

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WA.NO. 1149 OF 2015 () IN WP(C).12919/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 12919/2013

APPELLANT(S)/RESPONDENTS:

1. LIFE INSURANCE CORPORATION OF INDIA
REPRESENTED BY SENIOR DIVISIONAL MANAGER
DIVISIONAL OFFICE, PATTOM P.O.
THIRUVANANTHAPURAM-695004.

2. REGIONAL MANAGER (P&IR)
LIC OF INDIA, SOUTHERN ZONAL OFFICE, P.B.NO.2450
LIC BUILDING, 153, AANNASALAI
CHENNAI-600002.

BY ADV. SRI.S.EASWARAN

RESPONDENT(S)/PETITIONER:

R.SURESH
DEVELOPMENT OFFICER, S.R.NO.536775, LIC OF INDIA
SATELLITE OFFICE, VARKALA-695141.

R1 BY ADV. SRI.N.DHARMADAN (SR.)
R1 BY ADV. SMT.D.P.RENU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
30.09.2015, THE COURT ON THE 26.10.2015 DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.1149 of 2015

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Dated this the 26th day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

The Life Insurance Corporation of India (for short, “the Corporation”) is in appeal against the judgment dated 13.03.2015 of the learned Single Judge in W.P(C) No.12919 of 2013, filed by the 1st respondent to the appeal by which judgment the learned Single Judge has allowed the Writ Petition. Parties shall be referred to as noted in the Writ Petition.

2. Brief facts giving rise to the Writ Petition necessary to be noted for deciding this Writ Appeal are: Petitioner was appointed as Development Officer in the Corporation during the year 1984. His probation was declared with effect from 01.11.1986. Disciplinary proceeding was initiated against the petitioner by issuance of a charge sheet dated 04.05.1987.

Petitioner was dismissed from service with effect from 19.04.1989. Petitioner raised an industrial dispute questioning his dismissal order. The Industrial Tribunal vide its award dated 06.02.1993 held that punishment of dismissal is too harsh to sustain. The Tribunal gave its award directing the management to reinstate the workman without back wages and any other benefits. The Corporation challenged the award before this Court and the Apex Court unsuccessfully. However, during the period the litigations were pending, Corporation has obtained an interim order staying the enforcement of the award. After dismissal of the Special Leave Petition and Review Petition by the Apex Court, the petitioner was reinstated in service on 19.02.2009. The period of absence from the date of removal till the date of reinstatement was treated as extraordinary leave by the Corporation. Action of the Corporation was challenged by the petitioner in W.P(C) No.16769 of 2009. In the Writ Petition petitioner challenged reinstatement in so far as it denied the back wages and also claimed other reliefs including payment of interest and promotion. During the

pendency of the Writ Petition, the Corporation issued an order dated 07.09.2012 directing for payment of back wages with effect from 27.04.1993 along with some consequential benefits. As regards the plea of granting promotion it was held that the same could not be considered favourably since it depends on fulfillment of certain eligibility conditions. W.P(C) No.16769 of 2009 was decided by this Court on 17.09.2012. This Court held that award of the Industrial Tribunal and the benefits as contemplated by order dated 07.09.2012 be paid within two months. With regard to the claim of promotion, it was observed by this Court that the issue is to be considered in the light of various other aspects with regard to which no opinion is expressed. Against the order dated 07.09.2012 issued by the Senior Divisional Manager, petitioner filed an appeal claiming interest on back wages and promotions. Appeal was rejected which rejection was communicated to the petitioner on 21.03.2013. Petitioner thereafter filed the present Writ Petition praying for the following reliefs:

“(i) issue a writ of certiorari or other writ or order or direction

calling for the papers leading upto Ext.P9 and quash Ext.P1 all further orders and proceedings taken by the respondents pursuant to the same to deny the benefit claimed by the petitioner in Ext.P8 and P9.

(ii) declare that the petitioner is entitled to arrears of pay from 27.04.1993 after correcting fixing his increments and promotion actually due to him as if he was in regular service with 12% interest for the arrears as claimed in Exts.P8 and P9.

(iii) issue a writ of mandamus or other writ or order or direction to the respondent to reconsider Exts.P5 and P8 and pass fresh orders in the light of the above statements and Exts.p3 and P4 and the claim of the petitioner in the interest of justice on humanitarian consideration.

(iv) issue such other orders as this Honourable Court may deem fit and necessary in the facts and circumstances of the case”.

3. The Corporation filed a counter affidavit in the Writ Petition opposing the prayers made by the petitioner.

4. Learned Single Judge vide his judgment dated 13.03.2015 allowed the petition to the extent of granting reliefs regarding promotion and other consequential monetary benefits. Prayer of the petitioner for granting interest on back wages was refused. The Corporation aggrieved by the said judgment is in appeal.

5. We have heard Shri S.Easwaran, learned counsel

for the Corporation and Shri N.Darmadan, learned Senior Advocate assisted by Advocate Smt.D.P.Renu for the petitioner.

6. Learned counsel for the appellant in support of the appeal contended that claim of promotion raised by the petitioner in earlier Writ Petition No.16769 of 2009 having not been granted, plea of petitioner for promotion raised in the present Writ Petition is barred by the principle of res judicata. It is further contended that promotions to the post of Assistant Branch Manager and Branch Manager are granted not on the basis of seniority, but for granting promotion certain criteria is to be fulfilled, hence the petitioner was not entitled for promotion to the post of Assistant Branch Manager and Branch Manager as directed by the learned Single Judge. In any view of the matter, while granting retrospective promotion no arrears of salary could have been directed by the learned Single Judge. It is submitted that the learned Single Judge in the earlier Writ Petition filed by the petitioner being W.P(C) No.16769 of 2009 did not grant promotion and it was observed that grant of

promotion is dependent on various other aspects.

7. Shri N.Dharmadan, learned Senior Advocate for the petitioner contended that the petitioner was kept out of employment by the Corporation unjustifiably and in view of the fact that challenge made by the Corporation to the reinstatement order was pending before this Court and the Apex Court, eligible promotion to which the petitioner was entitled could not have been denied. It is submitted that the Corporation obtained interim order in the proceedings stopping implementation of the award of the Tribunal and it cannot be allowed to take benefit of the fact that petitioner could not work during the period in which he was entitled to work and earn promotions. It is submitted that the learned Single Judge committed no error in directing for promotion to the posts of Assistant Branch Manager and Branch Manager with effect from 24.07.2003 and 24.07.2011 with necessary back wages.

8. Learned counsel for the parties have placed reliance on various judgments of this Court and the Apex Court which shall be referred to while considering the

submissions in detail.

9. The first issue which is to be considered is as to whether claim of the petitioner is barred by the principle of res judicata in view of the earlier decision of this Court in W.P.(C) No.16769 of 2009. In W.P(C) No.16769 of 2009 petitioner has raised various claims including the claim for promotion to different higher posts. Learned Single Judge considered other claims on merits and also noticed Ext.P9 order dated 07.09.2012 which was issued during the pendency of that Writ Petition. With regard to promotion the following order was passed:

“9. With regard to the claim for promotion raised by the petitioner, this Court finds that this issue has to be considered in the light of various other aspects as well, with regard to which no opinion is expressed in the writ petition, as the scope is very limited. The only question is whether Ext. P1 Award passed by the Tribunal has been given effect to or not, which stands satisfied.

10. In the above circumstances, the writ petition is closed in the light of Ext. P9. The benefits flowing from Ext. P9 order now passed by the respondent corporation on 7-9-2012 (as borne by R1 (a) shall be quantified and the due amount payable to the petitioner shall be released at the earliest; at any rate within two months from the date of receipt of a copy of this judgment”.

In the above Writ Petition, it is clear that the question of

promotion was directly and substantially in issue and had the learned Single Judge not left the question open, the principle of constructive res judicata would have been attracted barring raising of any further plea by the petitioner. But in view of the fact that the learned Single Judge observed that with regard to promotion that "issue has to be considered in the light of various other aspects as well, with regard to which no opinion is expressed in the writ petition" that question was left open to be considered and neither the issue was decided nor closed. In view of the specific observations made by the learned Single Judge as noted above, we are of the view that claim of promotion of the petitioner shall not operate as res judicata in the proceedings which was initiated by the petitioner by means of filing W.P(C) No.12919 of 2013. It is further relevant to note that against the order passed by the Senior Divisional Manager, rejecting the claim of petitioner, petitioner had filed an appeal which appeal was decided and the order was communicated to the petitioner on 21.03.2013. The appeal having been decided after the disposal of W.P(C) No.16769

of 2009, petitioner had a cause of action to agitate and thus W.P(C) No.12919 of 2013 is not barred by the principle of res judicata.

10. The main issue raised by the learned counsel for parties regarding the claim of promotion by the petitioner during the period he was kept out from functioning needs to be answered.

11. As noted above, although the Industrial Tribunal gave an award on 06.02.1993, the petitioner was not reinstated and was kept out of employment by challenging the award of the Tribunal before this Court and the Apex Court. The petitioner, after the dismissal of the Special Leave Petition and Review Petition was reinstated vide order dated 19.02.2009. Although back wages was denied initially, subsequently by order dated 07.09.2012 he was granted back wages but the claim of eligible promotion was denied.

12. Learned Senior Advocate for the petitioner has placed reliance on the judgment of the Apex Court in **Union of India v. Hemraj Singh Chauhan and Others** ([2010] 4 SCC 290). The Apex Court in the said case held that right of

an eligible employee to be considered for promotion is virtually a part of his fundamental right under Article 16 and guarantee of fair consideration for promotion flows from guarantee of equality under Article 14. In the above case, Officers of the State Civil Service had claimed right of promotion based on cadre review which according to the State Civil Officers was to take place in April, 2003. There was delay in cadre review which could take place in August, 2005 only. Officers of the State Civil Service filed application before the Central Administrative Tribunal which held that review carried in August, 2005 cannot be given retrospective effect. The said order was challenged before the High Court. The High Court allowed the Writ Petition directing that cadre review should be undertaken as it was taking place on 30.04.2003. The following was observed in paragraph 17:

“17. The High Court after hearing the parties was pleased to set aside the judgment of C.A.T. dated 15.12.2006 and the notifications dated 1.2.2006 and 25.8.2005 were set aside. The State Government and the Central Government were directed that the cadre review exercise should be undertaken as if it was taking place on 30th April, 2003 with reference to the vacancy position as on 1st January, 2004.”

Union of India challenged the direction of the High Court in the Apex Court. Apex Court held that the Officers cannot be made responsible for the delay, hence the directions given by the High Court were reasonable and have to be carried out. In the above context the Apex Court has laid down the following in paragraphs 35, 36 and 38:

“35. The Court must keep in mind the Constitutional obligation of both the appellants / Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Art.16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Art.16 virtually flows from guarantee of equality under Art.14 of the Constitution.

38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in - action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.”

Thus we are of the view that claim of promotion of the petitioner which he might have been entitled had he been allowed to work in pursuance of the order of the Tribunal was required to be considered by the Corporation. As noted above, the Senior Divisional Manager vide his order dated 07.09.2012 has rejected the claim of the petitioner for promotion by making the following observations:

“I also hereby order that he be granted back wages with effect from 27.04.1993 along with other consequential benefits of PLLI, Gratuity, Pension as per rules. As regards his plea for granting him all eligible promotions, it may be stated that the same could not be viewed favourably as it would depend on his fulfillment of certain eligibility conditions, among other things, like business performance, etc. as laid down by the Corporation.”

Thus the Senior Divisional Manager by the aforesaid observation only observed that plea of grant of eligible promotion depends on fulfillment of certain eligibility conditions among other things like business performance, etc. The Corporation had not considered the claim of petitioner for promotion on relevant yardstick which led the petitioner in filing the subsequent Writ Petition. A submission which has been pressed by the learned counsel

for the Corporation is that grant of promotion is not automatic to Development Officers, rather it depends on various criteria which have been framed by the Corporation for effecting promotion. Learned counsel has relied on the Notification issued by the Corporation on 31.10.1994 regarding promotion exercise which was applicable for the year 1994. The Chairman had framed Rules where in Part I eligibility for Development Officers to be considered for promotion was mentioned which is as follows:

“1. Development Officers may be considered for promotion to the cadre of Assistant Branch Manager (Sales) provided:

(a) They have completed 10 years in their cadre as on “cut off date”.

(b) They have completed 5 years but less than 10 years in their cadre as on “cut off date” and have on the basis of the average performance during the last 3 appraisal years, brought in a Scheduled First Year Premium Income of Rs.80,000/- and 200 policies and whose lapse ratio is less than 10%. However, the lapse ratio of 10% has been relaxed by the Chairman to 15% with a view to widen the scope of selection. The lapse ratio for this and other purposes shall be determined as per Clause 6 below.

13. Learned counsel for the Corporation strongly relies on the judgment of the Apex Court in **State of Mysore v. C.R.Sheshadri and Others** ([1974] 4 SCC 308). Krishna Iyer J., had occasion to consider a case where the

respondent to appeal was claiming retrospective promotion from the date of his juniors were promoted. The High Court directed the State to promote the respondent. Apex Court held that if the rule of promotion is one of sheer seniority, it may well be that promotion is a matter of course, but when it is seniority-cum-merit, in the absence of positive proof of the relevant service rules, it is hazardous to assume that by efflux of time the petitioner would have spiralled up to promotion. The following was laid down in paragraph 2:

“2. Flowing from this finding is the direction by the High Court to give the petitioner notional promotion as Deputy Secretary with effect from the date on which one R. Venkataraman, next below him, secured such promotion and for payment of the excess salary accruing to him on that footing. This part of the judgment is attacked as beyond the power of the Court. We see the soundness of this submission. In our constitutional scheme, a broad three fold division exists. The power to promote an officer belongs to the Executive and the judicial power may control or review Government action but cannot extend to acting as if it were the Executive. The Court may issue directions but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles. What has been done here is in excess of its jurisdiction. Assuming the petitioner's seniority over Venkataraman, how can the Court say that the former would have been for certain promoted? Basically, it is in Government's discretionary power,

fairly exercised, to promote a Government servant. If the rule of promotion is one of sheer seniority it may well be that promotion is a matter of course. On the other hand if seniority cum merit is the rule, as in the Supreme Court decisions cited before us, promotion is problematical. In the absence of positive proof of the relevant service rules, it is hazardous to assume that by efflux of time the petitioner would have spiralled up to Deputy Secretaryship. How could we speculate in retrospect what the rule was and whether the petitioner would have been selected on merit, and on the strength of such dubious hypothesis direct retroactive promotion and back pay? The frontiers of judicial power cannot be stretched thus far. The proper direction can only be that Government will reconsider the case of the petitioner afresh for purposes of notional promotion. If the service rule entitles him to promotion on the ground of seniority alone, Government will, except for the strongest reason, grant the benefit of promotion with effect from the date Venkataraman became Deputy Secretary. Nothing has been suggested against the petitioner in his career to disentitle him to promotion and we have no doubt Government will give him his meed. However, if the criterion for promotion is one of seniority cum merit, comparative merit may have to be assessed if length of service is equal or an outstanding junior is available for promotion. On the facts before us, there is no reason to regard the petitioner's eligibility on merit for Deputy Secretaryship to be denied or delayed when Venkataraman was promoted."

The Apex Court further held that in a case where promotion of an officer was involved, the proper direction would be to consider the fitness of the workman for promotion. The following was laid down in paragraphs 5 and 6:

"5. In State of Mysore v. Syed Mahmood, (1968 (3) SCR 363 (366) : AIR 1968 SC 1113) Bachawat J., speaking for the Court, held in a case where the promotion of an officer was involved that the proper direction should be that the State Government should "consider the fitness of Syed Mahmood and Bhao Rao for promotion in 1959.....The State Government would upon such consideration be under a duty to promote them as from 1959 if they were then fit to discharge the duties of the higher post and if it fails to perform its duty, the Court may direct it to promote them as from 1959." The Court concluded in that case thus:

"We direct the State Government to consider whether Syed Mahmood and Bhao Rao should have been promoted to the post of senior statistical assistants on the relevant dates when officers junior to them were promoted, and if so what consequential monetary benefits should be allowed to them."

6. Similarly, in State of Mysore v. P. N. Nanjundiah, (1969 (3) SCC 633 (637) : AIR 1969 NSC 38) Ramaswami, J., speaking for the Court, dealt with a service dispute and while agreeing with the substantive conclusion of the High Court modified the order in so far as the promotion was ordered by the Court. The learned Judge observed:

"The argument was stressed on behalf of the appellants that in any event the High Court was not right in issuing a writ of mandamus "directing the appellants to promote respondent No.1 as Overseer with effect from February 1, 1961 and as Supervisor with effect from April 1, 1963 and to give him all consequential benefits". In our opinion there is justification for this argument. It has been pointed out by this Court in the State of Mysore v. Syed Mahmood, (1968 (3) SCR 363 : AIR 1968 SC 1113) that in matters of this description the high Court ought not to issue writs directing the State Government to promote the aggrieved officers with retrospective effect. The correct procedure for the High Court was to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the 1st respondent should have been promoted on the relevant date and

so what consequential benefits should be allowed to him. in the present case we are informed that both respondent No.1 and respondent No.2 have been promoted as overseers after the filing of the writ petition. In the circumstances we consider that proper course is to issue a direction to the appellants to consider whether the respondent No.1 should have been promoted to the post of Overseer with effect from December 1, 1961 and as a Supervisor with effect from April 1, 1963, what should be the relative seniority as between respondent No.1 and respondent No.2 and what consequential benefits should be allowed to respondent No.1".

We respectfully agree with the guideline furnished by these two decisions which fortify the view we have taken.

The Apex Court ultimately while deciding the appeal set aside the direction of the High Court.

14. Another judgment relied on by the learned counsel for the Corporation is **State of Haryana v. O.P. Gupta** ([1996] 7 SCC 533) where the Apex Court held that while giving notional promotion from the deemed date arrears of pay from the deemed date is not to be given. The following was observed in paragraphs 7 and 8:

"7. This Court in Paluru Ramakrishnaiah v. Union of India, 1989 (2) SCR 92 at page 109 : (AIR 1990 SC 166 at p. 195), considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect

from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in *Virender Kumar v. Avinash Chandra Chand*, 1990 (3) SCC 472 : (AIR 1991 SC 958), in paragraph 16.

8. It is true, as pointed out by Shir Hooda, that in *Union of India v. K. V. Jankiraman*, AIR 1991 SC 2010, this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto.”

15. Learned Senior Advocate for the petitioner has placed reliance on the judgment of the Apex Court in **Uma Shankar v. Union of India** (AIR 1980 SC 1457). The above case was a case of termination of an Official of the Central Excise. The termination was set aside and it was held that the appellant be treated as continuing in service. The said case was on its own facts and does not render any benefit to the petitioner in the present case.

16. With regard to the judgment in **Union of India v. Hemraj Singh Chauhan and Others** (supra), as noted above, although the Apex Court in the said case directed that consideration of promotion be made from the retrospective date i.e., the date when the cadre review was required to be conducted, in that case the question as to what benefit should be given while promoting the Officer was not under consideration and nor any such direction was issued.

17. Another judgment relied on by the learned Senior Advocate is **State of Jharkhand and Another v. Harihar Yadav and Others** ([2014] 2 SCC 114). In that case the Apex Court examined the principles of social justice, right to live with dignity and role of Judiciary and State pertaining thereto. The Apex Court held that social justice is the ideal goal of a welfare State and the Courts are bound to respond to the written constitutional framework of which directive principles of State policy constitute an integral part. In paragraphs 14 and 15, the Apex Court stated the following:

“14. In *Harjinder Singh v. Punjab State Warehousing Corporation*, 2010 (3) SCC 192 Singhvi, J. opined thus:

"It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-- public or private."

15. We have referred to the aforesaid authorities to highlight the concept of social justice, dignity of living and the role of the judiciary. The court is bound to respond within the constitutional framework. In this context, the Preamble of the Constitution becomes extremely significant. The Preamble uses the words "social justice" while speaking of "Justice - social, economic and political". Thus, social facet and the economic aspect are the ideal goal of the welfare State. The Constitution casts a responsibility on the State to sustain social and economic security, for the Preamble is the floodlight illuminating the path to be persuaded by the State to set up a sovereign, socialist, secular, democratic republic. [See: *D. S. Nakara* (supra)]."

The Proposition of the law as laid down by the Supreme Court in the above case cannot be disputed. But the above case was not a case of any retrospective promotion so as to help the petitioner in the present case.

18. The learned Single Judge has issued the following directions in paragraph 16:

“16. Based on the findings rendered as above, the writ petition is allowed to the extent of granting the following reliefs:-

(i) The writ petition is allowed to the extent of quashing Ext.P1 order through which the petitioners claim for grant of promotion was declined.

(ii) The respondents are directed to assign notional promotion to the petitioner with retrospective basis, to the post of Assistant Branch Manager with effect from 24.7.2003 and to the post of Branch Manager with effect from 24.7.2011. He shall be assigned with suitable posting in the cadre of 'Branch Manager' without any further delay, at any rate within one month from the date of receipt of a certified copy of the judgment.

(iii) It is declared that the petitioner shall be entitled for all consequential monetary benefits as if he had continued to officiate in the posts of Assistant Branch Manager and Branch Manager, from the respective due dates as mentioned above. The respondents shall effect computation of all such benefits and payment of balance amount remaining due to the petitioner shall be made at the earliest at any rate within 2 months from the date of receipt of a certified copy of this judgment.

(iv) The relief to the extent of claiming payment of interest on the benefits due for payment, is hereby declined.”

We have held that the petitioner was entitled for consideration of his promotion with retrospective effect. Learned Single Judge has considered the question of promotion as Assistant Branch Manager from 24.07.2003 and to the post of Branch Manager from 24.07.2011. It is relevant

to note that petitioner was reinstated in the year 2009 and on the date when the Senior Divisional Manager considered the claim of petitioner by Ext.P2 petitioner has to his credit at least 3 years work and experience. The present was a special case where the petitioner was kept out of employment due to the litigation initiated by the Corporation against the order of the Tribunal. There being work and conduct of an Officer available for a few years, the said work could have furnished relevant basis for considering the petitioner's eligibility for promotion since the stand taken by the Corporation is that promotion is not automatic and that it depends on various factors.

19. Learned Single Judge while deciding W.P.(C) No.16769 of 2009 has also made same observations in paragraph 9 which is to the following effect:

“9. With regard to the claim for promotion raised by the petitioner, this Court finds that this issue has to be considered in the light of various other aspects as well, with regard to which no opinion is expressed in the writ petition, as the scope is very limited. The only question is whether Ext. P1 Award passed by the Tribunal has been given effect to or not, which stands satisfied.”

20. Work experience could have furnished the basis

for consideration and if it was found that petitioner fulfilled the criteria as was applicable at the relevant period with effect from which he is being considered for promotion, he could have been granted notional promotion with effect from the earlier date and actual benefit of salary could have been paid from the date of the order. In the present case since the Senior Divisional Manager by order dated 07.09.2012 has considered and rejected the claim of petitioner for promotion, we direct that a fresh exercise be undertaken by the Corporation as if promotion is being considered on the said date, i.e., 07.09.2012. However, consideration of promotion of petitioner as Assistant Branch Manager shall be undertaken with effect from 24.07.2003 and in the post of Branch Manager on 24.07.2011 as has been directed by the learned Single Judge. However, direction of the learned Single Judge to extend the benefit of promotion from such dates is set aside. Judgment of the learned Single Judge is modified in the following manner:

(i) Petitioner's claim for promotion to the post of Assistant Branch Manager from

24.07.2003 and to the post of Branch Manager with effect from 24.07.2011 shall be considered afresh by the Corporation.

(ii) If it is found that the petitioner was eligible for promotion, as per the norms applicable at the relevant time, he shall be given notional promotion with effect from the aforesaid date, giving the benefit of fixation of salary.

(iii) Payment of salary on the promoted posts shall be made only from the date when the claim of petitioner was rejected by the Senior Divisional Manager, i.e., with effect from 07.09.2012.

(iv) Promotion exercise shall be undertaken by the Corporation on the basis of available work experience of the petitioner treating the same as relevant material for considering grant of promotion to the petitioner with retrospective effect.

(v) The above exercise shall be completed by the Corporation within a period of two months from the date of receipt of a copy of this judgment.

Writ Appeal is partly allowed as indicated above.

Parties shall bear their costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV