

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**
AND
HON'BLE SRI JUSTICE N. BALAYOGI

+ W.P.Nos.18967 and 21288 of 2018

% Date: 16-08-2018

W.P.No.18967 of 2018

BETWEEN:

Gajawada Venu, S/o Gangaiah, aged 39 years,
Occupation III Metropolitan Magistrate, Hyderabad.

... Petitioner

Vs.

High Court of Judicature for the State of
Telangana and Andhra Pradesh, represented
By its Registrar General, Hyderabad

... Respondent

W.P.No.21288 of 2018

BETWEEN:

Ms. T. Nagarani, d/o late T. Tirupathi,
Aged 48 years, Additional Junior Civil Judge,
Bhongir, Yadadri, Nalgonda

... Petitioner

Vs.

The State of Telangana, Law and Justice
Department, Secretariat Department, Hyderabad
Represented by its Principal Secretary and
3 others

... Respondent

! Counsel for the Appellant : Mr. Anand Kumar Kapoor
Mrs. Neeraja Reddy

^ Counsel for Respondents : Mr. V. Umadevi,
Mr. J. Anil Kumar

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N. BALAYOGI

W.P.Nos.18967 and 21288 of 2018

COMMON ORDER: *(per V. Ramasubramanian, J)*

Aggrieved by the non-inclusion of their names in the list of persons coming within the zone of consideration, for promotion to the post of Civil Judges (Senior Division), the petitioners in both the writ petitions have come with the above writ petitions.

2. Heard Mr. Anand Kumar Kapoor, learned counsel appearing for the petitioner in W.P.No.18967 of 2018, Smt. Neeraja Reddy, learned counsel appearing for the petitioner in W.P.No.21288 of 2018, Smt. V. Uma Devi and Mr. J. Anil Kumar, learned standing counsel taking notice for the Registry of the High Court.

3. By a notification issued on 28-04-2018, this Court invited attested copies of five judgments from about 111 officers working as Civil Judges (Junior Division) for being considered for promotion to the post of Civil Judges (Senior Division). The notification was for filling up 37 vacancies in the category of Civil Judges (Senior Division). The number of officers from whom copies of judgments were invited, were in the ratio of 1:3.

4. Though the petitioners in these two writ petitions are sufficiently senior to be included among the 111 candidates, who have come within the zone of consideration, the petitioners have

been left out of the notification dated 28-04-2018, on the sole ground that both of them are facing disciplinary proceedings for different articles of charges for grave misconduct. Therefore, challenging the action of the respondents in excluding the petitioners even from the zone of consideration on account of the pendency of charges, the petitioners have come up with the above writ petitions.

5. It is contended by Mr. Anand Kumar Kapoor, learned counsel appearing for the petitioner in the first writ petition (i) that the preamble to the Constitution guarantees to all citizens, equality of status and of opportunity; (ii) that while Article 14 is couched in the negative, directing that the State shall not deny equality before law or equal protection of the laws to any person, Article 16 is couched in the positive, guaranteeing equality of opportunity for all citizens in matters relating to employment or appointment to any office; (iii) that while there may be no right to promotion, there is certainly a fundamental right to be considered for promotion; (iv) that in the absence of a rule enabling the appointing authority to deny even a consideration for promotion, the omission to consider will be without the authority of law and violative of Articles 14 and 16 of the Constitution; (v) that as per the law declared by the Supreme Court, there are only two options open to the appointing authority namely either to promote without prejudice to the disciplinary proceedings or to adopt a sealed cover procedure if prescribed by the rules and (vi) that in any case the petitioner in the first writ petition was

empanelled last year and hence, his exclusion from the panel of the current year is a denial of a constitutional right.

6. In support of his above contentions, the learned counsel for the petitioner in the first writ petition relied upon the decisions reported in (1) **Prabhakar Yeshwant Joshi v. The State of Maharashtra**¹, (2) **State of Kerala v. N.M. Thomas**², (3) **Union of India v. K.V. Jankiraman**³, (4) **C.O. Arumugam and others v. State of Tamil Nadu**⁴, (5) **B.C. Chaturvedi v. Union of India**⁵, (6) **State of M.P. v. R.N. Mishra and another**⁶ and (7) **Coal India Ltd., v. Saroj Kumar Mishra**⁷.

7. Smt. Neeraja Reddy, learned counsel appearing for the petitioner in the second writ petition advanced similar arguments and contended that the mere pendency of an enquiry into grave charges cannot be a bar even for a consideration of the claim of a person for promotion.

8. We have carefully considered the above submissions.

9. Out of the six points that Mr. Anand Kumar Kapoor, learned counsel for the petitioner has raised, we have no difficulty in conceding the first three points namely (i) that the preamble to the Constitution guarantees to all citizens, equality of status and of opportunity, (ii) that while Article 14 is couched in the negative,

¹ 1993 (3) SCC 134

² (1976) 2 SCC 310

³ AIR 1991 SC 2010

⁴ 1991 Supp (2) SCC 199

⁵ (1995) 6 SCC 749

⁶ (1997) 7 SCC 644

⁷ (2007) 9 SCC 625

Article 16 is couched in the positive guaranteeing equality of opportunity in matters relating to employment or appointment to any office and (iii) that while there may be no right to promotion, there is certainly a fundamental right to be considered for promotion. Since there is no quarrel with regard to these principles, it is not necessary for us to deal with the first three points raised by the learned counsel.

10. The fourth point raised by the learned counsel for the petitioner is that in the absence of a Rule enabling the appointing authority to deny even a consideration for promotion, the omission to consider will be without the authority of law and will be violative of Articles 14 and 16. In order to test this contention, it is necessary to have a look at the Service Rules.

11. The petitioners herein are holding the post of Civil Judges (Junior Division), which falls under Category-III of the Andhra Pradesh State Judicial Service as per Rule 3 (2) of the Andhra Pradesh State Judicial Service Rules 2007. The controversy involved in these two writ petitions is for promotion to the post of Civil Judges which is in Category-II of the Service.

12. Rule 4 of the Special Rules prescribes the various methods of appointment to all the three categories of posts namely District Judges, Senior Civil Judges and the Civil Judges. Rule 4 (1) stipulates that appointment to the category of Senior Civil Judges shall be by promotion from the category of Civil Judges. Rule 4 (1) (c) of the Rules stipulates that appointment to the category of Senior

Civil Judges shall be by promotion from the category of Civil Judges, who have put in not less than 5 years of qualifying service selected by the High Court on the basis of the merit-cum-seniority. This Rule read as follows:

“4(1)(c) Appointment to the category of Senior Civil Judges shall be by promotion from the category of Civil Judges, who have put in not less than five years of qualifying service, selected by the High Court on the basis of merit-cum-seniority.”

13. There is no separate Rule found in the Andhra Pradesh State Judicial Service Rules, 2007, which deals with the methodology to be adopted for promotion of Civil Judges as Senior Civil Judges. However, Rule 25 of these Rules declares that the A.P. State and Subordinate Service Rules, 1996, which are not inconsistent with these Rules and to the extent not covered by these Rules, shall apply to the Service.

14. It may be of interest to note that Rule 19 (d) of these Rules declares that the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, the A.P. Civil Services (Conduct) Rules, 1964, the Fundamental Rules, the A.P. Leave Rules, 1933 and the Pension Rules shall govern the members of the service in the matters of their pay, allowances, leave, leave salary, pension and other conditions of service. The A.P. State and Subordinate Service Rules were not included along with the other set of Rules in Rule 19(d). But the applicability of the General Rules (A.P. State and Subordinate Service Rules) was separately provided for in Rule 25, qualifying the applicability with two kinds of phrases namely (i) which

are not inconsistent with these Rules and (ii) to the extent not covered by these Rules. ***In other words, Rule 25 invokes both the doctrine of eclipse and the doctrine of repugnancy.***

15. Keeping the above in mind let us now go to the A.P. State and Subordinate Service Rules, 1996.

16. For the purpose of promotion, the Andhra Pradesh State and Subordinate Service Rules classifies all posts into two categories namely (i) selection posts and (ii) non-selection posts. All non-Gazetted posts are declared under Rule 5 (b) of the A.P. State and Subordinate Service Rules, as non-selection posts. Consequently, promotion to such posts are directed under Rule 5 (b) to be made in accordance with “seniority-cum-fitness”. But in so far as selection posts are concerned, Rule 5 (a) of the General Rules declares that all promotions shall be made on the grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.

17. Sometime in the historic past, the various posts in the Subordinate Judiciary were classified into (i) State Higher Judicial Service and (ii) State Judicial Service. But after a spate of directions were issued by the Supreme Court in its decisions in *All India Judges Association-I* and *All India Judges Association-II*, the distinction between the State Higher Judicial Service and State Judicial Service vanished. The Andhra Pradesh State Judicial Service Rules, 2007 were issued, to be in tune with the directives issued by the Supreme Court in *All India Judges Association-I* and

All India Judges Association-II. All the posts in the Subordinate Judiciary now fall into three categories (i) District Judges, (ii) Senior Civil Judges and (iii) Civil Judges, comprised in only one service namely State Judicial Service.

18. Therefore, the distinction made between the State Service (Selection Posts/Gazetted Posts) in Rule 5 (a) and other Services (Non-Gazetted/Non-selection Posts) in Rule 5 (b) of the General Rules for State and Subordinate Services, is not available to the Judicial Service, as there is only one service. As a consequence, the detailed method of preparation of panels stipulated in Rule 6 of the General Rules, may not also be applicable to the Judicial Service. While the General Rules use the expressions "Selection Posts" and "merit and ability" in Rule 5 (a) and the expression "Non-selection posts" and "seniority-cum-fitness" in Rule 5 (b), the Andhra Pradesh State Judicial Service Rules, 2007 use the words "selected by the High Court" and "merit-cum-seniority" in Rule 4 (c). Therefore, it is clear that promotion from the post of Civil Judges to the post of Senior Civil Judges could only be by way of selection and not by way of promotion on the basis of seniority.

19. Though -- (i) Rule 4 (c) of the Andhra Pradesh State Judicial Service Rules, 2007 stipulate selection on the basis of the merit-cum-seniority and (ii) though Rules 5 (a) and 6 (a) of the General Rules for State and Subordinate Services stipulate the method of preparation of panels for promotion in other services, both these set of Rules are completely silent as to what should be done in

the case of persons, who are facing disciplinary proceedings, at the time when the process of selection for promotion is initiated. In order to fill up this gap, the Government appear to have issued various executive instructions from time to time, the last of which was in G.O.Ms.No.257 G.A.(Ser.C) Dept, dated 10-06-1999. Paragraph 5 of the said Government Order reads as follows:

“Government also order that with immediate effect the following procedure and guidelines, be followed to consider the employees against whom disciplinary cases or criminal prosecution are pending or whose conduct is under investigation, for appointment by promotion or transfer, to next higher categories.

(A) The details of employees in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committees or Screening Committees:

- (i) Officers under suspension;
- (ii) Officers in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending;
- (iii) Officers in respect of whom prosecution for a criminal charge is pending.

(B) Officers who are facing enquiry, trial or investigation can be categorized into the following groups based on the nature of the allegations or charges pending against them or about to be instituted namely:

- (i) an Officer with a clean record, the nature of charges or allegations against who related to minor lapses having no bearing on his integrity or efficiency, which even if held proved, would not stand in the way of his being promoted;
- (ii) an Officer whose record is such that he would not be promoted, irrespective of the allegations or charges under enquiry, trial or investigation; and
- (iii) an Officer whose record is such that he would have been promoted had had not been facing enquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supersede him.

(C) The suitability of the Officers for inclusion in the panel should be considered on an overall assessment based on the record which should include namely:

- (i) Adverse remarks recorded in the Annual Confidential Reports, the penalties awarded and the bad reputation of the Officer as vouchsafed by the Head of the Department and the Secretary to Government of the Department concerned;

The above cases should be considered as falling under category (ii) of item (B) above.

(ii) The Officers who do not have any adverse entry in the Annual Confidential Report and who have no penalties awarded against them in the entire duration of the post and not merely in the past five years and whose reputation is vouchsafed by the Head of the Department and the Secretary to Government of the Department concerned should be considered as falling under category (iii) of item (B) above.

The Officers categorized as under item (iii) of G.O.Ms.No.424, G.A.(Ser.C) Dept, dated 25-5-1976 as mentioned above only should be considered for ad-hoc promotion after completion of two years from the date of the Departmental Promotion Committee or Screening Committee Meeting in which their cases were considered for the first time.”

20. But the above instructions of the Government may not be applicable to the promotion of Civil Judges to the post of Senior Civil Judges. This is for the reason that Rule 4(1) of the A.P. State Judicial Services names the Governor of the State as the appointing authority for the categories of District Judges and Civil Judges, but the same Rule names the High Court as the appointing authority for promotion to the post of Senior Civil Judges.

21. Therefore, it is clear that the question as to how the case of an officer facing disciplinary proceedings should be dealt with, is not answered by the A.P. Judicial Service Rules. We cannot even look up to the General Rules for State and Subordinate Services for any guidance, as their application to State Judicial Service is limited under Rule 25 of the A.P. State Judicial Service Rules. The instructions issued by the Government in G.O. Ms.No.257 may not be applicable as the Government is not the authority empowered to consider the cases of officers eligible for promotion to the post of

Senior Civil Judges. Hence, we have to look up only to case law on the point for guidance.

22. In contra distinction to the A.P. State and Subordinate Service Rules, the General Rules for Tamilnadu State and Subordinate Services actually contain a prescription in Rule 39(d). This Rule 39 (d) of the Tamilnadu State and Subordinate Services Rules makes it clear that the pendency of charges will not be a bar for promotion.

23. Despite Rule 39 (d), the Tamilnadu Administrative Tribunal, while dealing with a matter, set aside the temporary promotions granted to certain individuals, on the ground that pendency of charges is a factor that could be taken into account by the appointing authority. When the matter landed up in the Supreme Court, the Supreme Court held in **C.O. Arumugam and others v. State of Tamil Nadu**, as follows:

“5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.”

24. Therefore, it is clear that despite the existence of a clear Rule making the pendency of the disciplinary proceedings not a bar

for promotion, the Supreme Court recognized the power of the appointing authority to take that factor into consideration.

25. However, relying upon the observation of the Constitution Bench of the Supreme Court in ***Prabhakar Yeshwant Joshi v. The State of Maharashtra***, it is contended by Mr. Anand Kumar Kapoor that when promotions are made on the basis of the seniority-cum-merit, all that is required is that persons entitled to promotion should be considered. He further contended, on the basis of another Constitution Bench decision of the Supreme Court in ***State of Kerala v. N.M. Thomas*** that the principle of equality is applicable to employment at all stages and that with regard to promotion, the normal principles are either merit-cum-seniority or seniority-cum-merit. Therefore, it is his contention that the interpretation given to Articles 14 and 16 by the decisions of the two Constitution Benches, would entitle the petitioner to relief, irrespective of what was laid down in ***C.O. Arumugam and others v. State of Tamil Nadu*** by a Two Member Bench.

26. But we do not think so. ***The sine qua non for the applicability of the concept of equality is that those, who claim equal treatment, should be equals. Unequals cannot claim parity of treatment with equals. Persons against whom disciplinary proceedings are initiated for grave misconduct cannot claim to be equals to those against whom no such proceedings are pending.*** It is only when a person establishes that

he is equal to others, he will be entitled to claim the benefit of the decisions of the Constitution Bench of the Supreme Court.

27. As a matter of fact, the decision of the Supreme Court in *C.O. Arumugam* cannot be seen in isolation. In another decision in **Union of India v. Tejinder Singh**⁸, the Supreme Court held in paragraph-4 as follows:

“We are also not satisfied as to the correctness of the view expressed by the Tribunal that a contemplated departmental inquiry or pendency of a departmental proceeding cannot be a ground for withholding consideration for promotion or the promotion itself. We are not aware of any Rule or principle to warrant such a view.”

28. ***It is relevant to note that in the paragraph extracted above, the Supreme Court considered both the twin aspects of (1) consideration for promotion; and (2) promotion itself. The Supreme Court also considered both stages, viz., (1) a contemplated departmental inquiry; and (2) a pending departmental inquiry.***

29. But the above view can be said to have been diluted to some extent in **Union of India v. K.V. Janakiraman**, by a 3 member bench of the Supreme Court. As can be seen from paragraph-2 of the decision in *K.V. Janakiraman*, three questions arose for consideration before the Supreme Court. They were (1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee; (2) what is the course to be adopted when the employee is held guilty in such proceedings; and

⁸ (1991) 4 SCC 129

(3) to what benefits an employee who is completely or partially exonerated, is entitled to and from which date.

30. The Supreme Court answered all the above three questions, in *K. V. Janakiraman*, specially in the context of the Office Memorandum issued by the Government of India (Department of Personnel and Training), which prescribe a sealed cover procedure.

31. But it was pointed out in *K.V. Janakiraman* that an employee has no right to promotion, though he has a right to be considered for promotion. The Supreme Court also pointed out that the promotion to a post and more so, to a selection post depends upon several circumstances. It was further held in *K.V. Janakiraman* that to qualify for promotion, the least that is expected of an employee is to have an unblemished record of service and that it is the minimum expected, to ensure a clean and efficient administration and to protect the public interest. ***It is relevant to point out that the Supreme Court made a clear distinction in Janakiraman between those who are guilty of misconduct and others. The Court categorically held that there is no discrimination, when in the matter of promotion, such an employee is treated differently.***

32. Therefore, despite the fact that *K.V. Janakiraman* was in the context of a prescription regarding sealed cover procedure, the decision in *K.V. Janakiraman* indicated in no uncertain terms that a person without a clean record of service is not to be treated as equal to a person with such a record. In other words, a person facing

disciplinary proceedings for grave acts of misconduct cannot be treated as equal to one who is not facing any such proceeding. If they cannot be treated as equals, there is no question of invocation of Articles 14 and 16.

33. Relying upon the decision of a 3 member bench of the Supreme Court in **B.C Chaturvedi v. Union of India**, it was contended by Mr. Anand Kumar Kapoor, learned counsel for the petitioner that in cases of promotion during the pendency of disciplinary proceedings, there are two courses of action open to the competent authority, viz., (1) sealed cover procedure or (2) promotion subject to the result of pending disciplinary action.

34. But unfortunately for the petitioner, no ratio is laid down in *B.C. Chaturvedi* that the case of a person should invariably be considered for promotion, even if he is facing disciplinary proceedings for grave acts of misconduct. What happened in *B.C. Chaturvedi* was that an Income Tax Officer, came under CBI net on allegations that he had acquired assets disproportionate to his known sources of income. Since evidence was not strong enough for prosecution, the CBI recommended a departmental enquiry. Pursuant to the departmental enquiry, he was dismissed from service, but the order of dismissal was converted by the Central Administrative Tribunal into one of compulsory retirement. Both the Union of India as well as the delinquent appealed to the Supreme Court. One of the contentions raised by the delinquent, while challenging the order of penalty was that during the pendency of

disciplinary proceedings, he was promoted as Assistant Commissioner of Income Tax and that this promotion was proof enough to show that there was nothing wrong with his conduct. It was while rejecting such an argument based upon what is known as “washed off theory” that the Supreme Court made the observations about the course of action open to a competent authority in the case of persons facing disciplinary proceedings. Therefore, *B.C. Chaturvedi* is not a precedent for the proposition that the case of an employee should invariably be considered for promotion even during the pendency of the charge memo.

35. Inviting our attention to the decision of the Supreme Court in **State of M.P. v. R.N. Mishra**, it is contended by Mr. Anand Kumar Kapoor, learned counsel for the petitioner that the respondents were not justified in excluding an employee from the field of consideration for promotion, merely on the ground of pendency of disciplinary proceedings.

36. But as in the case of *B.C. Chaturvedi* the decision of the Supreme Court in *R.N. Mishra*, was also that of an employee who claimed the benefit of promotion during the pendency of the proceedings, to advance the washed off theory. In *R.N. Mishra*, a preliminary enquiry was initiated in 1976, but he was promoted as Assistant Conservator of Forests, in 1977. The Charge Memo itself was issued only in 1982, after 5 years of promotion. Eventually a penalty of postponement of two increments was inflicted in 1986, which came to be challenged before the Tribunal. One of the

grounds of challenge to the penalty was that the allegations of misconduct stood condoned by the grant of promotion, and that therefore, the penalty was without jurisdiction (see para-2 of the report). It is in such a context that the Supreme Court followed the decision in *B.C. Chaturvedi*, in its decision in *R.N. Mishra*.

37. In support of his contention that the right of consideration for promotion can be withheld or kept in abeyance only in terms of valid rules and that absent any such rule, non-consideration would tantamount to acting without the authority of law, the learned counsel for the petitioner relied upon the decision in **Coal India Ltd., v. Saroj Kumar Mishra**.

38. But we think that the decision in *Coal India*, cannot advance the cause of the petitioners. It is apparent from the facts narrated in paragraphs-3, 4 and 5 of the decision in *Coal India Limited* that the employees in that case were issued with charge memo only in June, 2002, but they were denied promotion in the year 1999 itself on the ground that a preliminary enquiry was pending. Therefore, the said case cannot be equated to a case where a charge sheet is issued and the proceedings have commenced.

39. In paragraph 12 of its decision in *Coal India Limited*, the Supreme Court made an important observation, which reads as follows:

“It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the Vigilance Department, the competent authority had

arrived at a satisfaction as is required in terms of the said circulars that a charge-sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.

40. *The observations of the Supreme Court in paragraph-12 of its decision in Coal India Limited seem to suggest that even in cases where charge sheets had not been issued, the competent authority was entitled to arrive at a decision about the likelihood of disciplinary proceedings being initiated.*

Supplementing what was observed in para-12, the Supreme Court also indicated in para-18 that a departmental proceeding will be said to have been initiated only when a charge sheet is issued. Therefore, the decision in *Coal India* cannot be pressed into service, as the same arose out of denial of promotion to employees, much before the charge sheet was issued.

41. It appears from the files produced before us that the Registry of the Court is following a uniform procedure in the case of employees, against whom disciplinary proceedings have already been initiated with the issue of a charge memo. Once such a uniform procedure is followed in respect of judicial officers facing disciplinary proceedings, the petitioners cannot have a cause to complain, especially on the plank of Articles 14 and 16.

42. It is needless to emphasize that judicial service is not like any other service. It may be recalled that in its decision in **All India Judges Association v. Union of India**⁹ known as *All India Judges Association-I*, the Supreme Court issued a series of directions to

⁹ (1992) 1 SCC 119

improve the service conditions of the members of the subordinate judiciary. The Central Government as well as many State Governments filed petitions for review on the ground that the power to regulate the conditions of service of judicial officers vested with the executive, subject to the legislative control and that such a power given to the legislature and the State Government cannot be whittled down or curtailed by the directions issued by the Supreme Court. The review applications were disposed of by the Supreme Court by a decision which came to be known as (**All India Judges Association v. Union of India**¹⁰) All India Judges Association-II. The Supreme Court pointed out in the said decision that judicial service is not a service in the sense of employment and that Judges are not employees. The members of the judiciary, it was pointed out by the Supreme Court, exercise the sovereign judicial power of the State. Just as the Council of Ministers or the political executive is different from the secretarial staff or the administrative executive, Judges are different from judicial staff. Therefore, the Supreme Court concluded that the members of other services cannot be placed on par with the members of the judiciary either constitutionally or functionally. Hence, the manner in which we apply the test of Articles 14 and 16 in the matter of promotion of persons belonging to other services will be completely different from the manner in which we would apply the test to the cases of promotion of judicial officers. While the cases of persons belonging to other

¹⁰ (1993) 4 SCC 288

services are dealt with from the perspective of the rights of the employees and their status as Government servants, the cases of judicial officers are to be looked at from the perspective of the faith of the common man on which the entire edifice of judiciary is built. If judicial officers, against whom disciplinary proceedings for grave acts of misconduct are pending, are promoted by applying the same yardstick as that of other Government servants, the same may result in the erosion of the very foundation of the structure. The higher the office, the higher the responsibilities and the higher the standards stipulated.

43. Therefore, we are of the considered view that the practice followed by this court in not considering the cases of judicial officers facing enquiry into grave acts of misconduct, for promotion to higher posts, cannot be said to be arbitrary or violative of Articles 14 and 16 of the Constitution. The moment the officers come out clean in the disciplinary proceedings they will be entitled to consideration even with retrospective effect. Nothing more can be done. Hence the writ petitions are dismissed. There shall be no order as to costs.

44. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

Date: 16-08-2018
Ksn/Js
L.R copy to be marked

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

HON'BLE SRI JUSTICE N. BALAYOGI



A.S.Nos.149 and 239 of 2015

16th August, 2018

Ksn