H employee is facing disciplinary action or criminal case. In

those cases also the employee is required to be considered but his fate is to be kept in the sealed cover. A

5. In 1991 SC 2010 (*sic*) (*Union of India Vs. K.V. Jankiraman*), the Apex Court held that the sealed cover procedure can also be reported to only in the event a charge sheet in a disciplinary proceeding and a challan in a criminal case is issued/filed. In the present case, the respondents are not in a position to demonstrate that on the date of consideration of petitioner for promotion and issuance of order Annexure P-2, the petitioner was either facing disciplinary action or criminal case. Needless to mention that respondent department is custodian of the entire record including service record of the petitioner. In this view of the matter, merely because petitioner has made a bald statement in Annexure R-1, it was not sufficient to cancel the petitioner's promotion order. In absence of any material to show that petitioner was facing a disciplinary action or criminal case, the order Annexure P-1 cannot be upheld. There is no other justiciable reason assigned in the return for cancelling the said order." B
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10. The appellants herein preferred writ appeal against this order and the Division Bench has dismissed the appeal on the same ground, namely, there was no material on record to show that the respondent was facing any disciplinary proceeding or criminal case on the date of consideration of his name for promotion. The Division Bench, thus, observed that the learned Single Judge had not committed any illegality while passing the order impugned. F

11. Learned counsel for the appellants submitted that the High Court failed to consider that it is the respondent who himself came out with the plea that there was a departmental case pending against him and for this reason he did not want to join the duties at Sagar, i.e. the place of transfer, on promotion. He pointed out that at the time of promotion, the G
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A respondent was posted in District Bhind where he had remained for almost 15 years, i.e. since 1990, and his intention was to stay at that place only. Therefore, he came out with the story of his own that some farmers had moved a complaint against him on the basis of which departmental inquiry was pending before the Collector. He sent back the promotion order, in original, to the Deputy Director of his own. According to the learned counsel, since the respondent himself refused the promotion, appellant No.2 had no option but to cancel the promotion order. He further submitted that the writ petition filed by the respondent suffered from latches and delays and even when specific plea to this effect was taken, it was neither considered by the learned Single Judge nor the Division Bench of the High Court.

D Learned counsel appearing for the respondent, on the other hand, stuck to the reasons given by the Court below, which prompted the High Court to grant relief in his favour.

12. After hearing the counsel for the parties and considering the matter in its right perspective, we are of the opinion that this appeal warrants to be allowed. The entire approach of the High Court is erroneous in dealing with the matter at hand. In fact, the issue focused and discussed, on the basis of which cancellation order dated November 25, 2006 is passed, itself is extraneous. From the conspectus of factual matrix taken note of above, it becomes clear that insofar as the Department is concerned, the respondent was duly considered for promotion, nay, he was in fact promoted to the post of ADO vide orders dated December 23, 2005 as he was found fit for promotion. It is, thus, not that kind of a case where the respondent was either not considered for promotion or the recommendation of the Departmental Promotion Committee was kept in a sealed cover. On the contrary, promotion orders were issued, which, however, were cancelled subsequently.

H 13. It is this cancellation order which was the subject matter

of dispute and validity thereof had to be judged. In this fact scenario, holding the cancellation order to be bad in law on the ground that the respondent was not facing any disciplinary action or criminal case on the date of his consideration for promotion, was totally off the mark. The judgment of this Court in *Union of India v. K. V. Janakiraman & Ors*¹. Relied upon by the High Court would not have any application to decide the issue at hand. Since the High Court formulated wrong issue for determination, namely, right of consideration for promotion (which was not the real issue) and, therefore, committed an obvious error in answering that issue with the aid of the aforesaid judgment, though this issue did not at all occur in the given scenario.

14. What is to be noticed is that the order of promotion is dated December 23, 2005. No doubt, in para 3 of this order, the Deputy Director of the concerned District was asked to ascertain whether the persons promoted were facing any suspension/prosecution or departmental proceedings. At the same time, it was also mentioned in this para that in case it is so, promotion order shall be deemed to be cancelled and it is not to be given to the concerned employee. Insofar as Deputy Director is concerned, he naturally did not find any such prosecution or departmental proceedings pending against the respondent. Obviously, because of this reason, promotion order was in fact duly served upon the respondent. It was even acted upon by the appellant as the respondent was even relieved from his duty from Bhind Office on July 06, 2006 with instructions to report at Sagar Office. Curiously, it is the respondent who made the representation dated August 14, 2006 stating therein that some farmers had moved a complaint against him and since that complaint was pending, till the same is finalized, he was ready to take earned leave until the inquiry is disposed of. Interestingly, he also stated that he would continue to work on the post of ADO (which is a promotion post), but at District

1. (1991) 4 SCC 109.

A Bhind. So much so, he returned the promotion order, in original,
to the authorities. After receiving the said representation, the
authorities took the view that the respondent was not interested
to join the promotion post at Sagar and, therefore, cancelled
the promotion order. The cancellation did not come because
B of the reason of pendency of any alleged departmental inquiry
against the respondent, which was self created reason given
by the respondent. No doubt, it would have been better for the
appellants to write to the respondent, before cancelling the
order of promotion, stating that since there was no departmental
C inquiry, he should report at the Sagar Office or even if such a
complaint is pending, that is no reason not to join the office in
District Sagar. At the same time, we find in any case the
respondent was not interested joining the duties at Sagar and
cancelling the promotion for that reason cannot be treated as
D illegal or arbitrary in the facts of the present case. We would
like to summarise the circumstantial facts as follows:

15. Even when the respondent was relieved from the office
at District Bhind on July 06, 2006, not only he did not join the
duties at Sagar, it is more than one month thereafter, i.e. on
E August 14, 2006, he gave the representation. Further, he
returned the promotion order, in original. It is clear that he
wanted to remain in District Bhind, where he had continued
since 1990, as he was ready to go on leave instead of joining
the place of transfer. Moreover, for more than two years from
F the date of cancellation of the order of promotion, the
respondent kept totally mum and maintained stoic silence.
There was not even a semblance of protest as to why his
promotion order was cancelled or that he wanted to join the
promotion post after the alleged inquiry into the so-called
G complaint was over. He filed the writ petition on October 24,
2008, i.e. almost two years after cancellation of his promotion
order. So much so, even before filing of the writ petition, he did
not make any representation of any nature whatsoever. It would
also be interesting to note that in his writ petition, the
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respondent alleged that he was orally told that some departmental inquiry is pending against him and, therefore, his promotion order had been cancelled, but no departmental inquiry was ever started against him. This is clearly an afterthought plea. In the first instance, if that is the reason for cancellation of promotion order, it was not at all necessary for him to wait for departmental inquiry to either start or finish, inasmuch as, when he was not served with any charge sheet, there was no question of withholding his promotion, which was the position in law, as laid down in *K.V. Janakiraman* (supra). Furthermore, this was not the reason stated in the cancellation order. The appellants, in their counter affidavit, had specifically pleaded that there was no departmental inquiry pending and that was not the reason for cancellation of the promotion order and, in fact, it was cancelled as the respondent had refused to accept the promotion order by making representation dated August 14, 2006. As mentioned above, it is this aspect which was to be necessarily looked into, which has not been examined by the High Court.

16. As we find that it is the respondent himself who is responsible for cancellation of the promotion order as he did not join the promoted post, the impugned order of the High Court is clearly erroneous and against the law. The same is, accordingly, reversed. As a result, the appeal is allowed and the writ petition filed by the respondent in the High Court is dismissed.

There shall, however, be no order as to costs.