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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA**

ON THE 11th OF APRIL, 2023

WRIT PETITION No. 3092 of 2016

BETWEEN:-

**DR. MANISH KAUSHAL S/O SHRI MANGILAL KAUSHAL,
AGED ABOUT 43 YEARS, OCCUPATION: ASSOCIATE
PROFESSOR, M.G.M. MEDICAL COLLEGE, INDORE 403,
UTSAV AVENUE, 13/5, USHAGANJ, JAORA COMPOUND,
INDORE (MADHYA PRADESH)**

.....PETITIONER

(SHRI LOKESH MEHTA, LEARNED COUNSEL FOR THE PETITIONER)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, MEDICAL EDUCATION
DEPARTMENT VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. THE DIRECTOR MEDICAL EDUCATION
DEPARTMENT, SATPURA BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 3. THE DEAN AND CEO MGM MEDICAL COLLEGE,
A. B. ROAD INDORE (MADHYA PRADESH)**
- 4. SR ARVIND GHANGHORIYA, PROFESSOR, MGM
MEDICAL COLLEGE INDORE, ADDRESS, MGM
MEDICAL COLLEGE, A.B.ROAD INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI AMIT RAWAL, LEARNED GOVERNMENT ADVOCATE FOR
RESPONDENT/STATE)***

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

ORDER

The petitioner has filed the present petition seeking promotion to the post of Professor and challenging the promotion of respondent No4.

1- The petitioner and respondent no.4 both were appointed as Assistant Professors in the MGM Medical College, Indore which is an autonomous Society. Thereafter both were promoted to the post of Associate professor and became eligible for the promotion to the post of professor in the department of surgery. The service conditions of petitioner and respondent No. 4 are governed under the provisions of the Swashashi Chikitsa Mahavidyalay Ke Samvardhan Evam Saviliyan Sambandhi Niyam (Chikitsa, Dant, Nursing Mahavidyalay Tatha Mansik Arogya Shala ke Liye) 1998 (hereinafter referred to as 'the Rules of 1998').

2- The petitioner was appointed to the post of Assistant Professor on 05.12.2002. Thereafter he joined the department of surgery in the MGM Medical College, Indore on 09.12.2002. The petitioner was promoted to the post of Associate Professor on 11.06.2007 and thereafter he became due for promotion to the post of Professor under the Rules of 1998. A DPC was held on 29.03.2016. The name of the petitioner and respondent No. 4 both were considered. According to the petitioner, he is senior to respondent no.4 as per the gradation list of the department published in the years 2009, 2011 and 2014, but ignoring his claim of promotion, the DPC recommended the name of respondent no.4 for promotion to the post of Professor and accordingly, promotion order was issued. Hence, this petition before this Court.

3- After notice, respondents no.1 to 3 have filed a reply and respondent no.4 despite service has not filed any reply in this petition.

4- According to the respondent nos. 1 to 3, the name of the petitioner has not been considered for promotion since he did not submit an affidavit for transfer

of his services as a Professor in the pool of the State Government and respondent no.4 gave an affidavit to that effect, therefore, his name was recommended for promotion. It is further submitted that Professors are liable to be transferred from one Medical College to another College on the administrative ground hence the affidavit was obtained in compliance of the letter dated 1.4.2016 written by the Medical Education Department Government of Madhya Pradesh. Since the petitioner was not willing to give an affidavit to be in the Government pool, therefore his name was not recommended.

4- The petitioner has filed the rejoinder by submitting that in the year 2020, his name was considered for promotion and without taking any affidavit he has been promoted to the post of Professor, therefore it is apparent that the requirement of an affidavit de hors the rules, was demanded only to give out of turn promotion to respondent no.4, who was not liable to be promoted before the petitioner, being a junior and the post of Professor was not reserved for ST candidate.

I have heard the learned counsel for the parties and perused the record.

5- The sole question which requires consideration is whether respondents No. 1 to 3 were justified in demanding an affidavit from the petitioner for considering his name for promotion and the promotion to the post of Professor has wrongly been denied to the petitioner for want of submitting an affidavit? The recruitment, service conditions, promotion and seniority of assistant professors, associate professors and professors are governed under the provisions of the Rules of 1998. The petitioner and respondent no.4 both were appointed as Lecturers under these Rules and both were promoted to the post of Assistant Professors, admittedly the petitioner is senior to respondent No.4

6- The names of the petitioner and respondent no.4 were in the zone of consideration by the DPC held on 29.03.2016, but the petitioner did not submit an affidavit, hence his name was not recommended for promotion, whereas in the entire Rules of 1998, there is no such requirement of submitting any affidavit for transferring the services in the Government pool. The post of Professor is sanctioned post in the MGM Medical College, Indore therefore, the names of Associate Professors appointed by the autonomous society of the MGM Medical College were considered for promotion to the post of Professors. The demand for an affidavit from the associate professors was made on the basis of the internal communication letter dated 1.4.2016 written by the Medical Education Department in violation of the Rules of 1998, the internal communication cannot be overridden or prevail over the service Rules, therefore, the action of the respondents No. 1 to 3 was wholly unjustified and contrary to the Rules. There is no such requirement of submitting any affidavit for promotion to the post of Professor. The consent for transfer in the Government pool was taken with the intention to transfer the professor of autonomous medical colleges to other medical colleges but till date, respondent No. 4 has never been transferred from the MGM. The petitioner has wrongly been deprived of promotion for want of giving an affidavit and respondent No. 4 has been given undue favour by the respondents.

7- In the year 2020, when the petitioner was promoted no such affidavit was taken, therefore, it is apparent that such a requirement of the affidavit was imposed only to give promotion to respondent no.4 by way of undue advantage. Despite service respondent, No. 4 did not appear before this Court to justify his promotion over and above the petitioner.

8- In view of the aforesaid, the promotion order dated 1.4.2016 is hereby set

aside. Resultantly, the promotion of respondent no.4 to the post of Professor on the recommendation DPC dated 29.03.2016 is hereby quashed. The petitioner be treated as promoted to the post of Professor from 1.4.2016 with all consequential benefits as he was found suitable by the DPC but was not promoted due to non-submission of an affidavit. The petition is allowed with a cost of Rs.25,000/- to be paid by respondents no.1 to 3 as he suffered the agony of non-promotion when it was due to him and was made to work under his junior.

RJ



(VIVEK RUSIA)
JUDGE