

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 12919 of 2013 (L)

PETITIONER:

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

**BY ADVS.SRI.N.DHARMADAN (SR.)
SMT.D.P.RENU**

RESPONDENT(S):

- 1. LIFE INSURANCE CORPORATION, OF INDIA,
REPRESENTED BY THE SENIOR DIVISIONAL MANAGER
DIVISIONAL OFFICE, PATTOM P.O, THIRUVANANTHAPURAM**
- 2. REGIONAL MANAGER (P & IR),
L.I.C OF INDIA, SOUTHERN ZONAL OFFICE, P.B NO 2450
LIC BUILDING, 153, ANNA SALAI
CHENNAI 600002**

R1 & R2 BY ADV. SRI.S.EASWARAN, SC LIC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 12919 of 2013 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 21-03-2013 ISSUED BY THE LIC

EXHIBIT P2: TRUE COPY OF THE ORDER DATED 07-09-2012 ISSUED BY THE LIC

EXHIBIT P3: TRUE COPY OF THE JUDGMENT IN WPC 16769/2009 DATED 17-09-2012 OF THIS HON'BLE COURT

EXHIBIT P4: TRUE COPY OF THE AWARD IN I.D NO 22/91 DATED 06-02-1993 OF THE INDUSTRIAL TRIBUNAL, KOLLAM.

EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO 2004/2008 DATED 14-03-2008 OF THE HON'BLE SUPREME COURT.

EXHIBIT P6: TRUE COPY OF THE MEMORANDUM OF APPEAL DATED NIL FILED BY THE PETITIONER.

EXHIBIT P7: TRUE COPY OF THE LETTER DATED 19-11-2012 ISSUED BY THE LIC

EXHIBIT P8: TRUE COPY OF THE STATEMENT SHOWING THE CORRECT AMOUNT PREPARED BY PETITIONER SUBMITTED BEFORE THE L.I.C.

EXHIBIT P9: TRUE COPY OF THE REPRESENTATION DATED 10-05-2013 BY THE PETITIONER .

EXHIBIT P10: COPY OF THE STATEMENT SHOWING THE INCREMENT DUE PREPARED BY THE PETITIONER.

EXHIBIT P11: COPY OF THE JUDGMENT IN W.P.(C).3009 OF 1998 DATED 12.4.2010 OF THE DELHI HIGH COURT.

EXHIBIT P12: COPY OF THE ORDER DATED 10.2.2011 PASSED BY THE L.I.C.

EXHIBIT P13: COPY OF THE REPLY DATED 26.9.2013 (RELEVANT PORTION) BY L.I.C.

RESPONDENT(S)' EXHIBITS

EXHIBIT R1(A): COPY OF THE W.P.(C).NO.16769 OF 2009 FILED BY THE PETITIONER.

EXHIBIT R1(B): COPY OF THE INTERLOCUTORY APPLICATION I.A.NO.11687 OF 2012 IN W.P.(C).NO.16769 OF 2009

/TRUE COPY/

P.A. TO JUDGE

SKV

C.K. ABDUL REHIM, J.

W.P.(C) No. 12919 OF 2013-L

DATED THIS THE 13th DAY OF MARCH, 2015.

J U D G M E N T

Issue involved in this writ petition has got a chequered history. The petitioner was appointed as 'Development Officer' in the 1st respondent Corporation during the year 1984. While continuing as such, disciplinary action was initiated against him based on a Chargesheet issued on 04-05-1987. Relying on report of the domestic enquiry conducted, he was imposed with punishment of removal from service, on 19-04-1989. The petitioner raised an Industrial Dispute against the removal from service, which was adjudicated before the Industrial Tribunal, Kollam as I.D. No.22/1991. In Ext.P4 award passed by the Industrial Tribunal it was found that the punishment of dismissal from service imposed is too harsh to be sustained. At the same time the Tribunal found that the petitioner cannot be let off without any punishment for the misconduct proved against him. Observing that, the anguish and pain suffered by the petitioner due to loss of his job, denial of back wages and

other monetary benefits would be adequate punishment, an award was passed directing the 1st respondent Corporation to reinstate him in service without back wages and any other benefits. Exhibit P4 award dated 06-02-1993 came into effect on 27-04-1993. But the Corporation had not implemented the award. It was challenged before this court in a writ petition, OP No.7452/1993. This court dismissed the writ petition and thereby confirmed Ext.P4 award, through judgment dated 30-07-2001. The respondents took up the matter in appeal before the Division Bench. Writ Appeal No.3360/2001 filed in this regard was also dismissed as per judgment dated 03-02-2006. The 1st respondent again took up the matter before the hon'ble Supreme Court. It was ultimately decided in Ext.P5 judgment of the Supreme Court in Civil Appeal No.2004/2008. Interference on Ext.P4 award was declined and the appeal was dismissed. Eventhough the corporation attempted to a Review Petition against Ext.P5 judgment, the same was also declined by the apex court through order dated 02-12-2008.

2. After prolonged litigations, the petitioner was

reinstated in service with effect from 19-02-2009 by treating the period of absence from the date of removal from service till the date of reporting for duty as 'extra ordinary leave' on loss of pay. The said order was challenged by the petitioner in a writ petition filed before this court as W.P.(C) No.16769/2009, to the extent it reinstated the petitioner only from 19-02-2009 and directed to treat the period of absence as 'extra ordinary leave' on loss of pay. Inter alia, the petitioner sought for direction to reinstate him with effect from 24-07-1993 (the date on which Ext.P4 award came into effect) with all eligible promotions due thereafter, along with consequential monetary benefits and interest due thereon. During pendency of W.P (C) No.16769/2009 the Corporation issued Ext.P2 order reviewing the earlier decision and ordering back wages with effect from 27-04-1993 along with other consequential benefits like PLII, Gratuity and Pension. As regards the request for granting eligible promotion, the Corporation observed that, it could not be viewed favourably. It was observed that promotion would have been dependent upon fulfillment of certain eligibility conditions among other

factors like business performance etc., as prescribed. Based on Ext.P2 order, W.P.(C) No.16769/2009 was disposed of through Ext.P3 judgment. This court found that Ext.P4 award passed by the Tribunal has been satisfied by the respondent Corporation, especially when reinstatement was ordered without any back wages or other benefits. But with regard to the claim for promotion raised by the petitioner, it was observed as follows;

“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.”

3. Subsequently the petitioner approached the appellate authority under the relevant Regulations against Ext.P2 order, to the extent it denied benefit of promotions and back wages calculated based on such promotions. The petitioner was also seeking interest @12% on belated payment of back wages. The matter was dealt with by the appellate authority and in Ext.P1 it was ordered that the petitioner is not entitled for any promotions during period

between 1993 and 2009, mainly because charges framed against him stood established in the enquiry and the punishment was reversed only based on a finding that it was disproportionate and that there was violation of natural justice. Hence the request for promotion as well as for payment of interest were declined. This writ petition is filed challenging Ext.P1 order.

4. Contention of the petitioner is that, as per Ext.P4 award the back wages and other service benefits can be denied only up to 27.4.1993. The petitioner had completed probation in the cadre of 'Development Officer' as on 1.11.1986. Therefore he has to be treated as 'Development Officer' in the regular cadre, who worked in the Corporation from 27.4.1993 onwards. Therefore the petitioner is entitled for all due promotions he would have secured from the said dates onwards. But he was paid with back wages from 27.4.1993 to 31.10.2012 without reckoning any due increments and promotions. The benefits paid through Ext.P7 letter is lacking such entitlements, is the grievance.

5. The petitioner had illustrated various due dates of

increments in salary, had he continued in service from 27.4.1993 onwards. So also, it is contended that since he is entitled for interest due on the amounts paid, the back wages and other benefits were illegally denied from 27.4.1993 till the date of Ext.P7. It is contended that, the petitioner under normal circumstances would have got promotion to the post of Assistant Manager in the year 1994, Branch Manager in the year 2000, Senior Branch Manager in the year 2005 and Divisional Manager in the year 2010. Those promotions were denied because of no fault of the petitioner. The petitioner had produced Ext.P8 tabulated statements showing the details of promotions which he would have aspired, had he continued in the service from 27.4.1993 onwards. It is argued that those promotions should have been granted under humanitarian considerations, in view of observations contained in Ext.P5 judgment. The hon'ble apex court had observed that the petitioner had suffered mental strain and pain for more than 20 years since he was kept out of job for no fault of him. It is further contended that under Regulation 86 of the Life

Insurance Corporation of India (Staff) Regulations 1960, the Executive Committee of the Corporation has got powers to relax any of the provisions in the Service Regulations in individual cases. Therefore promotions to the petitioner in this regard could have been granted in exercise of such power, is the contention.

6. The respondents have filed counter affidavit contending that there is no specific directions contained in Ext.P3 judgment to grant any promotions or to pay interest on the arrears of salary. It is pointed out that, all along during pendency of the litigations before this court and before the apex court, implementation of Ext.P4 award was under interim stay. Therefore the respondents were not obliged to reinstate the petitioner in service during the said period. After disposal of the matter by the hon'ble Supreme Court, by virtue of Ext.P2 the petitioner was reinstated with effect from 27.4.1993 and granted back wages along with consequential benefits of PLII, gratuity, pension etc. The denial of promotion during the interregnum was taken judicial notice in Ext.P3 judgment, wherein it was

categorically found that Ext.P4 award stands complied with and fully satisfied. Therefore the contention that Ext.P3 judgment has not been given full effect, is totally misconceived, is the argument. It is contended that the request for promotion was declined because of the specific observations contained in Ext.P3 judgment that the claim for promotion will depend upon various aspects. But the court had not made any opinion about such aspects. Claim of the petitioner for payment of interest is resisted contending that the question of reinstatement arose only after disposal of the civil appeal by the hon'ble Supreme Court, because the award was under stay till then and the respondents were not at an obligation to reinstate the petitioner. It is also pointed out that there was no direction contained in any of the judgments of this court or the apex court with regard to payment of interest and therefore there is no such obligation. It is not a case where the petitioner was denied reinstatement for any illegal reasons and hence the respondent corporation is not at a liability to pay interest, is the contention. With respect to the claim for increments it is contended that such a claim

cannot be agitated in a proceedings under Article 226 of the Constitution of India. It is pointed out that the petitioner had not furnished details with respect to claim for any specific increments. It is further pointed out that the claim for fixation of pay based on increments is a disputed claim which can be resolved only under the Industrial Disputes Act, 1947. Without prejudice to the above said contentions, it is illustrated that in the counter affidavit that back wages due to the petitioner was actually worked out by taking note of various increments due on different dates. It is further contended that the petitioner is not entitled for any promotion as claimed, because necessarily it would depend upon performance evaluation. Since it is found in Ext.P3 judgment that the award stands implemented, claim for promotion with retrospectivity could not be accepted, is the contention. It is stated in the counter affidavit that promotions is not a matter of right and promotions can be ordered only on consideration of various aspects, as stipulated under the relevant Rules and Regulations of the Corporation. In Ext.P3 judgment this court had observed

that, various aspects need to be taken into consideration to make an assessment about eligibility of the petitioner for promotion. The back wages was calculated and paid taking note of various wage revisions effected in the Corporation and that the claim for promotion was rightly rejected. Therefore it is contended that the reliefs sought for in the present writ petition deserves no merit.

7. While appreciating the rival contentions, certain factual aspects remaining admitted need to be taken note of. The respondents have not reinstated the petitioner either on the date on which Ext.P4 award has taken effect or thereafter till 19.2.2009. Reinstatement with effect from 27.4.1993 was denied because the Corporation had pursued challenges against Ext.P4 award upto the hon'ble apex court. It is true that there were interim orders of stay obtained all along against implementation of Ext.P4 award. But when the challenges were ultimately negated by the courts, what will be the effect of the interim orders, is the question to be decided. No litigant can be deprived of any benefits because of mere pendency of a case in a court law. The interim

orders will always merge into the final orders. If the case is ultimately dismissed then the interim order will become nullified automatically. The above principle has been reiterated by the hon'ble Supreme Court in *Kalabharati Advertising v Hemant Vimalnath Narichania and Ors* (AIR 2010 SC 3745). The apex court observed that, a party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter to blame the court. The fact that the case is ultimately found to be devoid of any merit shows that a frivolous litigation was pursued. The maxim "*Actus curiae neminem gravabit*" ; which means that the act of court shall prejudice no one, is applicable in such case. Therefore contention of the respondents that they were not under obligation to reinstate the petitioner with effect from 27.4.1993 due to pendency of litigations and because of the interim orders granted, cannot be accepted. Hence it is to be held that the petitioner was entitled for reinstatement with effect from 27.4.1993.

8. By virtue of Ext.P2 the respondents have taken a decision to reinstate the petitioner with effect from

27.4.1993 and he was paid back wages and other consequential benefits like, PLLI, gratuity and pension. It is evident from Ext.P7 that the amounts computed as above was already paid to the petitioner on 19.11.2012. But the petitioner claims interest on the amount of back wages so paid and also claims for recalculation of the amounts based on increments and promotions which he could have acquired had he been reinstated on 27.4.1993. Those claims were in fact issues agitated before this court in W.P.(C). No.16769/2009. Copy of the writ petition in W.P.(C). 16769/2009 is produced as Ext.R1(a). The reliefs contained therein includes a declaration and a direction for granting all eligible promotions along with other consequential benefits. Consequential direction was also sought for payment of all monetary benefits along with 12% interest per annum due from 27.4.1993, after deducting wages already received under Section 17B of the Industrial Disputes Act. Learned counsel for the respondents contended that claims and reliefs in this regard stands concluded through Ext.P3 judgment. Observations contained in Ext.P3 judgment after taking note

of Ext.P2 order is as follows:–

“It is brought to the notice of this court that pursuant to Ext.P9, the petitioner has been reinstated in service as Development Officer and is discharging his duty. This being the position this court finds that Ext.P1 Award (*Ext.P4 herein*) passed by the Tribunal has been satisfied by the respondent Corporation; more so, when there is a specific direction in Ext. P1 Award that reinstatement shall be without any back wages or any other benefits”.

It is further observed in Ext.P3 that;

“The only question is whether Ext.P1 award passed by the Tribunal has been given effect to or not, which stands satisfied”.

According to counsel appearing for the respondents the entire issue relating to payment of salary and other benefits for the period from 27.4.1993 stands concluded and covered through Ext.P3 judgment. The petitioner cannot raise any further claim based on non-granting of increments or promotions or for payment of interest, based on principle of 'res judicata', is the contention. It is true that in Ext.P3 judgment there is a clear finding that Ext.P4 award stands satisfied. Hence the above said contention need to be appreciated, at least with respect to the claim for payment of

interest. When the reliefs agitated in the earlier writ petition, which culminated in Ext.P3 judgment, included a claim for payment of interest and when such a claim remains concluded through Ext.P3 judgment, it will be hit by the principle of 'res judicata'. Therefore this court is not persuaded to grant any relief with respect to payment of interest on the amounts paid to the petitioner through Ext.P2 order.

9. But with respect to the claim for promotions, which he would have got had he been reinstated on 27.4.1993 and permitted to continue in service, requires separate consideration. The observations in Ext.P3 judgment in this regard is as follows;

“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”.

Learned counsel for the respondent contended that, in a case where a declaratory relief is sought for and when the court has not granted such relief, it should be presumed that the

relief had been refused. In such cases principles of constructive 'res judicata' will apply. Seeking the very same relief in any subsequent litigation is barred, is the contention. Reliance was placed on a decision of the Hon'ble Supreme Court in Mysore State Road Transport Corporation v Babajan Conductor and Another [(1977) 2 SCC 355]. It is held therein that if a declaratory relief asked for has not been granted, the relief would therefore be deemed to have been refused and the party cannot claim such a relief in a subsequent writ petition. On the facts of the case at hand, learned counsel pointed out that in Ext.R1(a) the petitioner had already sought for a declaratory relief with respect to his entitlement for promotions and other consequential benefits, and this court had not granted the same. Therefore the petitioner could not raise it again, is the contention. But crucial question is as to whether this court had refused such relief in Ext.P3 judgment. Portion of the judgment extracted above would indicate that this court had explicitly made it clear that it had not expressed any opinion with respect to the issue. Learned counsel for respondents contended that,

unless it is expressly left open for further agitation, it has to be presumed as a refusal to grant the relief. But the observation that this court has not expressed any opinion, would ipso facto indicate that the issue stands not decided and it is left open. Therefore this court is of the considered opinion that there was no refusal with respect to the declaratory relief pertaining to the claim for promotion and the petitioner is entitled to agitate the issue further.

10. On behalf of the respondents it is pointed that promotion of an employee of the Corporation is a matter governed by the terms and conditions of service and therefore the petitioner can only raise an Industrial Dispute on the issue. It is to be noted that contention of the respondent Corporation all along during earlier litigations was that, the petitioner is not a 'workman' under Section 2(S) of the Industrial Disputes Act and that there exists no dispute coming under Section 2 (K) of the Act. In Ext.P5 judgment of the hon'ble apex court it was found that the petitioner will come within the purview of 'workman' under the Industrial Dispute Act and that the dispute was rightly adjudicated by

the Industrial Tribunal. Learned counsel for the petitioner had placed various other decisions of the hon'ble Supreme Court pointing out that the hon'ble apex court itself had taken a different view in the matter. As long as Ext.P5 judgment between parties inter se remains binding, this court cannot take a different view. But the issue now agitated is only an off-shoot of the earlier litigations. Therefore, whether the petitioner need to initiate a fresh industrial dispute, is a matter which requires consideration. But learned counsel for the respondents had fairly conceded that, by virtue of a latest decision of the Hon'ble Supreme Court in *Chauharya Tripathi & Ors. Vs. L.I.C. Of India & Ors.* (Civil Appeal Nos.5690-5691 of 2010 dated 11.03.2015) it remains settled that the post of 'Development Officer' in the 1st respondent Corporation will not come within the scope of 'workman' defined under the Industrial Disputes Act. In the said decision the hon'ble Supreme Court observed that Ext.P5 judgment is 'per incuriam' in view of certain other judgments rendered earlier. In view of the legal position remaining settled as mentioned above, this court is not inclined to

accept the contentions that remedy left open to the petitioner is to raise an industrial dispute.

11. On the facts of the case at hand, there was denial of reinstatement of the petitioner during the period between 27.4.1993 and till the year 2009. The denial was only because the respondents have unsuccessfully pursued litigations challenging Ext.P4 award, up to the hon'ble Supreme Court. As held in Kalabharati Advertisings Case (cited supra) the respondents cannot be permitted to take advantage based on the interim orders obtained during such litigations, because the challenge was ultimately negated. Had the petitioner been reinstated in the year 1993 and permitted to continue, he would have gained promotions to various higher posts. Of course, it will depend upon evaluation of his performance and suitability as well as seniority. Learned Senior counsel appearing for the petitioner contended that, if an employee was illegally prevented by the employer from performing his duties, the employee cannot be blamed for having not worked. The principle of 'no work no pay' cannot be applied to such cases. In this regard a

decision of the hon'ble Supreme Court in State of Uttar Pradesh v Dayanand Chakraworty And Other [AIR (2013) SC 3066] was relied upon. Grant of retrospective promotions is perfectly justified in case, when the administration had wrongly denied legitimate dues of the petitioner, is the dictum. In such case the employee is entitled for full benefits including the monetary benefits. Learned Senior Counsel had also placed reliance on another judgment of the hon'ble Supreme Court in State of Kerla and Others v E.K. Bhaskara Pillai [2003 1 KLT 60]. There also the hon'ble apex court observed that the principle of 'no work no pay' cannot be accepted as a rule of thumb. There are expectations where court had granted monetary benefits also. When a person was wrongly denied of promotions and the juniors to him were promoted, the court should examine as to whether he is entitled for monetary benefits in the promotional posts with retrospective effect. Decision of a Division Bench of this court on an identical situation in a Writ Appeal filed by the respondent Corporation is placed for reference. In the judgment in W.A.568/2007 dated 29.3.2007, this court, after

referring to various judgments of the hon'ble Supreme Court, confirmed the view taken by a learned Single Judge that the employee of the 1st respondent Corporation is entitled to be considered for promotion with reference to his seniority on retrospective basis in par with his juniors. It was also observed that the entitlement of arrears of wages based on deemed promotions can be denied only when there are valid reason to do so. Normal rule would be to grant such emoluments when promotion was denied for no fault of the employee, but was granted later with retrospective effect. However, in the said case, this court found that, whether there exists any valid reason for denial of such emoluments is a matter which need to be considered by the authority. Hence the respondent Corporation was directed to take an appropriate decision, after hearing the petitioner therein.

12. Learned Senior counsel appearing for the petitioner had pointed out yet another identical situation where a learned Judge of this court had followed the judgment in W.A No.568/2007 (cited supra). It was observed therein that, when so many juniors of the petitioner was admittedly

promoted, it cannot be said that the petitioner therein is inferior to all of them. In such case, it is not practicable to direct reconsideration of merits of the petitioner vis-a-vis others who were already promoted. Therefore it was ordered to grant promotion in accordance with seniority as done in the case of petitioners in the writ petition which had concluded through the judgment in W.A.No.568/2007. Judgment in W.P.(C) 28179/2007 dated 21.1.2011 is placed for reference in this regard. It is also pointed out that the above said judgment is pending in appeal before the Division Bench. But through an interim order dated 30.9.2011 in Writ Appeal Nos.588 and 589/2011 this court had declined to grant any interim stay against operation of the said judgment.

13. Learned Senior counsel had also made a reference to the judgment of the Hon'ble High Court of Delhi in W.P.(C) 3009/1998, copy of which is produced as Ext.P11. While setting aside the disciplinary action and punishment imposed against an employee, a Division Bench of that court directed the respondent Corporation to release all benefits which the

petitioner therein had been deprived of owing to the disciplinary action which has been quashed. Referring to Ext.P12 it is pointed out that in the said case, the 1st respondent Corporation had granted retrospective promotion and fixation of pay reckoning seniority of the employee in the promoted post, with retrospectivity.

14. As already found, there was denial of legitimate benefits due to the petitioner for no fault of his own. Undisputedly the petitioner had lost prospects in his career which he could have achieved based on due promotions. He had also lost all such consequential benefits during the period from 1993 to 2009. While considering the question of granting relief to compensate such loss, many other aspects need to be considered. The petitioner had produced Ext.P8, which is a statement illustrating various promotions which he could have achieved, had he been continued in service from 1993 onwards. He had also illustrated the monetary benefits due, if such promotions were considered. But on the other hand, learned Standing counsel pointed out that the promotions to various higher posts illustrated in Ext.P8 are

not automatic. Nor it will be granted solely on the basis of seniority. He had produced copy of the relevant Rules governing the promotion of 'Development Officer's to the cadre of 'Assistant Manager'. Notification issued by the 1st respondent Corporation in the year 1994, which is stated to have been applicable during the period when the petitioner ought to have been reinstated, would indicate that 'Development Officers' who have completed 10 years of service in the cadre as on 31.12.1993 alone are entitled for promotion. On the alternative it is prescribed that those who have completed 5 years, but less than 10 years, in their cadre as on the cut-off date and have an average performance assessed during the last 3 appraisal years and who had brought a specified limit of premium income also are eligible to be promoted, subject to certain other conditions. It is evident that after declaration of probation of the petitioner in the post of 'Development Officer' in the year 1986, he had only little span of service, since he was suspended soon after. Therefore even assuming that the petitioner would have got reinstatement in the year 1993 as Development officer, he

could not have obtained a promotion to the post of Assistant Branch Manager in the year 1995 as mentioned in Ext.P8. In normal circumstances he would have got a promotion only after completing 10 years of service, after the date of due for reinstatement. So also in the case of further promotions also there are insistence for completion of specific period of service in each cadre as stipulated in the rules and regulations. The relevant Regulations with respect to promotion from the cadre of Assistant Branch Manager insist for a minimum service of 8 years for further promotion. Moreover the criteria for promotion is merit-cum-seniority. Therefore it cannot be held that the petitioner could have achieved promotions automatically on completion of the requisite period of service in each of the posts. Therefore this court cannot accept the illustrative statement produced by the petitioner in Ext.P8 for the purpose of granting relief.

15. This court is of the considered opinion that principles of equity and good conscience need to be adopted in moulding relief to be granted to compensate the petitioner with respect to the loss suffered by him due to the illegal

denial of reinstatement at proper time. Probabilities on a reasonable basis need to be adopted in fixing the eligibility, which this court can evolve in exercise of its discretionary jurisdiction. If the petitioner would have been reinstated as Development Officer with effect from 24.7.1993, normally he would have become eligible to be considered for the next promotion within 10 years. But at present there is no way to direct assessment of his suitability at that point of time. Therefore it is only equitable to direct assignment of notional promotion with payment of consequential benefits to the cadre of 'Assistant Branch Manager' with effect from 24.7.2003. Further, after completion of 8 years in the cadre of 'Assistant Branch Manager' he would have normally become eligible for consideration for promotion to the post of 'Branch Manager'. Therefore it is also equitable to direct assignment of notional promotion to that post, with consequential benefit, with effect from 24.7.2011.

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.

Sd/-

C.K.ABDULREHIM, JUDGE