

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7962 of 2016

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Dr. Sunil Kumar Yadav, son of Late Tarni Prasad Yadav, presently working as Head of the Department of Philosophy, Parwati Science College, Kirti Nagar, Madhepura, P.S. & District Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna.
2. Principal Secretary Human Resources Development, Department Government of Bihar, Patna.
3. Secretary Higher Education, Government of Bihar Patna.
4. Special Secretary, Education Department, Government of Bihar, Patna.
5. Director, Higher Education, Government of Bihar, Patna.
6. B.N. Mandal University, Laloo Nagar, Madhepura, through its Registrar.
7. Vice Chancellor, B.N. Mandal University, Laloo Nagar, Madhepura.
8. Registrar, B.N. Mandal University, Laloo Nagar, Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Binodanand Mishra, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-18
For B.N.M. University : Mr. P. N. Shahi, Sr. Advocate
Mr. Shashi Bhushan Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

C.A.V. JUDGMENT

Date: 15-05-2018

The petitioner has filed the present application for quashing of the letter no. 1705 dated 01.09.2014 contained in Annexure-10, whereby the State Government directed the Universities of Bihar not to extend the operation of the statute regarding time bound promotion beyond. 23.09.1995.

2. Factual matrix lies in a very narrow compass.

Petitioner was appointed on 26.09.1985 as lecturer in the Department of Philosophy in Parwati Science College Kirti Nagar, Madhepura.



The petitioner joined the college in question on 1.10.1985. The college was made constituent in fourth phase in the year 1986. After series of litigation up to the Apex Court the issue as to absorption of teaching and non-teaching staff was finally adjudicated by the Apex Court in the case of **Bihar Rajya M.S.E.S.K.K. Mahasangh and Others**, reported in (2005) 9 SCC 129. The Apex Court accepted the report of Justice S.C. Agrawal (retired) Commission and directed the University to take final decision with regard to absorption of the teaching and non-teaching staff in exercise of jurisdiction under section 4 (1) (14) of the Bihar State Universities Act.

3. In the meanwhile, the State took a decision to introduce revised pay scale on the line of UGC package. The State Government issued memo no. 1300 on 20th of July 2001. While introducing the revised pay scale, a distinction was drawn between the teachers promoted under time bound promotion scheme and merit promotion scheme. The said decision of the State was challenged in C.W.J.C. no. 11986 of 2001. The Hon'ble Court declared clause 14 of the said letter as offending Article 14 of the Constitution of India. The decision of the Writ Court was taken to the L.P.A. Court the L.P.A. Court dismissed the appeal preferred by the State i.e. L.P.A. no. 500 of 2000 vide order dated 23.08.2002. As a follow-up of the decision of the Division Bench affirming the judgment of the Single Judge, the



State Government issued notification dated 28.09.2005 and extended the same benefit of pay revision to teachers promoted under time bound promotion and merit promotion.

4. The U.G.C. introduced Career Advancement Scheme and on the line of the U.G.C. Scheme on 23.09.1995 statute with regard to the Career Advancement Scheme was framed and assented to by the Hon,ble Chancellor of the University. On 23rd of September 1995 this Statute of Career Advancement Scheme was superseded by another Statute dated 29.06.2005. The subsequent Career Advancement Scheme was introduced with effect from 27.07.1998 superseding the earlier statute dated 23.09.1995. This Statute was introduced keeping in view the letter no. 1300 dated 20.07.2001 issued by the State Government.

5. Service of the petitioner was absorbed in the University service with effect from 26.09.1985, the date of his initial appointment.

6. The petitioner is aggrieved by the decision of the State Government whereby the benefit of time bound promotion was restricted to 23.09.1995.

7. Mr. Chittaranjan Sinha learned senior counsel appearing on behalf of the petitioner contended that the respondent



issued letter dated 28.09.2005, whereby the State Government has maintained that for the purpose of grant of revised pay scale there is no difference between time bound promotion and merit promotion and relying on the judgment of the L.P.A. Court in L.P.A. No. 500 of 2002 the respondents have rescinded clause 14, 15 and 16 of letter number 1300 dated 20.07.2001. Mr. Sinha in the aforesaid backdrop of the fact submitted that when the State Government has maintained that there is no difference between time bound promotees and merit promotees then the action of respondents in maintaining two yardstick for grant of promotion i.e. one for of time bound promotion and the other for merit promotion offends Article 14 and 16 of the Constitution. Referring to Annexure-6, he submitted that when the respondents have extended the merit promotion up to 20.07.2001cancelling the time bound promotion scheme with effect from 23.09.1995 is discriminatory and arbitrary.

8. Mr. Sinha submitted that in view of the above, Annexure-10 dated 01.09.2014 is unsustainable as vide letter dated 01.09.2014, the university was informed that time bound promotion has come to an end with effect from 23.09.1995.

9. Mr. Sinha submitted that the respondents themselves admitted vide Annexures- 6 and 7 that Time Bound



Promotion and Merit Promotion are similar for the purpose of grant of revised pay scale and, as such, they were not justified in adopting two yardstick, one to retain the merit promotion upto 2001 and discontinue the Time And Promotion after 23.09.1995. Mr. Sinha submitted that in fact the Statute dated 23.09.1995 regarding Career Advancement Scheme was never acted upon and career advancement scheme was made effective only with effect from 27.07.1998 when the Statute No.48 was assented by the Chancellor and as such the time bound promotion shall be deemed to be in operation.

10. Referring to the aforesaid factual position, he submitted that petitioner's case is a hard case where he was falling short of only a few days in order to qualify for Time Bound Promotion. The Time Bound Promotion was undisputedly available up to 23..09.1995 whereas the date of appointment of the petitioner is the instant case is 26.09.1985 so he was falling short of only four days and as such his case requires sympathetic consideration.

11. Mr Sinha further submitted that the court has to see the case of petitioner in the light of principles of quasi repeal or desuetude as Statute dated 23.09.1995 was never acted upon and as such it has to be treated as ineffective and not in use. After the hearing was concluded parties were granted opportunity to file their written



notes of argument. Learned counsel for the petitioner filed the written notes of argument which is on the same line the oral submission was made. For ready reference the written notes of argument is reproduced:

TIME BOUND PROMOTION STATUTES

In order to provide promotional avenues to the teachers of the Universities and colleges of the state of Bihar the Chancellor of the Universities for the first time approved statute for promotion of lecturers to the post of Readers vide letter number 5260G.S (1) dated 18.11.80. Subsequently, revised Statute for promotion of lecturers to the post of readers was approved by the Chancellor by letter dated 14.11.1981

The statute for time bound promotion of lecturers to the post of Readers and for Readers to the post of University professor was approved by the Chancellor by letter dated 24.12.1986. The said statute interalia provided for promotion of a lecture to the post of Reader if he holds the qualification as prescribed for the post of lecturer under the statute into force at the time of his appointment as lecturer if he holds substantive appointment to the post of lecturer and if he has completed 10 years of continuous service as lecturer in one or more Universities.

MERIT PROMOTION STATUTES



While 1981 time bound promotion statute was subsisting and operational, the statute regarding merit promotion of Readers to the University professor were approved by the Chancellor wide letter dated 22.02.1984 and 24.11.1986. Later on, the statute regarding merit promotion of lecturers as Readers was approved by the Chancellor by letter dated 22 December 1986. The merit promotion could be granted to the post of Reader after completing at least eight years of continuous service as lecturer of which at least four years should be in the Department where he/she is being considered.

From the perusal of the aforesaid statutes it appears firstly, that those statutes came into force from a particular date for example the statute for promotion of lecturers to the post of reader approved by the Chancellor by letter dated 18.11.80 in clause 12 clearly provided that statutes will come into force with effect from the date of Chancellor's approval i.e 14.11.80. Similarly, the revised statute for promotion of lecturers to the post of Readers approved by the Chancellor on 14.11.1981 also provided in clause 12 that this statutes shall come into force with effect from 24 of October 1981.

The time bound promotion statue for promotion of lecturers to the post of Reader approved by the Chancellor on 24.12. 1986 also provided in clause 12 that the statute shall come into force



with effect from 1 February 1985 in supercession of the statute approved by the Chancellor on 24.10.81 and 14.11.81 but all action taken under the said statute before the date of implementation of this statute shall be deemed to be valid. Secondly, from 1984 to 1995 both the time bound promotion statutes and the merit based promotion statutes were subsisting and operational in this state side by side. 1/3rd of the sanctioned strength was available for merit promotion and the rest was considered under time bound promotion statutes. Promotees under two sets of statutes were always treated at par.

CAREER ADVANCEMENT SCHEME

The statute for placement of lecturers to the post of lecturers in the senior pay scale and the statute for promotion of lecturers in the senior pay scale to the post of Readers and for placement of lecturers in the senior pay scale to the post of lecturers in the selection grade under Career advancement scheme was approved by the Chancellor by letter dated 23 September 1995.

In this statute (statute no 33) there was no repeal or saving clause and no date of implementation of this statute was given. Subsequently, for implementation of the career advancement scheme w.e.f 27.7.1998 the Chancellor, approved the statute (Statute No 48). In this the career advancement scheme and merit promotion scheme dated 23.9.1995 was superseded but there was no saving clause. It is



respectfully submitted that framers of the statute had complete knowledge of the promotion statute operating in the field. Since statute dated 23.9.1995 was not given effect to or it was not implemented there was no need of any saving clause. Thus, it is evidently clear that though the career advancement scheme was introduced from 23.9.1995 it has been given effect to from 27.7.1998.

**EXTENSION OF THE MERIT PROMOTION
SCHEME**

The state government by letter dated 26.6.2006(Annexure-7) extended the date of merit promotion scheme up to 20.7.2001 but there was no corresponding extension of the time bound promotion scheme even though earlier both the statutes were continuing simultaneously.

**REPRESENTATION FOR EXTENSION OF DATE
OF TIME BOUND PROMOTION**

The other similarly situated teachers and the Petitioner represented before the state authorities for extension of date of time bound promotion like the merit promotion scheme. They were assured that time bound promotion scheme will also be extended till 20.7.2001. The representative of the teachers namely FUTAB /FUSTAB also raised the issue before the State Government. The consequent agitation strike by the teachers led to an agreement dated



14.7.2010. The agreement was signed by Minister Human Resources Development Department, Principal Secretary Human Resources Development Department and the representatives of the teachers association. Annexure-8). From the perusal of the agreement it is evidently clear that the government agreed to extend the time bound promotion scheme like the merit promotion scheme. In the agreement it was categorically asserted that like merit promotion scheme the extension of date of time bound promotion scheme is under process. In other words, the state government agreed and made commitment to extend the cutoff date of time bound promotion scheme upto 20.7.2001. It is respectfully submitted that state government after making commitment and entering into agreement cannot resile from the same. The issue is no longer *res integra*. Similar aspect of the matter was considered by the Hon'ble Supreme Court in the case of State of Bihar vs Sunny Prakash (Reported in 2013AIR SCW 766.) . In the Sunny Prakash case the Hon'ble Supreme Court has affirmed the direction issued by the Hon'ble High Court to the State of Bihar to implement / honour the tripartite agreement without any exception.

While considering the similar issue A Division bench of this Hon'ble Court in LPA no 859 of 2007 has categorically held, *“Once, the State government made a particular representation to its employees and on which representation they called off their strike,*



subsequently, reduced to a written agreement in which the state government promised to act in a particular manner, this court shall bind the government those the standards. An assurance given by the state government, to its employees carries sanctity and cannot be wished away lightly especially when the employees were persuaded to alter their stand on that basis.”

In this view of the matter it is also evidently clear that government is obliged to extend the cut off date of time bound promotion scheme till 20.7.2001.

The impugned order

By letter dated 1.9.2014 (Annexure-10) the education department of the state government has decided not to extend the date of time bound promotion scheme. It was communicated to all the Registrars of the Universities of Bihar. From the perusal of the said letter it appears that the decision of the State government is based on the opinion of advocate general and the finance department.

The opinion of the Advocate General

The legal opinion of the Advocate General has been brought on record as annexure 11. From the perusal of the opinion of the advocate general it is evidently clear that extension of cut-off date of time bound promotion scheme was fully justified. The relevant portion is quoted herein below:



“In my considered opinion, the promotion under Merit Promotion Scheme and Time Bound Promotion Scheme has existed side by side and has been treated to be at par, which has also been recognized by the High Court in the two judgments, Supra, I do not find any find and valid ground in making a distinction between the teachers under the two different schemes, so far the cut of date for its enforceability w.e.f. 20.07.2001 is concerned. On consideration of totality of facts and circumstances, in view of legal interpretation probounded by the High Court and parity between the two class of teachers, in my considered opinion, distinction between two class of teachers in so far as determination of cut of date for its enforceability is concerned, may amount to discrimination within the meaning of Article 14 of Constitution of India. This has been enunciated in no uncertain words in the judgment of Writ Court and Division Bench, that the two schemes have existed side by side and are at par”.

OPINION OF THE FINANCE DEPARTMENT

It appears that finance department was not in favour of extension of cut-off date of time bound promotion primarily on the ground that if the time bound promotion is extended state would be saddled with huge financial liability. The finance department was of the view that in the case of state government employees the time bound promotion scheme was abolished w.e.f 1.1.1996, If the time



bound promotion scheme is extended the state government employees will start making similar claims. In the light of the aforesaid view of the finance department the matter was placed again before then advocate general (Annexure-12). The advocate general again reiterated the view that that merit promotion scheme and time bound promotion scheme having existed side by side and has been treated to be at par, duly recognized by the High Court in judgments referred to in his opinion. The learned Advocate General could not find any valid ground in making a distinction between the teachers under two different schemes. He accordingly concluded that the cut of date of enforceability would be 20.07.2001. However, for the reasons that it will generate fresh controversy and may also become a basis for claiming similar treatment by the state government employees whose time bound promotion scheme has been abolished w.e.f.1.1.96 the advocate general agreed with the view of finance department. In this connection it may be respectfully submitted that law in this connection is well settled that only because, there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. (AIR 2007 Supreme Court 1706). From the aforesaid opinion of the finance department and the advocate general it further transpires that they have no objection to the extension of time bound promotion scheme 31.12. 1995 because the time bound



promotion scheme was available to the State Government employees till 31.12.1995. It is respectfully submitted that even if the time bound promotion scheme is extended to 31.12.19 95 the petitioner would be eligible to be considered for time bound promotion to the post of Reader. The petitioner was appointed on sanctioned post of lecturer in philosophy in the Parvati science College, Madhepura on 26.9.1985. In pursuance of the same joined on 1.10.19 85 as such he completed the 10 year service from the date of joining on 30.9.19 95 which is much before the 31.12.1995. It is respectfully that case of the petitioner is fit to be considered for grant of time bound promotion even according to opinion expressed by the finance department and agreed by the advocate general.

REASONS FOR CONSIDERATION OF THE CASE
OF THE PETITIONER FOR GRANT OF TIME
BOUND PROMOTION:-

Prior to the introduction of Career Advancement is scheme the time bound promotion is scheme and merit promotion is scheme continued simultaneously. They were coterminous and coexisted together. If the merit promotion is scheme was extended till 20.7.2001 the time bound promotion is scheme was also liable to be extended till that date.

The state government once committed to extend the



cut off date of time bound promotion scheme cannot backout or resile from the same.

The Career advancement is scheme was given effect to from 27.7.98 as such until that date the time bound promotion is scheme was required to be continued. The state government itself in Annexure-7 made it clear that career advancement scheme came into effect from 27.7.1998.

Even if the view expressed by the finance department and agreed by the advocate general is accepted for the sake of argument for a moment that time bound promotion scheme cannot be extended beyond 31.12.1995 as it has abolished from 1.1.1996 the Petitioner would be eligible to be considered as he completed the 10 years period of continuous service on 30.9.1995.

It is a very hard case where the Petitioner is short of 6 days in completing the ten years continuous service up to 23.9.1995.

In view of the above it is respectfully prayed that the respondents may be directed to consider the case of the petitioner for grant of time bound promotion to the post of reader with effect from 30.9.95 with all consequential benefits of the said promotion.

12. Learned counsel appearing on behalf of State Mr Vivek Prasad submitted that the respondents have strictly acted in accordance with the statute framed by the Hon'ble Chancellor and



there is no error in directing the respondents not to extend the benefit of Time Bound Promotion beyond 23.09.1995. He submitted that petitioner has not completed the requirement of 10 years on the date of closure of the scheme of Time Bound Promotion i.e. 23.09.1995 and as such the petitioner cannot claim any benefit. Adverting to the issue of similarity in the scheme of Time Bound Promotion and Merit Promotion he submitted that the deeper scrutiny of the Career Advancement Scheme, it would be apparent that for certain purposes the Career Advancement Scheme also provide for grant of benefit on completion of length of service on the line of Time Bound Promotion, but there is a distinction between Time Bound Promotion and Merit Promotion. In the case of merit promotion, there is some amount of selection and scrutiny on merit whereas in the Time Bound Promotion it is the length of service alone. He submitted that time bound promotion is not recognized by U.G.C. whereas merit promotion is recognized by the U.G.C.

13. Mr. P. N. Shahi, learned counsel appearing on behalf of the University submitted that the University has acted upon the direction of the State. He submitted that when the Chancellor has consciously framed the statute on the line of U.G.C. package, the University cannot act in breach of the Statute framed by the Hon'ble Chancellor. Referring to the submission of Mr. Sinha, he submitted



that the petitioner cannot claim consideration of his case for time bound promotion, either on fact, law or equity. He submitted that when the Statute prescribes specific condition for grant of benefit of time bound promotion up to 23.09.1995 the petitioner cannot be allowed the benefit even if he falls short of few days in completing 10 years on or before 25.09.1995.

14. Having considered the rival submission of the parties and on appreciating the different statute framed by the Hon'ble Chancellor in furtherance of Career Advancement Scheme, the Court finds that the statute dated 23.09.1995 heralded new promotional scheme and the introduction of the new promotion scheme under Career Advancement Scheme, extinguished the old time bound promotion scheme. The retention of Merit Promotion Scheme 2001 is an exception and whatever is retained is only available for grant of promotion. Admittedly merit promotion scheme was retained, as it was earlier approved by the U.G.C. and as such it was retained vide Chancellor Statute dated 23.09.1995. The time bound promotion scheme was never approved by the UGC and while framing the Career Advancement Scheme, the Chancellor has not retained the Time Bound Promotion, as the Career Advancement Scheme Statute has specifically superseded the Time Bound Promotion Statute dated 24.12.1986. Adverting to the submission of learned counsel for the



petitioner that in L.P.A. no. 500 of 2002, the Division Bench of this Court has maintained that for pay revision time bound promotion and merit promotion is same and no distinction can be drawn in the matter of revised pay scale and on that line the follow-up notification dated 28.09.2005 granting the revised pay scale to time bound promotee cannot be a ground to extend the date of time bound promotion beyond 23.09.1995 when the Career Advancement Scheme was introduced. It is now well settled that when the Statute prescribes the date of its implementation, it has to be read in the light of the natural meaning of the words used in the Statute. The Court does not find any ambiguity in the Statute of Career Advancement Scheme and as such the Court is unable to agree with the submission of Mr. Sinha that the Time Bound Promotion is available up to 2001 or 27.07.1998, as there is similarity in the time bound promotion scheme and merit promotion scheme. With due respect, the Court does not agree with the contention of the learned counsel for the petitioner the similarity in pay scale is crucial for maintaining similarity in the two schemes of promotion as the scheme of pay scale is only for the purpose of granting the benefit of revised pay scale. The continuance of the time bound promotion scheme cannot be inferred on the basis of the similarity in the pay scale extended by the respondent State pursuant to the order passed in L.P.A. no. 500 of 2002.



15. Adverting to the submission of Mr. Chittaranjan Sinha the Senior Advocate for the petitioner that the statute dated 23.09.1995 was not acted upon and as was not in use and as such it has to be treated as not applicable. The Apex Court has occasion to examine the concept of desuetude in the case of **Municipal Corporation for City of Pune and another Vs. Bharat Forge Co. Ltd and others**, reported in (1995) 3 SCC 434. The Apex Court referring to the statute law and the line of reasoning of the different decision categorically held out in paragraph 31 to 34 as follows:-

31. In *Craies's 'Statute Law* (7th Edition) it has been stated at page 7 that desuetude is a process by which an Act of Parliament may lose its force without express repeal. It does not, however, consist merely of obsolescence or disuse: there must also be a contrary practice, which must be of some duration and general application. Lord Mackay's view in *Brown v. Magistrate of Edinburgh*, 1931 SLT (Scots Law Times Reports) 456, 458 has also been noted, which is as below:

"I hold it clear in law that desuetude requires for its operation a very considerable period, not merely of neglect, but of contrary usage of such a character as practically to infer such completely established habit of de community as to set a counter of law or establish a quasi-repeal"

A perusal of this judgment shows that Lord



Mackay ventured to prefer the Scottish system to that of England regarding which Lord Eldon, as a member of House of Lords, had stated thus in *Johnstone v. Scott*, (1802) 4 Pat 274 at p. 285: -

"The English lawyer feels himself much at a loss here; he cannot conceive at what period of time a statute can be held as commencing to grow in desuetude, nor when it can be held to be totally worn out. All he can do is to submit to what great authorities have declared the Law of Scotland to be."

Lord Mackay thereafter enunciated the afore-quoted test of desuetude for it to permit quasi-repeal.

32.It would be useful to note what has been stated in this regard in the chapter headed "Repeal and Desuetude of Statutes" by Aubrey L. Diamond, printed in *Current Legal Problems* (1975), Volume 28 pages 107 to 124. Diamond has quoted on this subject what Lord Denning M.R. observed in *Buckoke v. Greater London Council*, 1971 Ch. 655 at page 668, which reads:-

"It is a fundamental principle of our constitution, enshrined in the Bill of Rights, that no one, not even the Crown itself, has 'the power of dispensing with laws or the execution of laws'. But this is subject to some qualification. When a law has become a dead letter the police need not prosecute, nor need the Magistrate



punish. They can give an absolute discharge"

33. Diamond has thereafter referred to the Scottish approach to desuetude at pages 122 and 123 and has noted some decisions wherein an Act of Scottish Parliament was not enforced because of desuetude. It would be of interest to note that when an argument was advanced that the particular Act (which was of 1606) had been left unrepealed by the Statute Law (Repeals) Act, 1906, and must, therefore, be regarded as still in force, the reply given by one of the law Lords was that "it was for the Court and not for the Statute Law Revision (sic Repeal) Act to determine whether Act of 1606 was or was not in desuetude."

34. Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the 'dead letter'. We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country also. Our soil is ready to accept this principle: indeed, there is need for its implantation, because persons residing in *free* India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their



being, say, prosecuted and punished for violation of a law which has become 'dead letter'. A new path is, therefore, required to be laid and trodden.

16. From the discussion of the Apex Court in the case of **Municipal Corporation for City of Pune** (Supra) it is evident that the doctrine will apply when it is a dead letter and it is never acted upon. The principle is accepted not only if it is established that such provision was never acted upon for long. In addition thereto, it is also required that contrary practice was available, the availability of contrary practice was invoked to attract the principle of Desuetude. Applying the same principle, the Court finds that neither the petitioner has been able to prove that the statute was in desuetude for long years, nor the petitioner has established that there was a contrary practice. To the contrary, the facts are available on record to indicate that there was no contrary practice and the time gap between 1995 to 1998 cannot be treated as long gap to attract the doctrine. So far as the contention of the learned Senior Counsel for the petitioner that petitioner was only falling short by few days is concerned, it is now well settled that if law provides benefits on fulfillment of specific condition, the same is only available if all the condition for grant of benefit is satisfied. In the instant case, when the Statute prescribes that the incumbent has to complete 10 years in order to qualify for grant of Time Bound Promotion, petitioner cannot be granted the same before



completion of 10 years which is eligibility for Time Bound Promotion. Similarly, if the Time Bound Promotion comes to an end by the Career Advancement Statute dated 23.09.1995, it cannot be made effective beyond 23.09.1995 and the benefit of time bound promotion cannot be extended beyond 23.09.1995 on the analogy that merit promotion scheme continued even after 23.09.1995 vide statute dated 23.09.1995 side by side when the Career Advancement Scheme was introduced. The two schemes stand on different footing and whatever is protected is the benefit arising out of promotion either under Time Bound Promotion or under Merit Promotion Scheme once granted but that itself is no ground to extend the benefit of time bound promotion beyond 23.09.1995. The submission of Mr. Sinha on the basis of decision in Sunny Prakash Case also does not merit any consideration as the foundational facts are different.

(I) In that case there was dispute that decision taken by the concerned Minister and Finance Department and follow up direction issued to the government was a government decision or not a government decision, where as in the present case there is no such dispute. The only issue is whether after Statute for Career Advancement Scheme w.e.f. 23.09.1995, the Time Bound Promotion continued or not?



(II) In that case the agreement was made pursuant to the commitment given by the State Government to the federation and it was reduced writing in the present case the CAS was introduced w.e.f 23.09.1995 and the time bound promotion statute dated 24.12.1986 was superseded and as such the same cannot be extended to the petitioner without amendment in the statute and more so the CAS was introduced in view of the UGC package.

(III) The reliance on cut off date 31.12.1995 is of no help to the petitioner in the light of decision in Sunny Prakash case, as discussion of the department and opinion cannot be a ground to extend the applicability of Time Bound Promotion Scheme beyond 23.09.1995 when the Career Advancement Scheme Statute was made effective and time bound promotion statute was specifically superseded. Annexure-8 cannot restrict the operation of Statute, as agreement cannot override or supersede the Statute.

(IV) Opinion of AG and Finance Department can't override the statute of Career Advancement Scheme and such external aids are not available to construe unambiguous expression of the Career Advancement Scheme Statute that it is effect from 23.09.1995 in supersession of time bound promotion statute.

17. For the reasons indicated hereinabove, the Court



does not find any merit in the claim of the petitioner. Accordingly, the writ application stands dismissed.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	18.04.2018
Uploading Date	18.05.2018
Transmission Date	

