



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : WA/10/2022

SMTI. TEMJENRENLA
PRESENTLY SERVING AS JOINT DIRECTOR, DIRECTORATE OF
MUNICIPAL AFFAIRS, KOHIMA NAGALAND

VERSUS

SHRI. TARACHU FITHU AND 8 ORS
PRESENTLY SERVING AS JOINT DIRECTOR, DIRECTORATE OF
URBAN DEVELOPMENT, ZUNHEBOTO SUB-DIVISION, NAGALAND

2:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

3:THE ADDL. CHIEF SECRETARY AND DEVELOPMENT
COMMISSIONER
PLANNING AND COORDINATION DEPARTMENT
NAGALAND KOHIMA

4:THE SECRETARY
URBAN DEVELOPMENT
NAGALAND KOHIMA

5:THE DIRECTOR
URBAN DEVELOPMENT
NAGALAND KOHIMA

6:THE COMMISSIONER AND SECRETARY
WORKS AND HOUSING DEPARTMENT
NAGALAND KOHIMA

7:THE CHIEF ENGINEER
WORKS AND HOUSING DEPARTMENT NAGALAND KOHIMA

8:THE COMMISSIONER AND SECRETARY
P AND AR
NAGALAND KOHIMA

9:THE NAGALAND PHYSICAL PLANNERS ASSOCIATION
REPRESENTED BY ITS PRESIDENT
MR. TAKATUBA AIER
MINISTER'S HILL COLONY
KOHIMA NAGALAN

Advocate for the Petitioner : A. ZHIMOMI

Advocate for the Respondent : I. APOK PONGENER (R-1)

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER

Date : 21-06-2024

(S.K. Medhi, J.)

The present intra-court appeal has been preferred against the judgment and order dated 08.04.2022 passed in WP(C)/71/2010 by which the writ petition filed by the present respondent no. 1 was allowed and the impugned seniority list dated 26.02.2010 was set aside and quashed and the writ petitioner was declared to be senior to the respondent no. 8 with a further direction to restore such seniority. The appellant was the respondent no. 8 in the writ petition.

2. Before directly going to the issue to be decided, it would be convenient to place the facts of the case in brief.

3. The facts projected in the writ petition and emerging from the proceeding are that in a recruitment process, the writ petitioner was appointed to the post of Assistant Town Planner on 19.03.2004 un-

der the Establishment of Urban Development Department, Government of Nagaland and was posted at Junhebotto. Prior to that, the respondent no. 8 (the present appellant) was appointed as Assistant Architect on 17.01.2000 and was posted in the office of the Chief Town Planner, Nagaland, Kohima. The parent Department of the respondent no. 8 was, however, stated to be the Public Works Department and at the time of the appointments of the parties, the Town Planning Establishment was under the Planning and Coordination Department which was subsequently brought under the Urban Development Department. It was the contention of the writ petitioner that in view of the aforesaid factor, the services of the respondent no. 8 was governed by the Nagaland Engineering Service Rules, 1997 and subsequently by the Rules of 2006 and not the Town and Country Planning Rules, 2004. It was further contended that for all practical purposes, the respondent no. 8 was an employee of the Works and Housing Department (WHD) and even at the time of going for higher studies (Master's Degree), permission was sought for and granted by the WHD on 21.07.2000. After completion of such Master's Degree, the respondent no. 8 has joined the aforesaid WHD on 22.02.2002. The aforesaid post was redesignated as Assistant Town Planner in the year 2006 and the said respondent was treated as junior to the writ petitioner all along till the publication of the impugned seniority list dated 26.02.2010. It was further contended that in the earlier Seniority Lists of 2007 and 2009, the writ petitioner was placed above the respondent no. 8.

4. It was also contended that in the competitive examination held by the Nagaland Public Service Commission in the year 2004 for appointment to the post of Assistant Town Planner, the respondent no.

8 had also participated but failed whereas the writ petitioner was successful and was appointed. However, by the impugned action, the said respondent no. 8 was sought to be made senior to the writ petitioner only because of an order of redesignation of the post of Assistant Architect to the post of Assistant Town Planner in the year 2006. It is contended that the minimum qualification for the post of Assistant Architect is a Degree of Bachelor in Architecture whereas for the post of Town Planner, it is Master's in Architecture. It is also highlighted that the respondent no. 8, though appointed in the year 2000, was in the post of Assistant Architect and obtained the Master's degree in the year 2004 after taking study leave.

5. It was also contended that under the Rules of 2004, the post of Assistant Town Planner was to be filled up by two modes only, namely, direct recruitment (50%) and promotion from the feeder cadre (50%) and therefore, it was contended that by redesignation, the respondent no. 8 could not have been encadred in the said post and made senior to the writ petitioner. It was also contended that though the redesignation of the post of Assistant Architect to the post of Assistant Town Planner was made vide notification dated 20.09.2006, the incorporation in the schedule was w.e.f. 30.09.2008 and therefore, in any event, the seniority of the respondent no. 8 can, at best, be reckoned from the said date and not prior.

6. The State respondents as well as the respondent no. 8 had contested the writ petition by filing affidavit-in-opposition. It was contended by the State that the respondent no. 8 being directly posted in the office of the Town Planner, it cannot be said to be on deputation and accordingly, the seniority must be counted from his initial date of posting. It was further contended that the said post of

Assistant Architect was created after amalgamation of all the Engineering Services on 06.12.1988 and in absence of any record of inclusion of the said post in the amalgamated list under common Engineering Service, the same cannot be said to be a part of the said Service. It was also contended that the issue for determination of the seniority was resolved by redesignation of the post for which approval of the P&AR Department was also taken. It was also pleaded that the respondent no. 8 was selected through the NPSC prior in point of time and accordingly seniority was conferred upon her from her initial appointment. The aspect of the action of creation or restructuring of post being within the exclusive domain of the Executive was also highlighted by the State.

7. On behalf of the respondent no. 8 (present appellant), it was contended that since the post was created in the year 1988, the redesignation of the post as Assistant Town Planner should relate back to the original date of creation. The similarity of the post of Assistant Architect and Assistant Town Planner, by referring to the the scale and rank has been highlighted and it is contended that while the writ petitioner was appointed in the year 2004, the respondent no. 8 was appointed in the year 2000 and therefore, was senior and accordingly, vide the impugned order in the writ petition, the grievance of the respondent no. 8 was duly redressed. It was also contended that the exercise of judicial review should not be done for upsetting such administrative decision.

8. In the writ proceedings, the Association of the employees had also intervened who had supported the writ petitioner. It was contended that under Rule 6 of the Rules of 2004, the vacancies were to be filled up only by promotion and direct recruitment equally and

there was no mode of filling up any vacancy by redesignation. It was submitted that such action was against the interest of the employees of the Department.

9. Upon hearing the learned counsel for the rival parties, the learned Single Judge, vide the judgment dated 08.04.2022 had allowed the writ petition and the impugned seniority list dated 26.02.2010 was set aside. It was further held that the respondent no. 8 (present appellant) cannot be treated to be senior to the writ petitioner.

10. We have heard Shri A. Zhimomi, learned counsel for the appellant and Ms. V. Suokhrie, learned Additional Advocate General, Nagaland. We have also heard Shri I. Apok Pongener, learned counsel for the respondent no. 1 and Shri C.T. Jamir, learned Senior Counsel assisted by Shri I. Imchen, learned counsel for the respondent no. 9. We have also been handed over the copies of affidavit-in-reply which were not enclosed to the memo of appeal.

11. Shri Zhimomi, learned counsel for the appellant has submitted that the decision to amalgamate all engineering posts and bring the same under the Works and Housing Department was in the year 1989 and at that point of time, there were one post of Architect and two posts Assistant Architect. It is contended that a further post of Assistant Architect was created thereafter and therefore, could not have been a part of the decision of 1989. The said post was filled up through the NPSC and by referring to the Rules of 2004, it is contended that the post of Assistant Architect was equivalent to the post of Assistant Town Planner. Though the post of Assistant Town Planner requires an incumbent to be a Master's in Town Planning,

the said qualification was obtained by the respondent no. 8 in the meantime. Since the post of Assistant Architect did not have any promotional avenues, the post was absorbed/redesignated as Assistant Town Planner and thereafter, the incumbent holding the said post was given the benefit of promotion to higher post.

12. The learned counsel for the appellant has clarified that on 17.01.2000, the appellant was appointed as Assistant Architect in Town Planning Department whereafter he had gone on study leave to obtain Master's in Town Planning. In the said leave vacancy, the writ petitioner was appointed for a very temporary period and in the year 2004, the appellant had rejoined the post after obtaining the Master's degree. It is submitted that the issue of the appellant not being selected as Assistant Town Planner in the recruitment held in the year 2004 is not relevant as the scale of pay in both the posts were same. However, since there were no promotional avenues for the post of Assistant Architect, representation was made by the appellant and accordingly in 2006, the said post was redesignated as Assistant Town Planner. It is submitted that such redesignation has to be construed to be the redesignation of the petitioner as there was only one such post which the appellant was holding.

13. The learned counsel for the appellant has pointed out that though at the time of filing of a writ petition, the *vires* of the Rules of 2004 was put to challenge, the said challenge was withdrawn and accordingly, the matter was remanded to the Single Bench. He submits that by the aforesaid Rules, a statutory recognition has been given to the aspect of redesignation. The attention of this Court has been drawn to the orders dated 26.10.2016 and 04.08.2016 of this Court whereby the aspect of challenge to the *vires* was held to be

not pressed and by the second order, liberty was given to make officiating appointments.

14. The learned counsel for the appellant has also referred to the Nagaland Engineering Service Rules, 1984. Under Section 6 of the said Rules, strength and pay scale of different cadres have been given which is to be read with Schedule II. Reference has also been made to the Rules of 1997 read with Schedule VI. It is submitted that under Sl. No. 7, the post of Assistant Architect is mentioned which is to be filled up by 100% promotion. He accordingly submits that since the appellant was appointed by direct recruitment, it becomes clear that those Rules were not applicable. The learned counsel has also referred to the Rules of 2006 with Schedule VII and in Sl. No. 7, the post of Assistant Architect is mentioned which is to be filled up by 100% promotion. It is submitted that these Rules are applicable in the Works and Housing Department. Noting the anomalies, the correction was done by the Department by recasting the seniority in the Seniority List dated 26.02.2010 which has been challenged.

15. Justifying the stand of the Department, the learned counsel for the appellant has submitted that the communications were exchanged between the Planning Department and the NPSC were under the mistaken motion. He reiterates that the amalgamation order was only for three numbers of existing posts and not for the post created thereafter in 1990 wherein the appellant was recruited. The learned counsel has, however, submitted that both the appellant and the writ petitioner are presently holding the post of Joint Director on being promoted and the next promotional post is the post of Director.

16. The learned counsel for the appellant has relied upon the case of ***PS Sadasivaswamy Vs. State of Tamil Nadu***, reported in **(1975) 1 SCC 152** to contend that powers under Article 226 of the Constitution of India should not be exercised if such approach to the Court is not done expeditiously. It is contended that while the redesignation was done in the year 2006, the challenge was made in the year 2010. Reliance has also been placed upon the case of ***PU Joshi Vs. Accountant General***, reported in **(2003) 1 SCC 632** wherein, the Hon'ble Supreme Court has laid down that it is the prerogative of the State to frame Rules or make changes thereof, including conditions of service and that power is within the exclusive domain of the State. The learned counsel has also pressed into service the case of ***Union of India Vs. SR Dhingra***, reported in **(2008) 2 SCC 229** to contend that no right would accrue upon a party by a mistake. He has also relied upon the case of this Court in ***Rupnarayan Pradhan Vs. Mrinal Kumar Roy***, reported in **2009 (3) GLT 685** to contend that on merger of equivalent posts, seniority is to be counted from the initial appointment.

17. *Per contra*, the learned counsel for the respondent no. 1/ writ petitioner has submitted that the findings arrived at by the learned Single Judge are based on materials on record and would require no interference. He submits that the scope of interference by a Writ Appellate Court in an intra-court appeal is limited and only where there is a perverse finding, such interference may be permitted.

18. On the facts, the learned counsel for the respondent no.1/writ petitioner has submitted that after creation of the post in question, one incumbent was earlier posted as Assistant Architect and the said appointment was issued by the Works and Housing Department who

was absorbed subsequently and his seniority was taken into consideration from such date of absorption. On the other hand, so far as the appellant is concerned, it is contended that there is no order of absorption in the Town and Country Planning Department. By drawing the attention to paragraph 18 of the judgment, it is submitted that two posts are in two different cadres and therefore, the seniority cannot be compared. It is categorically submitted that the appellant belongs to the Works and Housing Department whereas the respondent no. 1/writ petitioner was of the Town and Country Planning Department. It is submitted that the appointment of the appellant vide order dated 17.01.2000 is exactly similar to that of the earlier incumbent.

19. By referring to the affidavits-in-reply against the affidavits-in-opposition of the respondent nos. 2, 3 and 4 in the writ petition, the learned counsel for the respondent no. 1/writ petitioner has drawn the attention of this Court to the judgment dated 11.09.2003 in WA/10(K)/2000 wherein, it was observed that the draft Rules were not notified and accordingly, did not come into effect. The aspect of the selection of the respondent no. 1/writ petitioner in the recruitment held by NPSC in the year 2004 in which, the appellant had failed has also been highlighted. It is submitted that the NPSC had left the issue to determine the seniority to the Department which had accordingly decided the writ petitioner to be senior. Such decision was manifested in the Seniority Lists of 2007 and 2009. However, the same was upset by the seniority list of 2010.

20. The learned counsel for the respondent no. 1/writ petitioner has also submitted that the order of redesignation dated 20.09.2006

of the post of Assistant Architect to Assistant Town Planner was with immediate effect and not with any retrospective effect. It is submitted that the aforesaid order of redesignation was passed on the behest of the appellant.

21. The learned counsel for the respondent no. 1/writ petitioner has placed reliance upon the case of ***Sub-Inspector Rooplal & Anr. vs. Lt. Governor through Chief Secretary, Delhi & Ors.***, reported in **(2000) 1 SCC 644** wherein four factors have been laid down for the purpose of comparing two posts whether the same are similar. It is submitted that amongst the four factors, equivalence of pay scale is the least important factor. It is submitted that for the post of Assistant Town Planner, a Master's degree in Architecture is necessary whereas for the post of Assistant Architect, only a Bachelor's degree is required. As regards, the duties and functions, it is submitted that those are also different and the job of an Assistant Town Planner is of Master Planning whereas that of an Assistant Architect is only for designing.

22. Reliance has also been placed upon the case of ***Uttaranchal Forest Rangers' Assn. (Direct Recruit) & Ors. Vs. State of U.P. & Ors.***, reported in **(2006) 10 SCC 346** to bring home the contention that seniority cannot be granted until an incumbent is borne in the cadre.

23. The learned State Counsel has, however, supported the case of appellant and has defended the decision for recasting the seniority in the year 2010.

24. Shri CT Jamir, learned Senior Counsel for the respondent no.9 (the Association) has submitted that the Association was allowed to

intervene in the writ petition vide an order dated 20.05.2015. Consequently, affidavit was filed which supported the writ petitioner. It is submitted that under the Urban Development Department, there are 4 nos. of Executive Engineers, 13 nos. of Assistant Engineers and 23 nos. of Junior Engineers and all are posted from the PWD. The post of Assistant Architect, though created under the Urban Development Department, was a post substantively under the PWD. He clarifies that the parent Department is Works and Housing and PWD is a part thereof. The learned Senior Counsel has highlighted the instances of violation of the Service Rules by deputation and redesignation of certain posts by which the members of the Association had suffered grave prejudice. He has reiterated that there was no absorption of the appellant in the Urban Development Department. He has also reiterated the aspect that the redesignation order dated 20.09.2006 was to be given immediate effect and therefore, the question of giving retrospective effect would not arise.

25. The rival submissions of the learned counsel for the parties have been duly considered. The records of the case, more particularly, the impugned judgment and order dated 08.04.2022 passed by the learned Single judge have been carefully examined.

26. It transpires from the records that while the appellant was continuing as Assistant Architect, the post of Assistant Town Planner was advertised for recruitment in the year 2004. Though admittedly both the appellant and the writ petitioner had participated in the said selection process, the writ petitioner was selected. This Court is also of the opinion that when the appellant was sanguine about his seniority and the post, there was no occasion for him to participate

in the recruitment held by the NPSC in the year 2004 for the post of Assistant Town Planner.

27. The posts of Assistant Architect and Assistant Town Planner are distinct and different. As observed above, while for Assistant Architect, a Bachelor's degree is necessary, for Assistant Town Planner, an incumbent is required to possess a Master's degree in Architecture. It has to be borne in mind that the redesignation of the post held by the appellant from Assistant Architect to Assistant Town Planner in the year 2006 was preceded by the appellant having obtained the Master's degree while working in the aforesaid capacity as Assistant Architect by taking study leave. Since the prescription of the Rules is to have a Master's degree to be appointed in the said post, the redesignation could not have been possible if such Master's degree was not procured by the appellant in the meantime.

28. The question therefore, arises that after such redesignation in the year 2006 whether the seniority can be related back to the date of the initial appointment of the appellant as Assistant Architect on 17.01.2000. Admittedly, on the said date, the appellant was not having the required qualification of Master's degree which he had obtained only subsequently.

29. As observed above, the appellant had also taken a chance to be appointed as Assistant Town Planner in the recruitment held by the NPSC in year 2004. However, in the said recruitment, he could not be successful whereas the respondent no. 1/writ petitioner was duly selected and appointed. It is also clear from the records that the redesignation exercise was carried out only for the benefit of the appellant inasmuch as, there was no promotional avenues for the

post of Assistant Architect and the appellant had also, in the meantime, obtained the Master's degree.

30. In the case of ***Sub-Inspector Rooplal*** (*supra*), the Hon'ble Supreme Court has laid down the four factors which are to be taken into consideration for settling disputes regarding equation of post and the following observations have been made on the aforesaid aspect:

"17. ... These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charged held or responsibilities discharged; (iii) the minimum qualification, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in any way make the post 'not equivalent'..."

31. As observed by the Hon'ble Supreme Court, while comparing two posts, the similarity or equivalent pay scale would be the least important factor. Therefore, the contention advanced on behalf of the appellant regarding the same pay scale of the post of Assistant Architect and Assistant Town Planner is not conclusive or relevant. As observed above, the entry level qualification in the two posts are different; whereas for the post of Assistant Architect, the minimum qualification is a Bachelor's degree in Architecture and for the post of Assistant Town Planner the minimum qualification is a Master's Degree in Architecture. The duties and factions are also different which have been noted above.

32. We are of the considered opinion that for the subsequently created post of the Assistant Architect in which the appellant was posted at such time, the redesignation in the year 2006 was possible only because the appellant had, in the meantime, obtained the Master's Degree. The entire objective of such redesignation of the post held by the appellant was to open his promotional avenues which in fact was done and presently, as admitted, the appellant is working as Joint Director in the Department along with the respondent no. 1/writ petitioner. However, the said redesignation cannot be construed to confer seniority to the appellant from his date of appointment i.e. 17.01.2000 as Assistant Architect. As observed above, on the said date i.e. 17.01.2000, the appellant was not even having the minimum qualification of being Master's in Architecture required for the post of Assistant Town Planner.

33. The respondent no. 1/writ petitioner as well as the Association had vehemently contended that the appellant, by such redesignation, could not have been said to be encadred in the Department. However, we are unable to accept the said contention because of the fact that after such redesignation as Assistant Town Planner, the appellant was promoted to higher posts from time to time and is presently holding the post of Joint Director in the Department. Such promotion was made by considering the said appellant as a member of the cadre and the same was not the subject matter of challenge in any proceeding. Therefore, at this stage, any attempt to delve into that issue would amount to unsettling the settled position as, in the meantime, rights have accrued upon the parties, including certain third party rights.

34. This Court has also noticed that the issue of seniority which is

the subject matter of dispute would, otherwise not have any substantial role in the consideration for promotion to the next higher post of Director for which, both the parties are aspiring. We have noticed that the criteria laid down in the Rules for such promotion is "merit and suitability with due regard to seniority". The aforesaid criterion is slightly different from the normally used criteria of "seniority-cum-merit" and "merit-cum-seniority". The aforesaid expression has been explained by the Hon'ble Supreme Court in few cases and after consideration of the same, this Court, in the case of ***Ramen Chandra Kalita vs. State of Assam***, reported in **2003 (3) GLT 369** has laid down as follows:

"(8) The expression merit and suitability with due regard to seniority, it is agreed at the Bar has been subjected to judicial interpretation in a very few cases, perhaps because the said expression has been less frequently used by the Rule making authority. In Union of India versus M L Kapoor and others, AIR 1974 SC 87 the aforesaid expression came up for consideration before the Apex Court in the context of the prescription contained in the promotion Regulation for promotion to the Indian Administrative Service. Though in the separate but concurring judgment of Mathew, J, there are some indications that the aforesaid principle really prescribe a merit based criteria for promotion, the main judgment delivered in the case would go to indicate that the necessary fusion between merit and seniority has to be established by giving some weightage to seniority along with inter se merit of all the eligible candidates, and such weightage must be given at the time of making the assessment of candidates for being included in the select list.

In the case of Union of India and others versus Lt. Gen. Rajendra Singh Kadyan and another (2000) SCC 698 relied upon by the Respondents the aforesaid expression "merit and suitability with due regard to seniority" was again considered by the Apex court. But the observation of the Apex Court in that case must be understood in the true context in which the Apex Court was in seisin of the matter. As would be evident from a leading of the judgment in Union of India and others (Supra), the Apex Court was really concerned with the question as to whether the post of Army Commander was a selection post or promotion to the said post was required to be made on the basis of seniority alone.

(9) ...

(10) In the light of the above discussions, the parameters applied while making the impugned selection, do not appear to conform to the principle of merit and suitability with due regard to seniority as prescribed by the rules in force. The correct meaning of the expression, "merit and suitability with due regard to the seniority", having regard to the context of the Rules in force and keeping in mind the earlier Rules holding the field, would be that though the criteria of merit and suitability with due regard to seniority is essentially a merit based criterion, seniority cannot altogether be ignored and has to be considered parallelly along with merit while determining the eligibility of a candidate for his inclusion in the select list. Though it would not be the duty of the court to lay down the exact modalities to cover selection by application of said criteria, it may be apposite to observe that out of the total marks earmarked for assessment, say

out of 100 marks, a particular percentage can be assigned to merit and the remaining percentage to seniority. The percentage prescribed for merit must necessarily be higher than the percentage prescribed for seniority, as this court has already held that the expression in question convey primarily a merit based assessment. What marks should be given to seniority can also be worked out by taking into account each year of completed service and on that basis the necessary fusion between merit and seniority can be reached. ..."

35. The reliance upon the case laws by the learned counsel for the appellant is misplaced. Though in the case of ***PS Sadasivaswamy*** (*supra*), delayed approach to a writ court has been discouraged, in the instant case, the impugned action to recast the seniority was of the year 2010 and immediately, the writ petition was filed. The case of ***PU Joshi*** (*supra*) is not relevant as the issue in this case is different. The case of ***SR Dhingra*** (*supra*) would not be applicable as it is not the appellant who had approached this Court for his seniority after his redesignation. The ratio laid down by this Court in ***Rupnarayan Pradhan*** (*supra*) on the aspect that seniority is to be counted from the initial appointment is on the precondition that the merger was of equivalent posts. In the instant case, both the posts of Assistant Architect and Assistant Town Planner are distinct and different posts requiring different educational qualifications and admittedly, the appellant was initially appointed as Assistant Architect with his qualification as a Bachelor's degree holder and only on his subsequent procurement of the Master's degree, the post was redesignated to that of Assistant Town Planner.

36. The scope of interference in an intra-court appeal is limited and circumscribed. Unless the view of the learned Single Judge is such a view which cannot be taken by a reasonable person or only because of availability of another view, interference is not to be made. In the case of ***Management of Narendra and Co. Pvt. Ltd. Vs. Workmen of Narendra & Co.***, reported in **(2016) 3 SCC 340**, the Hon'ble Supreme Court has laid down the following:

"5. Once the learned Single Judge having seen the records and come to the conclusion that the industry was not functioning after January, 1995, there is no justification in entering a different finding without any further material before the Division Bench. The appellate bench ought to have noticed that the statement of MW-3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief."

37. In view of the above discussions, we are of the considered opinion that the impugned judgment and order dated 08.04.2022 passed by the learned Single Judge in WP(C)/71/2010 does not call for any interference and accordingly, the appeal is dismissed. It is, however, observed that promotion to the next higher post of Direc-

tor be made strictly in accordance with the criteria laid down in the Rules.

38. No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Comparing Assistant