

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WA.No. 1231 of 2014 () IN OP.4394/1989

AGAINST THE ORDER/JUDGMENT IN OP 4394/1989 of HIGH COURT OF KERALA
DATED 26-06-2014

APPELLANT/PETITIONER:

K.THANKARAJAN
AMILK PROCUREMENT OFFICER (NOW RETD. ASSISTANT MANAGER)
TRIVANDRUM REGIONAL CO-OPERATIVE MILK PRODUCER'S UNION LTD
ALLEPPEY UNIT, MANNAR.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT(S) /RESPONDENT:

1. MANAGING DIRECTOR
TRIVANDRUM REGIONAL CO-OPERATIVE MILK PRODUCER'S UNION LTD
GIRIJA BHAVAN, THYCAUD, TRIVANDRUM - 695 014.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (DAIRY)
TRIVANDRUM - 695 001.

3. SHRI T.T.MATHEW
MILK PROCUREMENT OFFICER
TRIVANDRUM REGIONAL CO-OPERATIVE MILK PRODUCER'S UNION LTD
TRIVANDRUM UNIT, GIRIJA BHAVAN, THYCAUD
TRIVANDRUM - 14, (NOW RETD ASSISTANT MANAGER
RESIDING AT TEGHOBATH, T.C. NO. 5/287(1), KATTELA
SREEKARIYAM P.O., THIRUVANANTHAPURAM - 695 017.

R1 BY ADV. SRI.K.ANAND (SR.)

BY ADV. SMT.LATHA KRISHNAN

R2 BY SENIOR GOVERNMENT PLEADER SRI. M. MUHAMMED SHAFI

R3 BY ADV. SRI.B.PRAMOD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31-07-2015,
ALONG WITH WA. 1874/2014, WA. 209/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

[CR.]

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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W.A. Nos. 1231 and 1874 of 2014  
and 209 of 2015

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Dated, this the 31st day of July, 2015

JUDGMENT

Ramachandra Menon, J.

The common issue involved in these cases is in respect of granting of 'Higher Grade' to the 3rd respondent in W.A. No. 1231 of 2014 (who happens to be the appellant in W.A. No. 1874 of 2014), on completion of 8 years in the post of Assistant Manager (also reckoning the temporary service rendered by him in the concerned post carrying the same scale of pay); which however came to be denied to the appellant in W.A. No. 1231 of 2014, despite the fact that the appellant in W.A. 1231 of 2014 was admittedly senior to the 3rd respondent, both in the cadre of Assistant Manager and also in the cadre of Manager. The challenge raised against the temporary promotion given to the 3rd respondent was declined to be entertained by the learned learned single Judge, however arriving at a finding that

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the grade promotion to the 3rd respondent was per se wrong and illegal in all respects. But instead of ordering same to be recalled or recovered, the said benefit was ordered to be given to the appellant in W.A. No. 1231 of 2014 as well, however with a rider that it would only be notional and no monetary benefit needs to be given. The findings and observations made by the learned single Judge have been taken up by the concerned appellants (the rival contestants and the employer) to the extent they are aggrieved, as exposed in the concerned appeal.

2. The pleadings and proceedings are referred to, as given in W.A. No. 1231 of 2014, taking the same as the lead case, unless separately referred to, wherever it is found necessary. Contesting parties are also referred to as the 'appellant', the '3rd respondent' and the 'employer'.

3. Sequence of events revealed from the proceedings is that the appellant joined service of the employer as Assistant Milk Procurement Officer on 30.04.1981. The third respondent joined service in the same post, on the very same date. But by virtue of the higher age factor of the appellant, he was assigned seniority over and above the 3rd respondent, as evident from Ext. P2

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seniority list. Subsequently, the appellant and the third respondent were promoted as Milk Procurement Officers as per the proceedings dated 26.06.1985 issued by the employer and this time as well, the appellant was given placement over and above the 3rd respondent, with reference to seniority, as disclosed from Exts.P2, P4 and P5. There is no dispute with regard to the factual sequence in this regard.

4. Heartburn of the appellant started, when the employer selected the 3rd respondent for temporary appointment as Assistant Manager (Institutional Development) for a term of 4 years, under a particular project by name Co-operative Development Programme sponsored/financed by the National Dairy Development Board. Placement given to the 3rd respondent as above, vide Ext. P10 order dated 22.05.1989, was sought to be challenged by the appellant by filing O.P. No. 4394 of 1989, mainly contending that the vested right of the appellant to be appointed against the said post by virtue of higher seniority and credentials had been overlooked by the employer. It is stated that an interim order of stay was granted by this Court, which was never vacated, till the matter was finalized years thereafter.

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5. During the pendency of the proceedings as above, the employer granted 'Higher Grade' to the third respondent in the scale of pay of Rs.10,000 – 16,350 w.e.f. 23.05.1997 as per Ext.P20 order dated 10.05.2000. According to the employer, the 3rd respondent had completed the tenure of 8 years, so as to make him eligible for the 'Higher Grade', which according to the appellant was per se wrong and unsustainable in all respects. It was contended that the initial period of 4 years, when the 3rd respondent was continuing in the said post by virtue of fortuitous placement, could never adversely affect the seniority of the appellant, as evident from Ext. P10 order and that the said appointment would never confer any right for claiming seniority in the said cadre. The appellant was given the benefit of 'Higher Grade' only much later w.e.f. 01.07.2001 as borne by Ext. P22 dated 16.07.2001. This gave another cause of action to the appellant, who sought to amend the writ petition. It is stated that the matter was heard and the writ petition was originally allowed by the learned single Judge, which was later sought to be reviewed at the instance of the 3rd respondent. It was accordingly, that the matter was finally heard on 26.06.2014 leading to the judgment

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which is under challenge in these writ appeals.

6. The challenge raised by the appellant in W.A. No. 1231 is to the effect that, it was never correct or proper for the learned single Judge to have denied the monetary benefits, despite the finding arrived at with regard to the right of the appellant to have the 'Higher Grade' granted w.e.f. 23.05.1997 i.e. the date of granting the benefit to the 3rd respondent - junior. The observation made by the learned single Judge to deny the said benefit, doubting that it was not clear whether the appellant was actually working against the post discharging the duties, is stated as not correct and it is contended that the appellant was being engaged by the employer to man the post in question at different spells of time (copies of the relevant documents have been produced as Annexures I to III in the memorandum of appeal).

7. Third respondent has filed the appeal (W.A. No. 1874 of 2014) being aggrieved by the finding entered by the learned single Judge to the effect that the 3rd respondent was not entitled to have the benefit of 'Higher Grade' and that the period of 4 years on temporary appointment could not have been considered or counted for granting such 'Higher Grade', in view of the clear stipulation in

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Ext. P1 order to the effect that 'seniority' would not be affected or altered under any circumstances. It is contended that, by virtue of the merit and eligibility, the third respondent was very much entitled to have the benefit of 'Higher Grade', which was rightly considered and sanctioned by the employer. Some additional materials are also brought on record along with the memorandum of appeal, showing that, in the course of subsequent proceedings, the particular stream/unit wherein the 3rd respondent was working (Institutional Development) was segregated and the post/project was continued even after the expiry of initial four years. Though it was initially agreed by the NABARD to have financed till the stipulated time, it was decided by the employer to have it extended further, undertaking the financial burden in this regard. It was accordingly, that the segregation was effected and option was given to the persons in the CD unit, where the 3rd respondent was working, whether they would like to come out or continue in the regular stream. Pursuant to the exercise of the option in this regard, the third respondent came to the separate stream/unit and a separate seniority list was also published in respect of the CD unit, as disclosed from the seniority list in the regular

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establishment, where the appellant was included. The proposal was approved by the Government as well, as per Annexrure II Government Order dated 03.03.1997 (produced in W.A. No. 1874 of 2014). By virtue of the turn of events, it is contended that the right and the eligibility of the 3rd respondent to get the 'Higher Grade' benefit is not liable to be questioned by the appellant under any circumstances and that he cannot claim any parity in service with the third respondent. It is pointed out that, what is contemplated in Ext. P10 order is only with regard to the right of the appellant to have 'seniority' over the 3rd respondent and that grade promotion granted is based on a different pedestal. It is not with reference to the 'seniority', but with reference to the continuance in the particular 'scale of pay', which is satisfied by the 3rd respondent, having been assigned the same scale of pay pursuant to Ext. P10 selection and appointment. It is also contended that, by virtue of the relevant norm, the third respondent was given second 'Higher Grade' benefit in the year 2005. He continued in service till the year 2008 and retired on attaining the age of superannuation, after rendering nearly 27 years of service (19 years in the post of Assistant Manager), also

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getting the second Higher Grade. The second Higher Grade benefit given to the 3rd respondent was never under challenge by the appellant. Similarly, the segregation of the service/unit and the placement of the 3rd respondent in a different stream/unit with separate seniority list is also not subjected to challenge.

8. The appeal filed by the employer is mainly contending that the 'Higher Grade' given to the 3rd respondent is on the basis of the merit and eligibility, having satisfied 8 years of service in the same scale of pay and that the condition stipulated in Ext. P10 with reference to the 'seniority' was never to bar the way of the employer in extending the benefit of 'Higher Grade', where the norm is entirely different. Further contention is that the challenge of the appellant against Ext.P10 order has already been held by the learned single Judge as not correct or sustainable. If for any reason, the extension of benefit to the third respondent was not sustainable, the learned single Judge ought to have permitted the employer to have it rectified by pursuing appropriate proceedings in accordance with law, instead of directing the benefit granted to the 3rd respondent to be extended to the appellant as well, in spite of the fact that appellant admittedly does not satisfy the requirement

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of '8 years' in the same scale of pay; having obtained placement in the concerned scale of pay only in the year 1994. On completion of 8 years of service in the said scale of pay, the employer has extended the benefit later in the year 2001, to the appellant as well, as admitted in the pleadings and proceedings.

9. Heard both the sides in detail.

10. Mr. Ajayakumar the learned counsel appearing for the appellant, submits, that the initial challenge in the writ petition was mainly against the selection and placement of the third respondent as Assistant Manager vide Ext. P10 order, followed by the additional challenge raised against Ext. P20 order granting the 'Higher Grade' benefit to the said respondent. It is conceded that the finding of the learned single Judge that the challenge raised by the writ petitioner against Ext. P10 is not sustainable has not been subjected to challenge and as such, the said issue has become final.

11. The grievance is whether the learned single Judge was justified in not granting monetary benefit, but for ordering notional extension of the benefit, with reference to the date of granting such benefit to the 3rd respondent. The learned counsel for the

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appellant conceded that the appellant came to be promoted to the cadre of Asst. Manager only in the year 1994 and by virtue of the Rules for grade promotion, 8 years period would be satisfied only in the year 2001. There is no dispute that the appellant has already obtained the said benefit in the year 2001; i.e. on completion of 8 years. In other words there cannot be any case that the appellant is entitled to have the benefit of 'Higher Grade' or as to any denial on the part of the employer in this regard, and the grievance is only with reference to granting of 'Higher Grade' benefit to the junior/3rd respondent on an earlier date. The learned counsel submits that by virtue of the law declared by the Apex Court in **Mohan Dutt Sharma Vs. Chief Justice, Punjab & Haryana High Court [AIR 1997 SC 3094]** and **Union of India and Ors. Vs. P. Jagdish and Ors. [AIR 1997 SC 1783]** and also by the Division Bench of this Court in **Kamala Devi Vs. Kerala State Financial Enterprises Ltd. [2002 (1) KLT 157]**, under no circumstance could the employer have extended the 'Higher Grade' benefit to the 3rd respondent, ignoring the right of the appellant/senior to get the same. Admittedly, since the 3rd respondent has already been given the benefit, the pay of the

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appellant ought to have been stepped up to the requisite extent, so as to make it on par with the pay of the 3rd respondent, in view of the law declared by the Apex Court, submits the learned counsel.

12. A reference is made to Ext.R3(a) counter affidavit filed by the 3rd respondent and also 'Ground (iii)' raised in W.A. 1874 of 2014 filed by the 3rd respondent, wherein the said respondent has conceded that the 'Higher Grade' can be given only to the persons, who have not obtained promotion. In the instant case, the third respondent is a person who obtained promotion in the year 1994 and as such, no benefit of 'Higher Grade' could have been extended to the 3rd respondent. Since it has been chosen to be given to the 3rd respondent, it is stated as liable to be extended to the appellant as well.

13. The first point to be considered is, whether the stipulation in Ext. P10 order appointing the 3rd respondent in the post of Assistant Manager on 'temporary measure', would place any hurdle with regard to granting of 'Higher Grade' benefit to the 3rd respondent. The relevant clause as contained in Ext. P10 reads as follows :

"1. The post of Assistant Manager (Institutional

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Development) is a temporary one but likely to continue for a period of four years. Your appointment against that post will be treated as temporary and does not confer any right or entitlement for claiming seniority in the category of Assistant Manager and your seniority in the cadre of Milk Procurement Officer will not change because of this change."

14. Coming to the norms for granting 'Higher Grade', a copy of the relevant proceedings bearing No. PER 208/86 dated 01.09.89 has been placed for consideration by the learned standing counsel appearing for the employer. Clause VII dealing with the 'Grade Promotion' reads as follows :

"VII GRADE PROMOTION :

(a) Officers belonging to the first two lower categories of pre-revised scale (1050-2000 and 1250-2500) are eligible for grade promotion on completion of minimum service of 8 years to the next higher grade."

The learned counsel for the appellant had raised a contention that the norm for grade promotion only takes in the 'initial two levels of pre-revised scales of pay' and that the post of Assistant Manager or Manager does not come within the purview of the said benefit. By

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virtue of the said contention, the employer has produced copies of the relevant proceedings, whereby the norms were amended subsequently, vide proceedings dated 05.04.2000. As per the said proceedings, the posts of Assistant Manager and the Manager were also included as eligible for the benefit of 'Higher Grade' and further, the date of effect was advanced to a prior date. On going through the contents of the stipulation in Ext. P10, what is stated is that the placement given to the 3rd respondent can never have any advantage with regard to the '**seniority**' and that alone. It is true that the question of seniority may affect various other instances with regard to the rights and conditions of service. But coming to the benefit of granting Grade Promotion (Higher Grade), what is stated therein is not with reference to any seniority, but with reference to the chance of continuing in a particular scale of pay by the persons concerned (for the requisite number of years).

15. There is a contention for the appellant that the very concept of 'promotion' is relevant with regard to granting 'Grade Promotion' and that 'Grade Promotion' is provided only to prevent the chance of stagnation in the post. Since the 3rd respondent was already promoted, there was no question of stagnation, submits the

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learned counsel for the appellant. But going by the facts and figures, this Court finds that the available materials on record clearly reveal that the granting of 'Grade Promotion' (Higher Grade) is with reference to continuance in the particular scale of pay as mentioned above. In other words, 'stagnation' is with reference to the 'particular scale' and not with reference to the particular post. The third respondent started drawing the scale of pay of Rs.1500-2685, pursuant to Ext. P10, which happens to be the same scale of pay in the regularly promoted post of Assistant Manager, when he was promoted in the year 1994. He was continuing in the very same scale of pay, which in turn was reckoned, on completion of 8 years, for granting the 'Higher Grade' as per Ext.P20. The question is whether the appellant can claim the said benefit with reference to the norms which cannot, but be answered in the 'negative' as the appellant admittedly does not have the requisite extent of 8 years of service, to have the 'Grade Promotion' when it was given to the 3rd respondent; nor had he any case that he was placed in any such scale resulting in any stagnation for the minimum period of 8 years.

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16. Coming to the alleged instances of discrimination and the question of equality, the latter is always a positive concept, which has to be established on the basis of 'rights'. The nature of challenge raised is that since the junior of the appellant has been given the benefit of 'Higher Grade', the appellant's pay is also liable to be stepped up; he being the senior. The concept of 'stepping up of pay' has only a limited application as made clear by the Apex Court on many an occasion including in **Union of India & Ors. Vs. P. Jagdish & Ors. [(1997) 3 SCC 176]**. This decision has been referred to and the position has been explained by a Division Bench of this Court in **Kamala Devi Vs. Kerala State Financial Enterprises Ltd. [2002 (1) KLT 157]**. In the opening paragraph itself, the Division Bench has made clear that there may be situation or circumstance, that junior may be obtaining more pay than the senior. Stepping up of pay will be necessitated only under the specified contingencies involving the admitted junior - senior relationship, continuance in the same scale of pay and the adverse consequence resulted by virtue of the application of relevant scale of pay or revision of pay. There may be several occasions when the junior may be getting more pay.

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When a direct recruit and a promotee come to the common pool, by virtue of two separate streams, the promotee may be drawing more pay and the direct recruit cannot claim for any stepping up in this regard. So also there may be circumstance when a junior may be drawing higher pay by virtue of higher qualification or such other enabling circumstances. There is no Universal Rule that a junior under no circumstance can draw a higher salary than the senior. Admittedly, the third respondent was drawing more salary than the appellant, right from the issuance of Ext. P10. The challenge raised by the appellant against the said order has been held as not sustainable, which has attained finality, by virtue of the verdict passed by the learned single Judge and this finding has not been subjected to challenge. That apart, the fact remains that, pursuant to segregation of the units in the employer/establishment, the third respondent was working in the 'CD unit' with separate seniority list. The proceedings of the employer to continue the project, have been approved by the Government as per Annexure II order dated 03.03.1997 (produced in W.A. No. 1874 of 2015). Option was sought for from the 3rd respondent, whether he liked to come to the CD project/unit with separate seniority from the parent

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unit, vide Annexure III. It was accepted by the 3rd respondent as per Annexure IV memo dated 07.09.1999 and this was given effect to, by the employer accordingly.

17. Coming to the judicial precedents cited across the Bar, the decision sought to be relied on by the appellant in **Mohan Dutt Sharma Vs. Chief Justice [AIR 1997 SC 3094]** stands on a different footing. The factual position therein reveals that the promotion given to the appellant was not in a normal course. At the time of giving such promotion, a stipulation was incorporated (as a specific condition) that such promotion by itself will not confer any right upon the appellant over and above the rights of the other persons, who were otherwise seniors. The said stipulation was sought to be challenged by the beneficiary of promotion and after considering the facts and figures, the Apex Court held that such fortuitous promotion given could never confer any right upon the appellant. It was held that the stipulation made by the concerned authority (the concerned Chief Justice) was perfectly within the four walls of law and hence could not be interfered. The same does not come to the rescue of the appellant in any manner, so far as the issue herein is not with reference to

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the seniority, which stands already protected by virtue of Ext. P10, but with reference to the granting of 'Higher Grade' to the 3rd respondent, based on the Grade Promotion Rules, which makes a reference to continuance in a particular scale of pay, so as to make one eligible for the benefit.

18. The position has been reiterated by a Division Bench of this Court in **Kamala Devi Vs. Kerala State Financial Enterprises Ltd. [2002 (1) KLT 157]**. The opening paragraph of the said judgment deals with circumstances under which, a junior may be justified in drawing higher salary than a senior. Only the circumstances involving the instances as mentioned therein, that the salary of senior can be stepped up with reference to the salary of junior, which is not the position involved herein.

19. The circumstances under which declaration was made by the Apex Court in **Commissioner, Karanataka Housing Board Vs. C. Muddaiah [(2007) 7 SCC 689]** and the outcome are discernible from paragraphs 33 and 34 which read as follows :

33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such

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provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34 We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, **nay** must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The

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Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an **absolute** proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.

The crux of the finding therein is that, nobody can be given the benefit of his own misdeeds and that the Court has to rise to the occasion, to see that injustice is rectified under such circumstance. The said decision has been cited by the appellant to contend that, having arrived at a finding that the appellant was entitled to have the benefit of 'Higher Grade' to be given notionally from 23.05.1997 i.e. from the date of granting 'Higher Grade' to the 3rd respondent, all monetary benefits should have been given to the appellant. This Court is of the firm view that, only if a finding can be rendered that there is an illegal denial of benefit, can such an

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order be passed by this Court, based on the said decision.

20. The view expressed by the Apex Court in the decision rendered in **State of Uttar Pradesh Vs. Dayand Chakrworthy and Others [(2013) 7 SCC 595]** is also worthwhile to be noted. Paragraph 48 therein is relevant, which is extracted below for convenience of reference:

48. In view of the orders passed by this Court in **Harwindra Kumar [(2005) 13 SCC 300]**, **Radhey Shyam Gautam [(2007) 11 SCC 507]** and **Jaswant Singh [(2006) 11 SCC 464]**, it was not open to the High Court to rely on some other decision of this Court, ratio of which is not applicable in the present case for determining back wages of the respondents restricting it to be 20% of the basic salary. We observe that the principle of 'no pay no work' is not applicable to the employees who were guided by specific rules like Leave Rules etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule relating to absence from duty. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of 'no pay no work' shall not be applicable to such employee.

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The Apex Court has observed that, if an employee is prevented by the employer from performing the duty, the employee cannot be blamed by the employer for not doing work and under such circumstances, the principle of 'no work no pay' shall not have any application. In the instant case, the question is something different, as it is more in relation to the eligibility of the appellant to get the benefit of 'Higher Grade' on the basis of the norms for 'Grade Promotion'. In so far as there is no case for the appellant, that he is entitled to have 'Grade Promotion', having completed 8 years after entering the particular scale of pay in the year 1994, there cannot be any positive declaration in this regard.

21. It is brought on record that the 3rd respondent, on completion of 8 years of service in the same scale of pay was given the benefit of I 'Higher Grade' in the year 1997 as per the Grade Promotion Rules. On completing further 8 years, he was given the benefit of II Higher Grade in the year 2005, which has never been challenged by the appellant. Admittedly, the appellant who came to the concerned scale of pay only in the year 1994, completed 8 years of service only in the year 2001, when he was given the I 'Higher Grade'. Since he retired from service on attaining the age

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of superannuation in the year 2008, he could not get the II Higher Grade (for want of further 8 years) whereas the 3rd respondent got the same in the year 2005, having obtained the I 'Higher Grade' in the year 1997 and he retired from the service only in the year 2009.

22. After hearing both the sides, this Court finds that the declaration made by the learned single Judge that the 3rd respondent was not entitled to have the benefit of 'Higher Grade', by virtue of the stipulation in Ext. P10 with reference to the 'seniority' is not liable to be sustained. Similarly, having declared by the Court that the 3rd respondent was not entitled to have the benefit, it was not proper for the learned single Judge to have extended the benefit to the appellant as well, which otherwise would only amount to perpetuation of injustice. Mistake is always mistake, which is liable to be rectified at the earliest opportunity, which cannot be perpetrated by issuing a writ of mandamus. This Court finds support from the decision rendered by the Apex Court in **Chandigarh Administration and Another Vs. Jagjit Singh and another [AIR 1995 SC 705]**. This being the position, the contention raised by the employer in this regard deserves to be

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sustained.

20. The gist of the discussion is that, this Court does not find any reason to sustain the claim mooted by the appellant in W.A. 1231 of 2014. The appeal fails and the same is dismissed accordingly. The appeal preferred by the 3rd respondent (W.A. 1874 of 2014) and that of the employer (W.A. 209 of 2015) stand allowed. The verdict passed by the learned single Judge will stand set aside to the extent as mentioned above. No cost.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd

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P.A. to Judge