

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10613 of 2015

DATE OF DECISION: AUGUST 31, 2015

ICAR AND ANOTHER

...PETITIONERS

VERSUS

SMT. CHANCHAL RANI & ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. R.K.SHARMA, ADVOCATE FOR THE PETITIONERS.
MR. A.K. BHARDWAJ, ADVOCATE FOR RESPONDENT NO.1.

M. JEYAPPAUL, J.

1. Indian Council of Agricultural Research (ICAR) and Director, Central Soil Salinity Research Institute (CSSRI), Karnal, Haryana have challenged the quashment of the communications issued by them on 29.4.2013, 24.5.2013 and 2.8.2013.

2. Respondent No.1 Chanchal Rani who had acquired 1 year Diploma in Medical Laboratory Technology joined the petitioners-Organization at Karnal as T-1 (Laboratory Technician) on 19.1.1989. She was promoted under Assessment Promotion Scheme as T-2 (Laboratory Assistant) w.e.f. 1.1.1995 and as T-1-3 (Laboratory Assistant) w.e.f. 1.1.2000 vide order dated 3.8.2005. Thereafter, she was placed in the Grade T-II-3 w.e.f. 1.1.2000 and granted merit promotion to the grade of T-4. She was also granted further promotion to T-5 (Technical Officer) w.e.f. 1.1.2010. All those promotions were recommended by Assessment

Committee/DPC approved by the Director, CSSRI, Karnal. Respondent No.1 has stated that removal of category barrier from Category I to Category II was considered by the DPC on the ground that she had passed 1 year Diploma in Medical Laboratory Technology. The petitioners vide letter dated 27.10.2007 sought clarification from the Director General, Health Department, Haryana as to whether 1 year Course/Diploma in Medical Laboratory Technology was equivalent to 3 years' Diploma in the same discipline. The Health Department vide letter dated 10.12.2007 clarified that 1 year Laboratory Technician Diploma was recognized by the Haryana Government for the purpose of appointment, as no other course was available. On 29.4.2013, petitioner No.1 informed petitioner No.2 that 1 year Diploma in Medical Laboratory Technology possessed by respondent No.1 cannot be considered relevant for removal of category barrier from Category I to Category II. Petitioner No.2 issued show cause notice to the respondent No.1. to explain as to why her promotion from T-2 to T-II-3 should not be considered.

3. The writ petitioners have contended that respondent No.1 was not eligible for promotion to T-3 under five yearly assessment, as she had not met the necessary qualification. The case of respondent No.1 for promotion was decided by the petitioner No.2 without getting the approval from petitioner No.1. It is contended by the writ petitioners that they have taken a right decision.

4. We heard the elaborate submissions made by learned counsel appearing for the writ petitioners and learned counsel appearing for

respondent No.1. It is an admitted position that there was only 1 year Diploma course in Medical Laboratory Technology at the time when respondent No.1 was promoted from T-2 to T-II-3. On a careful perusal of Annexure A-11, a very similar issue pertaining to the promotion of one Rajiv Gupta came up for consideration before the Under Secretary of the Indian Council of Agricultural Research, New Delhi. Considering the entire gamut of the issue and the fact that there was no 2 years Diploma in Refrigeration and Air Conditioning course, 1 year Diploma in that Discipline acquired by the said Rajiv Gupta was considered for removal of category barrier. Based thereupon the said Rajiv Gupta was granted promotion after removing the category barrier.

5. In the instant case, the writ petitioners sought clarification whether 1 year Diploma in Medical Laboratory Technology was equivalent to 3 years' Diploma in the same Discipline from the Health Department of Haryana who intimated them that for the purpose of appointment, 1 year Diploma course in Medical Laboratory Technology was being considered as there was no longer duration Diploma course in vogue.

6. The yardstick adopted in Rajiv Gupta had been adopted by the writ petitioners in the case of respondent No.1 herein. In other words, a conscious decision was taken by respondent No.2 considering the fact that there was a category barrier and the said category barrier had to be removed, as no one could have got such a qualification prescribed. It is not as if the competent Authority was not aware of the category barrier which resulted in inadvertent promotion to the employee. The category barrier was squarely

addressed by the competent Authority and thereafter exemption was granted to respondent No.1. Such a conscious decision cannot be upset by an arbitrary communication that category barrier was wrongly removed in the case of respondent No.1.

7. Learned Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal') has also made an observation that a similar matter was brought for adjudication before it in O.A. No.2438 of 2012 and the same was decided in favour of the applicant therein. It is an admitted position that the order passed in O.A. No.2438 of 2012 in a similar matter was not put to challenge by the writ petitioners. But they have chosen to implement the orders passed by the Tribunal.

8. At this juncture, learned counsel appearing for the writ petitioners cited a decision of the Hon'ble Supreme Court in **State of Maharashtra vs. Digambar, 1995 AIR (SC) 1991**, wherein it has been held as follows:-

“16. We are unable to appreciate the objection raised against the prosecution of this appeal by the appellant or other S.L.Ps filed in similar matters. Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in Writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the

State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where S.L.Ps are filed by the State against judgments of High Court, such S.L.Ps may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some S.L.Ps in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an S.L.P. or S.L.Ps in other similar matters where it is considered on behalf of the State that non-filing of such S.L.P. or S.L.Ps and pursuing them is likely to seriously jeopardize the interest of the State or public interest.”

9. True it is that the Department for variety of reasons might not have challenged the decision arrived at by the learned Tribunal in a similar matter. But the fact that the writ petitioners chose not to challenge the said order, cannot be a ground to reject the writ petition filed by them. In other words, the principle of *res judicata* will not operate against the writ petitioners who failed to challenge the similar issues determined by the very same Forum in a different case.

10. It was submitted by learned counsel appearing for the writ petitioners that even an unworkable service Rule shall continue to be in force unless it was repealed or replaced by another Rule. To support the above contention, he referred to the decision of the Hon'ble Supreme Court in Union of India Thr. Government of Pondicherry & Anr. vs. V.Ramakrishnan & Ors., 2005 AIR (SC) 4295, wherein it has been observed as follows:-

“21. The rules did not become inoperative only because the two scales of pay of the Superintending Engineer and the Chief Engineer became same in terms of revised pay scales. A rule does not become inoperative only because the UPSC says so. A rule validly made even if it has become unworkable unless repealed and replaced by another rule of amended, continue to be in force. As regard, scale of pay, the matter should have been referred to the anomaly removal committee. In terms of the new rules, the criteria prescribed under the old rules were modified. Thus, till the new rules were given effect to, no promotion to the post of Chief Engineer could be effected in derogation to the criteria prescribed under the existing rule.”

11. That was a case where an Executive Engineer sought for promotion based on a new Draft Rule which was in the process of finalization. Under such circumstances, the above dictum was laid down by the Hon'ble Supreme Court. But in the instant case, the existent Rule was properly read by the competent Authority and it thought it fit to give

exemption considering the fact that only 1 year Diploma in the respective Discipline was imparted at the relevant point of time. Further, respondent No.1, in the instant case, does not seek for any relaxation of the category barrier. It was only the Authorities concerned who took a well informed and conscious decision to accord relaxation for respondent No.1 to cross-over the category barrier. Under such circumstances, the above decision of the Hon'ble Supreme Court will not apply to the instant case. The writ petitioners have passed an order upsetting the category barrier exemption granted to respondent No.1 which culminated in her promotion from T-2 to T-II-3 w.e.f. 1.1.2000. Thereafter, she had been promoted to the cadre of T-4. Now, she has been placed in the position of T-5. As it is not a *bona fide* error but a well informed decision exempting respondent No.1 from the category barrier, the writ petitioner cannot be permitted to reverse the promotions granted to respondent No.1 who has now reached the position of T-5.

12. For all these reasons, we are of the view that the Tribunal has rightly taken a decision to grant the relief sought for by respondent No.1. We do not find any merit to interfere with the well considered order of the Tribunal. The writ petition stands dismissed.

(M. JEYAPPAUL)
JUDGE

August 31, 2015
Gulati

(DARSHAN SINGH)
JUDGE