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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 26.05.2016

% Judgement delivered on: 12.8. 2016

\+ **W.P.(C) 7609/2014**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

LOVE GOPAL BHARDWAJ ..... Respondent
Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

\+ **W.P.(C) 1335/2015**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. (DCHFC LTD.) & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

NEELAM KANDPAL ..... Respondent
Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

\+ **W.P.(C) 1337/2015**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. (DCHFC LTD.) & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

ANIL KUMAR POKHRIYAL ..... Respondent

Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

\+ **W.P.(C) 1339/2015**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. (DCHFC LTD.) & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

SAPNA SETH ..... Respondent
Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

\+ **W.P.(C) 1340/2015**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. (DCHFC LTD.) & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

NAVJYOTI AHLUWALIA ..... Respondent
Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

\+ **W.P.(C) 1341/2015**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. (DCHFC LTD.) & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

SANGEETA SETH ..... Respondent
Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

+ **W.P.(C) 1342/2015**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. (DCHFC LTD.) & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

S. BALASUNDARI ..... Respondent
Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

+ **W.P.(C) 1343/2015**

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LTD. (DCHFC LTD.) & ANR ..... Petitioners
Through: Mr Saurabh Chadda, Adv.

versus

PRITI PANDEY ..... Respondent
Through: Ms Jyoti Singh, Sr. Adv. with Mr Amandeep Joshi & Mr Sameer Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J

1. The Delhi Housing Co-operative Finance Corporation Ltd. (for short the petitioner corporation) has filed these writ petitions impugning the order dated 11.07.2014 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (for short the Tribunal) in OA Nos. 1540/2013 (filed by Love Gopal Bhardwaj), 280/2014 (filed by Ms Priti Pandey), 281/2014 (filed by Mr Anil

Kumar Pokhriyal), 288/2014 (filed by Ms Sapna Seth), 289/2014 (filed by Ms. S. Balasundari), 290/2014 (filed by Ms Sangeeta Seth), 292/2014 (filed by Mrs Navjyoti Ahluwalia) and 303/2014 (filed by Ms Neelam Kandpal).

2. The petitioner, a corporation has filed eight writ petitions as the respondents herein had filed eight separate OAs before the Tribunal. As an identical issue arises for consideration, these petitions are being disposed of by a common judgment.

3. The respondents, it is accepted, were initially appointed as contractual employees and subsequently regularized on different dates. The relevant dates are:-

Name of the employee	Initial Appointment (on contract basis) w.e.f	Regularised w.e.f
Love Gopal Bhardwaj	23.07.1997	25.07.2005
Neelam Kandpal	09.10.1998	25.07.2005
Anil Kumar Pokhriyal	01.08.1997	25.07.2005
Sapna Seth	11.02.1998	25.07.2005
Navjyoti Ahluwalia	23.07.2002	25.07.2005
Sangeeta Sethi	15.05.1995	25.07.2005
S.Balasundari	14.12.1995	25.07.2005
Priti Pandey	31.12.1994	25.07.2005

4. The respondents had filed the OAs professing their right to *in situ* promotion under the Delhi Co-operative Housing Corporation Ltd. Employees Promotion Scheme, 1995 (for short, 'the scheme').

5. The scheme was introduced as a result of a policy decision and

promulgated on 14.11.1995. The scheme itself and its promulgation is not disputed by the petitioner corporation.

6. The petitioner contends that the scheme would only apply to employees who were in the employment of the petitioner corporation at the time when the scheme was enacted and applied, i.e., on 14.11.1995 and not to employees appointed post 14.11.1995. Another contention raised by the petitioner before us was that the respondents herein would not be entitled to the benefit of the said scheme because they were initially appointed as contractual employees.

7. In support of the said contentions, our attention was drawn to paragraphs 4.2 and 4.5 of the scheme which deal with applicability of the scheme and eligibility for in situ promotion. Paragraphs 4.2 and 4.5 of the scheme read as follows:

> "... 4.2 **Applicability**
>
> The Scheme is applicable to all regular and full time employees of the Corporation including those appointed on contract basis for a fixed term, as on the date of coming into force of the Scheme. The persons who may be appointed on regular basis to the posts under the Corporation or whose contractual appointment are renewed for further period(s) in future shall also be governed by it.
>
> xxxx
>
> 4.5 **Eligibility Service**
>
> The minimum eligibility service for considering for promotion from one pay scale to the higher scale in a Group is 5 years of regular service.
>
> 4.5.2 In the case of existing employees, regular service already rendered by them on the same or equivalent pay scale shall also be taken into consideration in reckoning the eligibility service prescribed above....."

Paragraph 4.5 of the scheme stipulates that the minimum eligibility service for consideration for promotion from one scale to the next higher scale in a group was/is 5 years of regular service. Paragraph 4.5.2 states that in case of existing employees, regular service already rendered by them on the same or equivalent pay scale shall be taken into consideration and reckoned for eligibility service prescribed above. Paragraph 4.2 of the scheme is somewhat ambiguous and unclear. As per Paragraph 4.2, the scheme applies to all regular and full-time employees. It also applies to employees appointed on a contract basis for a fixed term as on the date of coming into force of the scheme. Thus the scheme applies to regular employees, employees who would be appointed on regular basis or those contractual employment employees whose contract would be renewed. The said employees would be governed by the *in situ* promotion scheme. It is possible to interpret the second sentence to mean contractual employees who were already working as on 14.11.1995 and whose contracts were renewed, as covered by the scheme. In other words, future contractual employees would not be governed by the scheme. However such interpretation would be in conflict with and contrary to paragraphs 2 and 3.3.1 of the scheme, which for the sake of convenience, are reproduced below:

> "....2. The appointment will be for an initial period of 5 years which may be renewed for further tenures of 5 years each, depending on the following factors:
>
> (a) The performance, commitment and the conduct of the individual;

(b) Continued requirement of the post based on work load at the time of renewal; and

(c) Willingness of the employee to serve for another term.

xxxx

3.3.1 The contractual appointees will have all the benefits of service as are given to the existing employees of the Corporation, including the in situ promotion wherever they fulfil the eligibility conditions...."

Paragraph 3.3.1, in categorical terms states that contractual employees would have all the benefits of service as are/were being given to the existing employees of the petitioner corporation, including *in situ* promotion, wherever they fulfil the eligibility conditions. The word 'existing employees' therefore means the employees who were appointed on contractual as well as on regular basis. Paragraph 2 states that the initial employment would be for 5 years and renewed for further tenures of 5 years each.

8. This doubt or debate can be answered and settled by two additional factors in favour of the respondents. The first factum is the Terms of Appointment of the respondents on contract recorded in the appointment letters issued by the petitioner. It was specifically stipulated and affirmed to each of the respondents that they would be governed by the service rules and promotion policy as applicable to the petitioner corporation in terms of the circular/ office order dated 14.11.1995. The appointment letters mandated that in case of renewal of contract of service for a further term, the entire service from the first term of appointment on contract would be considered as

continuous service for the purpose of *in situ* promotion and service benefits, which would depend upon the length of service. The contract of service, it was stated, would terminate on attaining the age of 58 years. Thus, the appointment letters postulated and accepted that the *in situ* promotion policy, i.e. the scheme, would be applicable. Secondly, all respondents, with the exception of Ms Priti Pandey, were granted *in situ* promotion after completion of five years of contractual service, followed by regular service. As per the table produced in the impugned order, the respondents, except Ms Priti Pandey, had prayed for a second or third *in situ* promotion from different dates. In other words, they had already been granted *in situ* promotion, in terms of the scheme dated 14.11.1995. Thus the petitioner corporation had never distinguished or selectively applied the scheme to exclude contractual employees.

9. The aforesaid reasoning would also take care of the contention raised by the petitioner that the scheme would not apply as the respondents were appointed as contractual employees and their contractual employment had continued till 2005. The scheme was made applicable to both regular as well as contractual employees. Possibly, the reason was that the management felt that there were not enough/ sufficient regular posts; consequently, it was decided that the benefit of *in situ* promotion would be equally applicable to contractual employees.

10. Paragraph 3.1 of the scheme is instructive and unveils the promotion policy on the basis of which the petitioner had made appointments to the posts on contractual basis for five years at a time.

According to Paragraph 2.1, no conventional system of promotion was in vogue and all posts were stand alone posts.

11. However, there is merit in the contention of the petitioner that the respondents would not be entitled to the entire arrears of in situ promotion, whether first, second or third, for law of limitation would negate and restrict grant of such relief. While examining and deciding the said aspect, we would also consider and decide on the submission that the scheme has been withdrawn and is no longer applicable.

12. The respondents had first approached the tribunal by way of original applications in 2012. The respondents claimed *in situ* promotion from the following dates:

S. No.	Name of applicant/ O.A. number	First promotion	Second promotion	Third promotion
1	Ms. Priti Pandey – OA No. 280/2014	31.12.1999	31.12.2004	31.12.2009
2	Mr Anil Kumar Pokhriyal – OA No. 281/2004	-	1.8.2007	1.8.2012
3	Ms Sapna Seth – OA No. 288/2014	-	11.2.2008	11.2.2013
4	Ms S. Balasundari – OA No. 289/2014	-	-	14.2.2010
5	Ms Sangeeta Seth – OA No. 290/2014	-	15.5.2005	15.5.2010
6	Ms Navjyoti Ahluwalia – OA No. 292/2014	-	23.7.2007	23.7.2012
7	Ms Neelam Kandpal – OA No. 303/2014	-	9.10.2008	9.10.2013
8	Mr Love Gopal Bhardwaj – OA No. 1540/2013	-	23.7.2007	23.7.2012

These details have been taken from the impugned order, but there is

no dispute and this factual assertion is accepted. It is submitted that the respondents have been denied *in situ* promotion and, therefore, the arrears of pay should be paid from the date the in situ promotion was due, and the arrears should not be restricted to three years prior to 2012 or any other period.

13. It is accepted that the first original application making the claim was filed. These OAs were disposed of directing the petitioner corporation to respond and reply to the representation made by the respondents. Liberty was granted to the respondents to approach the Tribunal by way of appropriate proceedings, in case they were still aggrieved. A Departmental Promotion Committee (for short DPC) meeting was convened and held on 25.03.2013, to examine and consider the respondents' case for in situ promotion. The DPC felt that irregularities were committed at the time of recruitment/ regularization of the employees, including non-creation of posts at the time of regularization in the year 2005. The DPC observed that the *in situ* promotion scheme was in violation of the Assured Career Progression Scheme (ACP Scheme) introduced by the Central/State Government. The *in situ* promotion scheme, as per the DPC, would be violative of instructions issued by the Government of India, and was contrary to law for the petitioner corporation was owned by the Govt. of NCT of Delhi and was bound to follow the policy of the Government of India/ GNCT of Delhi. Accordingly, the following notings were made by the DPC:

> "…. In view of the above, DPC is of the view that the entire matter needs to be revisited and the present in-

situ promotion policy requires reconsideration so as to bring it in alignment with various rules, regulations and instruction of Government of NCT of Delhi and Government of India and particularly the MACP Scheme prescribed by Government of India. DPC suggest that matter may be placed before the Board of Directors of DCHFC for taking the requisite remedial measures and thereafter it may be placed before the DPC in accordance with the extant decisions and policy of organisation...."

14. Thereafter the matter was placed before the Board of Directors of the petitioner corporation and the aspect/issue was examined on 13.06.2013. The minutes of the Board of Directors meeting dated 13.06.2013 record that the file was forwarded to the Law Department of Govt. of NCT of Delhi, which opined that the petitioner corporation should take their own decision. Legal opinion was also obtained. Further, one of the employees of the petitioner corporation had challenged the minutes of the DPC dated 25.03.2013 before the Tribunal and the matter was pending consideration. The following decision was taken by the Board of Directors on 13.06.2013:-

"..... Promotion under MACP scheme of Government of India

If the employee is not entitled for regular promotion, promotion case of the employee will be considered under MACP scheme of Government of India as per Sixth Pay Commission, which provides maximum three upgradation of pay scales during the entire service period of the employee with a minimum qualifying service of ten years.

DPC found that certain irregularities were committed at the time of recruitment or regularization of the same employees including non creation of regular

post at the time of regularization in the year 2005 which is still pending and that in-situ promotion policy of DCHFC is violative of ACP/ MACP prescribed by Govt. of India and that continuation of such a scheme would not only be violative of the instruction of Govt. of India which DCHFC being owned by GNCT, Delhi, is bound to follow, but may also be in the best administrative interest of the organization and it may eventually lead to administrative anomalies. DCHFC has been following rules and orders issued by GNCTD of Delhi and Central Govt. in respect of their employees as a part of their policy.

In compliance of the recommendations of DPC and to create opportunity of regular promotion to the employees of the DCHFC, the matter is placed before the board for

1. Ratification of the Minutes of the Departmental Promotion Committee held on 25.03.2013.
2. The earlier in-situ promotion policy and promotion order dated 25.09.1995 may be scraped immediately as it was found violative of ACP/ MACP scheme of Govt. of India by the DPC.
3. ACP/ MACP scheme provided by DOPT, Govt. of India, may be introduced in DCHFC in place of in-situ promotion policy of DCHFC.
4. The scheme for promotion, official hierarchy as well as Recruitment Rules for the posts may be prepared and placed before the Board for approval, so as to remove stagnation.

The matter is placed before the Board for consideration and approval

RESOLUTION

RESOLVED that the Minutes of the Departmental Promotion Committee held on 25.03.2013 is ratified

FURTHER RESOLVED that the earlier policy for in-situ promotion and promotion order dated 25.09.1995, is

scraped as it was found violative of ACP/ MACP scheme of Govt. of India by the DPC.

FURTHER RESOLVED that ACP/ MACP scheme provided by DOPT, Govt. of India, be introduced in DCHFC.

FURTHER ALSO RESOLVED that the scheme for promotion, creation of suitable official hierarchy as well as Recruitment Rules for the posts be prepared and placed before the Board for approval.."

Learned counsel for the respondents, on the other hand, draws our attention to the minutes of the Board of Directors meeting held on 27.08.2014 and the resolutions passed. In particular, our attention was drawn to the fact that the Board of Directors had noted that the petitioner was to adopt the Modified Assured Career Progression scheme with prospective effect and was also required to constitute a DPC to consider the claim of the respondents for *in situ* promotion.

15. At this stage, we would like to record and observe that the controversy as to the effect of minutes of the Board of Directors meeting held on 13.06.2013 and the subsequent minutes are not directly the subject matter of issue and controversy in the present writ petition. The said issue was not an aspect raised by the petitioner corporation in their reply to the OAs and has not been decided or adverted to in the impugned order. For deciding the present writ petitions we are not examining and going into the question whether the *in situ* promotion scheme dated 14.11.1995 would be applicable after 13.06.2013. We notice that the petitioners and the respondents have taken opposite views/ stands on the effect of the said resolution.

16. Even if we accept the argument of the petitioners that the *in situ* promotion scheme was withdrawn and scrapped with effect from 13.06.2013, the withdrawal would not have retrospective effect and the respondents would have considered the employees eligible for *in situ* promotion on or before 13.06.2013 in terms of the scheme. It is not asserted or indicated that *in situ* promotion policy dated 14.11.1995 was withdrawn with retrospective effect. It is not even the case of the petitioner corporation that the resolution dated 13.06.2013 had withdrawn the *in situ* promotion policy with retrospective effect.

17. On the question of arrears, we would observe and hold that the respondents would be entitled to arrears for a period of three years from the date they had filed the first OA in the year 2012. However, while computing the arrears, the petitioners would take into account the *in situ* promotions, which the respondents would have earned during the period from the date of initial appointment till the relevant date in 2009. We have reproduced, in paragraph 10, the chart with the dates from which the first, second and third *in situ* promotions are claimed. Thus, the arrears while being restricted to three years prior to filing of the OA in 2012, would be computed by taking into account the *in situ* promotions that the respondents would have earned till the date from which the arrears are payable. The arrears would be computed accordingly. The impugned order of the Tribunal, to this extent, is modified.

18. As per the *in situ* scheme the question of promotion has to be examined by the DPC. The DPC will consider the case of the respondent in accordance with the said scheme and pass appropriate

orders. As there has been considerable delay, it is directed that the DPC will be held within a period of two months from the date of receipt of this order and an appropriate decision will be taken in terms of the policy dated 14.11.1995, within three months thereafter. The petitioners would make payment of arrears within five months from the said date. As we are modifying the impugned order to above effect, it would be fair and just if we direct the petitioners to also pay interest on arrears at the rate of 8% per annum from the date of the impugned order i.e. 11.07.2014, till the date of payment of arrears.

19. With the above directions, the writ petitions are disposed of. No orders as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

AUGUST 12th, 2016/kk/ssn