

(1)

W.A.No.1133/2024

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE ROOPESH CHANDRA VARSHNEY

ON THE 12th OF JULY, 2024

WRIT APPEAL No. 1133 of 2024

NARESH KUMAR GUPTA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance :

**(SHRI SIDDHARTH SHARMA, LEARNED COUNSEL
FOR THE PETITIONER)**

**SHRI VIVEK KHEDKAR, LEARNED ADDITIONAL
ADVOCATE GENERAL FOR THE
RESPONDENTS/STATE).**

Per : VIVEK RUSIA, J.

ORDER

Appellant/Petitioner has filed the present Writ Appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 challenging the order dt.28.06.2023 passed by the Writ Court in Writ Petition

No.8515/2013, whereby the claim of the petitioner for grant of first kramonnati has been rejected.

2. The facts of the case in short are as under:-

(i) The appellant/petitioner was appointed to the post of Computer (Statics) in the respondent department on 06.12.1980. Vide order dt.26.09.1998 he was promoted to the post of Bazaar Bhav Nirikshak. Due to unavoidable circumstances, the petitioner submitted an application for forgoing the promotion and requested to post him at Gwalior because the promotional post was not available at Gwalior. The respondents accepted the request of the petitioner and vide order dt.23.12.2001, he was reverted to the post of Computer and was posted in the office of Commissioner Land Records Gwalior.

(ii) Although the aforesaid order was passed on own request of the petitioner, despite that, he challenged the order dt.23.12.2001 by way of Writ Petition No.1940/2005 (S) before this Court. Vide order dt.4.8.2006, the writ petition was dismissed. Thereafter, he preferred Writ Appeal No.355/2006, which was also dismissed by this Court vide order dt.10.09.2008, however, at the time of dismissal, the petitioner sought that he be given the time-bound promotion in place of regular promotion. The petitioner was given the liberty to file a representation to that effect to respondents No.1 and 2 within a month.

(iii) The petitioner submitted a representation and vide order dt.22.12.2021, the petitioner was granted a second kramonnati after completion of 24 years of service in the pay scale of Rs.4500-125-7000 taking into consideration his promotion on 08.08.1998.

(iv) The petitioner again submitted the representation that after completion of 12 years of service, he became entitled to first kramonnati in the pay scale of 4000-6000, which has not been granted in compliance with circular dt.19.04.1999. The respondents rejected the aforesaid representation. Hence, the petitioner filed Writ Petition No.8515/2023 before this Court. The respondents filed the reply by submitting that the petitioner was given the promotion, therefore, he was not entitled to kramonnati after the completion of 12 years of service under the above policy.

(v) After hearing learned counsel for the parties, the learned Writ Court dismissed the writ petition vide order dt.28.06.2023. Hence this writ appeal before this Court.

3. Learned counsel for the appellant submits that the petitioner was promoted to the post of Bazar Bhav Nirikshak Computer vide order dt.26.09.1998 but the said order was cancelled vide order dt.23.12.2001. The petitioner completed 12 years of service from the date of appointment, therefore, under the Kramonnati Policy dt.19.04.1999 he became entitled to the first kramonnat vetanman. It is further submitted by the learned counsel that it has wrongly been denied by the respondents as well as by the writ court. Learned counsel further submits that the Writ Court has wrongly placed reliance on the judgment of the Apex Court in the case of **Union of India Vs. Manju Arora and another - 2022 (1) SCALE 1**.

4. Learned Additional Advocate General in support of the impugned order as well as the order passed by the Writ Court and submits that the petitioner's claim for first kramonnati is not maintainable. The petitioner was promoted but he waived his right

to get the benefit of kramonnati. The State Govt. came up with the policy dt.19.04.1999 in order to give the benefit of kramonnati vetanman of the promotional post to the employees, who could not get the promotion due to the stagnation. The petitioner was given the promotion but he requested his reversion, hence, he is not entitled to kramonnati under the Kramonnati Scheme dt.19.4.1999.

We have heard the learned counsel for the parties at length and perused the record of the case.

5. The aforementioned facts are not in dispute. The petitioner was promoted vide order dt.26.09.1998 to the post of Bazar Bhav Nirikshak, which he accepted, and he joined the promotional post. However, looking at his problem after three years, the State Govt. accepted his request for cancellation of promotion. Upon cancellation of promotion, he was liable to be reverted back to the lower post. The petitioner himself applied for cancellation of promotion or reversion to the feeder post. Despite that, he challenged the aforesaid action by way of Writ Petition No.1940/2005 (S). After the dismissal writ petition, Writ Appeal No.355/2006 was filed, which was also dismissed. Therefore, after wasting valuable time of the High Court he changed his stand that though he was not enjoying the promotional post he was entitled to first kramonnati. It is clear from the scheme of the State Govt. that the kramonnati vetanman is liable to be granted to those employees after completion of 12/24 years of service who could not get regular promotions due to the stagnation. In this case, the petitioner was duly promoted to the post, which he himself forgone and after completion of 24 years of service, he has been granted the benefit of

second kramonnati. A similar view has been taken by the Apex Court in the case of **Manju Arora (supra)**. Relevant para 16 and 17 of the aforesaid order are reproduced below :-

16. We are quite certain that if a regular promotion is offered but is refused by the employee before becoming entitled to a financial upgradation, she/he shall not be entitled to financial upgradation only because she Page 12 of 16 has suffered stagnation. This is because, it is not a case of lack of promotional opportunities but an employee opting to forfeit offered promotion, for her own personal reasons. However, this vital aspect was not appropriately appreciated by the High Court while granting relief to the employees.

17. It may also be observed that when an employee refuses the offered promotion, difficulties in manning the higher position might arise which give rise to administrative difficulties as the concerned employee very often refuse promotion in order to continue in his/her own place of posting.

6. Accordingly, the present appeal being devoid of merit is hereby dismissed. The appellant/petitioner is aged about 70 years and a pensioner, therefore, we are not imposing cost but he has wasted enough time of the court.

(VIVEK RUSIA)
JUDGE

(ROOPESH CHANDRA VARSHNEY)
JUDGE

SP