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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.198 of 2015**

Kailash Chandra Agrawal, S/o Shri Madan Lal Agrawal, aged about 53 years, presently working as Superintendent of Police (Rail), Raipur, District Raipur (Chhattisgarh) 492001

---- Petitioner**versus**

1. Union of India, through the Secretary, Ministry of Public Grievance and Pensions Department of Personal and Training, Government of India, New Delhi
2. The Secretary, Government of India, Ministry of Home Affairs, New Delhi
3. The Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi
4. The State of Chhattisgarh through the Secretary, Department of Home, Mahanadi Bhawan, Mantralaya Raipur, Chhattisgarh

---- Respondents

For Petitioner	: Shri Rajeev Shrivastava and Shri Shivang Dubey, Advocates
For Respondents No.1, 2 and 3	: Shri N.K.Vyas, Assistant Solicitor General
For Respondent No.4/State	: Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Navin Sinha, Chief Justice****14/10/2015**

1. The Petitioner assails order dated 21.11.2014 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting Bilaspur in Original Application No. 660 of 2013. The Tribunal held that the Respondents had given correct weightage for seniority to the Petitioner based on years of service under Rule 3(3)(3)(ii) of the Indian Police

Service (Regulation of Seniority) Rules, 1988 (hereinafter called 'the Seniority Rules') as amended vide notification dated 18.4.2012 retrospectively. The allotment of seniority to the Petitioner from the year 2002 consequent to his selection by promotion to the Indian Police Service (hereinafter referred to as 'IPS') in the select list of 2009 under the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter called 'the Regulations') called for no interference.

2. Learned Counsel for the Petitioner submitted that he was appointed as a Deputy Superintendent of Police on 28.10.1985. The Respondents considered him for appointment in the IPS Cadre under the Regulations at the Departmental Promotion Committee Meeting dated 11.3.2011 for the select list of the year 2009, pursuant to the order of the Punjab and Haryana High Court in C.W.P. No. 15798 of 2009 (Parveen Kumar v. Union Public Service Commission) affirmed by the Supreme Court. In accordance with the law laid down in Parveen Kumar (supra) the eligibility for selection was to be considered as on the 1st of January to which the select list related based on assessment of vacancy as on 31st December of the year concerned. The Respondents therefore rightly considered the Petitioner for the select list of 2009 instead of 2010 as was being done by them earlier.

3. The select list was not prepared annually as required by the Regulations. The departmental promotion committee which met on 11.3.2011, by a fiction was considering the eligibility of the Petitioner for promotion as in the year 2009. The Notification for promotion was issued on 2.9.2011. If the consideration was by a fiction, the fiction had to be taken to its logical conclusion by applying the principles for grant of seniority in reckoning weightage in accordance with the Seniority Rules as it stood in 2009. The Respondents in their counter affidavit did not deny that the Petitioner was entitled to weightage of eight years of service

under the Seniority Rules. Any subsequent amendment made to the Seniority Rules on 18.4.2012 could not be applied retrospectively, more so when the amendment was clearly prospective in nature. The Petitioner could not be promoted to IPS cadre in the select list of 2009 and seniority granted in accordance with the law as amended in 2012. The Tribunal committed gross error in holding that the Respondents had correctly given retrospective effect to the amendment notification dated 18.4.2012 when the amendment itself stated that it was prospective in nature.

4. After the judgment in Parveen Kumar (supra) the Respondents had issued an executive instruction on 28.5.2010 that the law laid down by the Court would be applicable from 1.2.2010 and that wherever selection committee meetings had not been held it will be done according to the Regulations as interpreted by the Court. The Petitioner is entitled to eight years' weightage of service in accordance with the law as it existed in 2009.

5. Learned Counsel for the Respondents submitted that the Petitioner was essentially being considered for the select list of 2010. It was styled as select list of 2009 in accordance with the law laid down in Parveen Kumar (supra). The Respondents had made valid classification for grant of weightage to those whose select list was prepared before the judgment in accordance with the old Seniority Rules and for those prepared after judgment in accordance with the amended Seniority Rules. The Tribunal thus rightly held that the amendment dated 18.4.2012 to the Seniority Rules was retrospective in nature.

6. We have considered the submissions on behalf of the parties.

7. The Regulations framed under Rule 9(1) of the Indian Police Service (Recruitment) Rules, 1954 provides in Regulation 5 for preparation of select list annually and appointments from the same under Regulation 9. The Seniority Rules provides for the manner in which

seniority has to be reckoned to a candidate from the State Police inducted into the IPS and the grant of weightage for past years of service.

8. The judgment of a Court of law is always retrospective in nature unless expressly made prospective in operation. The Respondents therefore rightly considered the case of the Petitioner for appointment to the IPS in the select list of 2009 in accordance with the judgment in Parveen Kumar (supra). The Departmental Promotion Committee on 11.3.2011 by a fiction considered the matter as in 2009. The executive instruction dated 25.8.2010 issued pursuant to the judgment itself stated that all future consideration had to be in accordance with the same.

9. If the select list was required to be prepared annually the consideration being made by the departmental promotion committee in 2011 was as if it was being done in 2009 by a fiction. The fiction had therefore to be taken to its logical conclusion by the imagined state of affairs and the law as existed in 2009 with regard to weightage for grant of seniority. The Respondents cannot consider matters by fiction in 2009 and apply the Seniority Rules as amended on 8.4.2012. There is absolutely no material to suggest any administrative decision, if it could have been done, to apply the amended law in cases considered after Parveen Kumar (supra) and those considered after it. In (2009) 1 SCC 540 (Corporation Bank v. Saraswati Abharansala) with regard to a legal fiction it was observed :-

“17....The effect of a legal fiction is well known. It must be given full effect. It must be taken to its logical conclusion....”

10. This notification dated 18.4.2012 fixing new criteria for grant of weightage for years of service was prospective in nature. The counter affidavit admits that the Petitioner was entitled to eight years weightage based on length of service. If a fiction was being created, that fiction had to be carried to its logical end by considering grant of weightage in

accordance with law that may have been existed as in 2009. Having created a fiction, it is not permissible for the Respondents to then boggle their mind by acting upon the fiction partly and rejecting it in the other part. The Tribunal, in our opinion, committed a gross error in coming to the finding that the notification dated 18.4.2012 was retrospective in nature. If we may say so, it is a perverse finding contrary to the language of the notification itself.

11. The order of the Tribunal is held to be unsustainable. It is set aside. The Respondents are directed to consider grant of seniority to the Petitioner by granting weightage for past service based on his entry into the Indian Police Service in the select list of 2009, in accordance with Rule 3(3)(3)(ii) of the Seniority Rules as it existed before the amendment dated 18.4.2012 to the same.

12. Let such consideration be done and appropriate orders passed within a maximum period of four months from the date of receipt and/or production of a copy of this order.

13. The writ petition is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE