

AWADESH KUMAR MISHRA
v.
STATE OF SIKKIM
(Civil Appeal No. 6778 of 2010)

DECEMBER 09, 2014

[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

Service Law:

Sikkim Government Services (Advancement Grade) Rules, 1999 – r. 6(5) – Advancement grade – Grant of – Appellant-graduate teacher on completion of ten years of continuous service given advancement grade/scale of the post of post-graduate teacher – Appellant claiming advancement grade, in terms of the pay scale of the post of principal, Senior Secondary School – Held: Even though the appellant fulfills the educational qualification prescribed for the post of principal, he is not eligible to be promoted as Principal as per the relevant recruitment rules to the post of Principal, Senior Secondary School – Appellant does not belong to the feeder cadre, out of which appointments can be made by promotion to the post of Principal – Appellant does not possess the postulated experience, prescribed for such promotion – Thus, the appellant does not qualify for being allowed advancement grade, u/r 6(5) of the 1999 Rules in the grade of the post of Principal, Senior Secondary School.

Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy, 2011 (14) SCR 502: (2011) 9 SCC 510; Hukum Chand Gupta vs. Director General, Indian Council of

A *Agricultural Research* 2012 (8) SCR 831: (2012) 12 SCC 666 – referred to.

Case Law Reference:

B 2011 (14) SCR 502 referred to Para 5
 2012 (8) SCR 831 referred to Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6778 of 2010.

C From the Judgment & Order dated 05.06.2008 of the High Court of Sikkim in Writ Petition (C) No. 41 of 2006.

Sudhir Kilshreshtha for the Appellant.

D A. Mariarputham, Yusuf Khan (for Aruna Mathur) for the Respondent.

The Judgment of the Court was delivered by

E **J.S.KHEHAR, J.** 1. The appellant was inducted into the employment of the parent Human Resource Development Department, of the Government of Sikkim, as a Graduate Teacher. On the completion of ten years of continuous service as a Graduate Teacher, he was allowed to draw salary in the advancement grade/scale of Rs.7000-225-11500, with effect from 22.01.1997. It is not a matter of dispute, that the afore-stated scale of Rs.7000-225-11500, is that of the post of Post Graduate Teacher.

G 2. The right to be placed in an advancement grade, is provided for to Government employees, under the Sikkim Government Services (Advancement Grade) Rules, 1999 (hereinafter referred to as the '1999 Rules'). The procedure for grant of advancement grade is delineated in Rule 6 of the 1999
H Rules, which is being extracted hereunder:

"6. Procedure for grant of advancement grade:-

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(1) The Government servants up to the level of Deputy Secretary and equivalent shall be granted pay scales of the advancement grade on completion of 10(ten) years of continuous service in a post/grade if they do not get any promotion during that period subject to

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(a) clearance by the Departmental Promotion Committee;

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(b) Non-appearance of any adverse entry in their confidential reports for preceding three years prior to consideration for advance grade.

Provided that grant of advancement grade under these rules shall not be deemed to be promotion to the higher grade nor the employee shall have right to claim for employee shall have right to claim for promotion unless vacancy in such higher grade exists and is otherwise eligible to be considered for promotion to such higher grade.

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(2) Grant of advancement grade would not involve any change in the designation of the employee concerned.

(3) Grant of advancement grade of pay shall be once in a particular post/grade.

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(4) In cases where the pre-revised scales have been clubbed and where a Government servant has reached the higher scale in pre-revised scale of pay by way of advancement grade prior to 1.1.1996 shall be given higher scale in the revised pay of scale on pay fixation i.e. corresponding advancement scale in the revised pay of scale.

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SCHEDULE

Name of post	Educational & other qualification required for direct recruitment experience/ training/length of service in the lower post; (whether age and education qualification prescribed for the direct recruitment will apply in the case of promotion)	Educational & other qualification required for promotion including	In case of recruitment by promotion /deputation /transfer grade from which promotion/ deputation transfer to be made	If a DPC exists what is its composition
1	8	9	11	12
Principal Sr. Sec. Schools	a) Graduate with B.Ed. & 15 years administrative teaching experience (b) Master's Degree with B.Ed./M.Ed. With 7 years teaching experience	As at column 8	(a) Head-master of Sec. Schools with 15 years service (b) PGT with B.Ed. With 7 years regular service	As may be constituted by the Govt. from time to time by a separate notification

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A Relying on the qualifications indicated in Column 8 and 9 of the Recruitment Rules, it is the submission of the learned counsel for the appellant, that the appellant possessed Master Degree with B.Ed. with 7 years' teaching experience, and as such, was eligible for promotion to the post of Principal, Senior Secondary School, on the date from which he was placed in the advancement grade. In the above view of the matter, the appellant claims the grant of advancement grade, in terms of the pay scale of the post of Principal, Senior Secondary School.

C 4. We have given our thoughtful consideration to the solitary contention advanced at the behest of the appellant. The validity of the claim of the appellant would be determined with reference to Rule 6 of the '1999 Rules', which delineate the procedure for grant of advancement grade. Rule 6(5) provides, that advancement grade would be granted with reference to the post, to which a government employee "...is eligible to be promoted as per the relevant recruitment rules". The question to be determined is, whether the appellant was/is eligible for promotion to the post of Principal, Senior Secondary School under the Recruitment Rules? If the answer to the above, is in the affirmative, his claim would be justified. Despite the fact, that appellant fulfills the educational qualification prescribed for the post of Principal, Senior Secondary School, we are satisfied, that it would not be correct to conclude, that he "... is eligible to be promoted as Principal, Senior Secondary School, as per the relevant recruitment rules". We say so because, as per the Schedule appended to the Recruitment Rules, the appellant does not belong to the feeder cadre, out of which appointments can be made by promotion, to the post of Principals, Senior Secondary Schools. The appellant, does not possess the postulated experience, prescribed for such promotion in the Schedule appended to the Recruitment Rules. In this behalf, it would be pertinent to mention, that Column 11 of the Schedule provides, that promotion to the post of Principal, Senior Secondary School, can be made from

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Headmasters of Secondary Schools with 15 years service, and also from Post-Graduate Teachers with B.Ed., and 7 years regular service. The appellant has never held the post of Headmaster, or the post of Post Graduate Teacher, nor does he possess the experience of service postulated (15 years as Head Master of a Secondary School, or 7 years as Post Graduate Teacher). The appellant therefore, cannot be considered to be "...eligible to be promoted as per the relevant recruitment rules" to the post of Principal, Senior Secondary School. Thus viewed, we are satisfied that the appellant does not qualify for being allowed advancement grade, under Rule 6(5) of the 1999 Rules in the grade of the post of Principal, Senior Secondary School.

5. It would be relevant to mention, that the learned counsel for the appellant placed reliance on the judgments rendered by this Court in *Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy*, (2011) 9 SCC 510, and *Hukum Chand Gupta vs. Director General, Indian Council of Agricultural Research*, (2012) 12 SCC 666. The provisions and the terms and conditions for grant of advancement grade in the judgments relied on being dissimilar to the rules which are prevalent for eligibility for grant of advancement grade in the case in hand, we are of the considered view, that none of the aforesaid judgments can be of any assistance to the appellant, for the claim raised.

6. For the reasons recorded hereinabove, we find no merit in the instant appeal, and the same is accordingly hereby dismissed.

Nidhi Jain

Appeal dismissed.