IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1112 OF 2018

The Secretary,
Government of India
Department of Revenue and ors. … Petitioners
V/s.
Devi Singh s/o Souli Ram, IRS … Respondent

Mr.R.A.Rodrigues i/by Ms.Anjali Helekar for the Petitioner.
Mr.Sandeep Marne for the Respondent.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 26, 2019.

P.C.:-

1. This petition is filed by the Union of India challenging the judgment dated 22nd June, 2017 passed by the Central Administrative Tribunal, Mumbai in Original Application No.355 of 2017 filed by the respondent herein.

2. Brief facts are as under :-

Respondent at the relevant time was working as the Commissioner of Income Tax. The Department had initiated the process for granting promotion to the eligible candidates to the post of Principal Commissioner of Income Tax for several vacancies for the year 2015-16 which had to be filled up. Looking to the cadre in question, the decision of the Department Promotion Committee (DPC) would have to be cleared by the Appointments Committee of the Cabinet (ACC). When this process was going on, the retirement of the respondent was fast approaching. Apprehending that the process may not be completed before his retirement, he approached Central Administrative Tribunal by filing OA No.355 of 2017, in which he inter-alia prayed for direction to the respondents to forthwith hold a DPC for filling up the vacancy in question and thereafter to direct the ACC to complete the proceedings for clearance of the recommendation of the DPC in any case before 30th June, 2017 i.e. his last working day in office.

3. On 9th June, 2017, the Central Administrative Tribunal, Mumbai issued notice to the respondents in such original application and further observed that in

view of the fact that the original applicant was to retire on 30th June, 2017, the respondent may take necessary steps for early clearance of the proposal of promotion at all levels. The original application was fixed for hearing on 22nd June, 2017 to enable the respondents to file reply. On 22nd June, 2017, the impugned order came to be passed by the Tribunal, relevant portion of which reads as under:-

> "Therefore, there would be an order to the effect that in case the applicant is found fit then his promotion will take effect from at least last day of his office so that at least notionally he will have the benefit of his promotion. This is particularly so as this is a newly created post and therefore the machinery of the Government is not yet geared enough to contain all nitty gritty of such promotion. Besides, after his selection applicant can legitimately expect his promotion to come through."

4. The petitioners herein i.e. the Union of India and the Income Tax Department are aggrieved by these directions. They would point out that DPC met on 7th June, 2017. The recommendations of the DPC were cleared by the ACC on or around 2nd August, 2017, after

which regular promotion orders were issued. Counsel for the petitioner vehemently contended that the Tribunal has issued directions for giving retrospective promotion to the respondent who had by the time the selection process was over, retired from service. This could not have been done. He submitted that an employee can claim promotion only as long as he is in active service. Post retirement an employee has no right of promotion. No case of malafides was made out by the respondent in delaying the process.

5. On the other hand, the learned counsel for the respondent-original applicant submitted that the Tribunal had issued innocuous directions. All that the original applicant would under such order get is pay fixation in the promotional post on the date of retirement with consequential pension benefits.

6. We are broadly in agreement with the counsel for the petitioners that the Tribunal could not have granted promotion from the back date in favour of the employee

who had by that time the procedure for promotion was completed, retired from service. An employee only in active service can claim the benefit of promotion unless his case for some reason is required to be considered for for deemed date of promotion. No such case existed here. Particularly when no malafides were alleged against the Department in not completing the selection process timely, the Tribunal should have been slow in issuing the said directions. In law, we are in full agreement with the suggestion of the counsel for the petitioners.

7. However, in facts of the case, we are not inclined to interfere for following reasons:-

i. The vacancies in question pertain to the year 2015-16. The promotions were thus in any case long time overdue.

ii. The DPC had already been convened on 7th June, 2017, which found the original applicant fit for promotion and accordingly, made its recommendations.

iii. The ACC also eventually accepted such recommendations. In other words, in the opinion of the

DPC and ACC the original applicant was fit for promotion.

iv. Though the Tribunal's direction for granting promotion after retirement was legally flawed, the Tribunal could as well have given the direction for completing the entire process of consideration by the ACC before 30th June, 2017. This would have brought about the same result. It was perhaps the wrong choice of direction by the Tribunal.

8. In the facts of the present case, we are not inclined to exercise discretionary writ jurisdiction under Article 227 of the Constitution of India. In the result, petition is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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