



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 24th OF SEPTEMBER, 2024

WRIT PETITION No. 30909 of 2023

MRS. VEENA JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri L. C. Patne - Advocate for the petitioner.

Ms. Bhagyashree Gupta – G.A./P.L. for respondent No.1/State.

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“(a) to call for the relevant records of the case from the respondents;
(b) to quash the **impugned** order dated 6.10.2023 (**Annexure P/2**) issued by Respondent No.1 in so far as it places/appoints Respondent No. 2 and other officers junior to her in the cadre of M.P.State Finance Service Senior Selection Pay Scale (Additional Director) in Super Time Pay Scale (Director), by a writ of CERTIORARI or any other appropriate writ, direction or order;
(c) to command the Respondents to place/ appoint the petitioner in Super Time Pay Scale (Director) in the regular pay scale of Rs.129700-214300/- w.e.f. 1.1.2023 and to restore her seniority and to refix her pay and to release arrears thereof alongwith interest @



12% p.a. by a writ of MANDAMUS or any other appropriate writ, direction or order;

(d) to allow this petition with costs;

(e) to pass any such other order(s) as this Hon'ble Court may deem fit in the peculiar facts and circumstances of the case to grant relief to the petitioner, in the interest of justice.”

3] The petitioner is aggrieved by the order dated 06.10.2023 (Annexure P/2), passed by the respondent No.1 Additional Chief Secretary to the Government of M.P., which is an order of promotion in which the name of the petitioner does not find place, despite the fact that persons junior to her have already been promoted. The respondent No.2, who happens to be the immediate junior to the petitioner, has not filed any reply to the petition, and counsel for the petitioner has submitted that otherwise also no prejudice would be caused to him.

4] The grievance of the petitioner is that her name for promotion on Super Time Pay Scale (Director) has not been considered only because it has been found by the respondents that the petitioner was given Grade-C in her ACR of 2020. It is submitted that the respondents have never communicated the aforesaid degrading of the petitioner's ACR in the year 2020, despite the fact that the petitioner had obtained A+ grade in the previous years viz., 2016, 2017 and 2019, and thereafter in the year 2021 also she had obtained A+ grade, which is “Excellent”. In the year 2018 she had obtained A grade which stands for “Very Good”.

5] Counsel for the petitioner has drawn the attention of this Court to the decision rendered by the Division Bench of this Court, at Jabalpur in the case of *Mehfooz Ahmad Vs. High Court of Madhya Pradesh &*



Another reported as **2024 (3) JJJ 17** in which it has been clearly opined that uncommunicated ACR(s) cannot be taken into consideration by the DPC. Counsel has submitted that had the aforesaid ACR been communicated to the petitioner, she would have taken steps to rectify the same, and in such circumstances the respondents were liable to exclude her grading for the year 2020, and should have considered her case for promotion.

6] A reply to the petition has also been filed by the respondent No.1/State in which it is mentioned that the ACR of the petitioner was not adverse, hence, it was not communicated, and thus, the question of communication of Grade – C does not arise. It is also submitted that there is a mis-joinder of the parties as the petitioner has not arrayed as respondents the other persons, who have also been promoted by the impugned order.

7] In rebuttal, counsel for the petitioner has submitted that there was no need to array the other persons as respondents, whose rights are not affected by this petition, and the only grievance of the petitioner is that her downgraded ACR has not been communicated to her. It is also submitted that the respondents have not filed any document to demonstrate that ACRs are to be communicated only when a person receives poor grading and not the average.

8] Heard. Having considered the rival submissions and on perusal of the record as also the decision rendered by the Division Bench of this



Court in the case of **Mahfooz Ahmad (supra)**, the relevant para of the same reads as under:-

“36. The uncommunicated ACRs cannot be taken into consideration by the DPC. Under these circumstances, the consideration of ACRs by the DPC which were never communicated to the petitioner, the declaration by the DPC that the petitioner is not found fit for promotion is per se illegal. Although the petitioner has been granted promotion subsequently from a subsequent date but he has sought promotion from the date when the DPC has considered the case of other candidates that is from 11/14.08.2016. The DPC has taken a decision to promote the petitioner to the post of Assistant Registrar vide order dated 02.11.2018 considering the fact that none of ACRs considered by DPC were communicated to the petitioner.”

(Emphasis supplied)

9] Thus, it is apparent that uncommunicated ACRs cannot be taken into account while considering the case of an employee for promotion. Reference in this regard may also be had to the decision rendered by the Supreme Court in the case of *Abhijit Ghosh Dastidar vs. Union of India and others* reported as (2009) 16 SCC 146 in which it is also held that even if a person has received good grade, in that case also it is liable to be communicated to the employee so that he can have a chance to upgrade the aforesaid grade. Thus, when the facts of the present case are tested on the anvil of the aforesaid decisions, it is apparent that the petitioner obtained grade-C in her ACR of 2020, which was, admittedly not communicated to her by the respondent No.1.

10] In such circumstances, the petition stands partly allowed and it is directed that the uncommunicated ACR of the 2020 of the petitioner



cannot be taken into consideration while deciding the case of the petitioner for promotion on the post of Super Time Pay Scale (Director), and accordingly, the respondent No.1 is directed to appoint the petitioner in Super Time Pay Scale (Director) in the regular pay scale of Rs.129700-214300/- w.e.f. 01.01.2023, and restore her seniority by refixing her pay and also release arrears thereof along with interest at applicable bank rates.

11] With the aforesaid, present writ petition stands **partly allowed** and **disposed of**.

(SUBODH ABHYANKAR)
JUDGE

Pankaj