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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.1844 of 2015

Date of decision: May 11, 2016

Dr. Nirdosh Rai and another

.....Petitioners

Versus

Central Administrative Tribunal, Chandigarh Bench
and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mr. K.S. Banyana, Advocate
for the petitioners.

Ms. Deepali Puri, Advocate
for U.T., Administration.

Mr. N.P. Mittal, Advocate
for respondent No.4.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT, J. (Oral)

The petitioners and respondent No.4 joined the Education Department, Chandigarh Administration, as Trained Graduate Teachers (for short 'TGTs'). While fourth respondent belongs to General Category, the petitioners are from Reserved Category. The petitioners were granted accelerated promotion(s) and resultantly, they were placed above respondent No.4 in the seniority list of promotional cadre though as TGTs, 4th respondent was senior to petitioners. Respondent No.4 questioned the out of turn promotion granted to the petitioners in view of law laid down by the Constitution Bench in M. Nagraj versus Union of India and others, reported as (2006) 8 SCC 212. The Central Administrative Tribunal (for short 'CAT'), Chandigarh Bench vide the impugned order has accepted the

claim of respondent No.4 on the ground that no mandatory survey was carried out by the Chandigarh Administration regarding representation of SC/ST employees in the services to justify accelerated promotions. A direction has been issued to review the promotion given to the petitioners and consider the claim of respondent No.4 for such promotion from the date her juniors were promoted.

The aggrieved petitioners have approached this Court. We have heard learned counsel for the parties at a considerable length and seen the record.

Animosity amongst the Teachers, the genesis whereof lies in their birth mark is a matter of serious concern for all as it would actualize its impact on the shaping of our future generations. It is but natural that the contestants of caste-based issues inside the Court compounds most likely would leave their trails in the school-campus also. It was keeping this in view and to curb such like opinion formation that the Chandigarh Administration was directed on 20.04.2015 to consider respondent No.4 as well for promotion w.e.f. the date the petitioners were promoted, on notional basis and subject to her suitability and eligibility, provided further there was no other legal impediment.

Pursuant thereto, respondent No.4 has since been promoted but not from the date her juniors were promoted.

There is no gain saying that meanwhile a co-ordinate Bench has dealt with an identical issue in **The Director, Post Graduate Institute of Medical Education & Research, Chandigarh Versus The Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others, 2016(1) PLJ 188** and has upheld the CAT's order based on same reasoning.

That apart, Hon'ble Supreme Court has reiterated the legal principles in a

recent decision in Suresh Chand Gautam versus State of Uttar Pradesh & Ors. 2016 AIR (SC) 1321. Further, it is an admitted fact that no survey in terms of M. Nagraj's case (supra) was carried out by the Chandigarh Administration. No other issue arises for consideration in this case. We thus, allow this writ petition in part to the extent that the promotion granted to the petitioners is saved subject to the condition that respondent No.4 is held entitled to such promotion from the date her juniors were promoted but on notional basis. We are not inclined to grant arrears of pay for the reason that respondent No.4 has not performed duties on the promotional post from the date she will now be promoted; secondly, it is not a case where the authorities denied promotion to respondent No.4 in a casual or irresponsible manner; there has been contentious legal issue(s) pending consideration before different forums and the Administration, in the given circumstances, granted accelerated promotions to the petitioners in the manner as the policy was understood at that time. Taking into consideration the totality of the circumstances, no case to grant arrears of pay to respondent No.4 is made out though she is entitled to retrospective promotion along with notional pay fixation from the date her juniors were promoted. Resultantly, she will continue to rank senior to petitioners for all intents and purposes in future. The necessary orders to this effect be issued within three months from the date of receipt of copy of this order.

[SURYA KANT]
JUDGE

[A.B. CHAUDHARI]
JUDGE

May 11, 2016
mahavir