

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B.RADHAKRISHNAN
AND
HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT PETITION No.2315 OF 2019

ORDER: (per Hon'ble Sri Justice A.Rajasheker Reddy)

This Writ Petition is filed against the order of the Central Administrative Tribunal, Hyderabad Bench, dated 29.10.2018 in O.A. No.021/00311 of 2015, wherein and whereby, the impugned order dated 26.02.2015 passed by the petitioners' authority declining to grant retrospective promotion to the respondent herein was set aside by the Tribunal and consequently directed the petitioners to give notional promotion to the respondent from T-6 to T-7/8 with effect from 30.08.2009 with all consequential financial and service benefits within a period of three months from the date of the order.

2. The brief facts of the case are that the respondent-applicant joined as Technical Assistant Grade-II-3 (T-II-3) in National Bureau of Plant Genetic Resources, New Delhi, on 28.11.1985, and her probation was declared on 27.11.1987. Subsequently, she got promotion from T-II-3 to T-4 on 01.07.1991 and T-4 to T-5 on 01.07.1997. Even though she attended duty from 01.07.1996 to 20.09.1996 for 82 days, the same was deducted from her regular service for further promotion. That apart, she proceeded on leave while she was working under the Indian Institute of Sugarcane Research, Lucknow. As a result of her availing different leaves for 237 days under Earned Leave or Half Pay Leave and due to

non-consideration of her attendance for 82 days, the petitioners have deducted 319 days from her service and consequently her promotion from T-5 to T-6, which was due to her on 30.08.2004, was postponed to 17.07.2005. Thereafter, she filed O.A. No.278 of 2015 before the Tribunal challenging non-consideration of her claim in counting her EL and HPL for 237 days and work done period of 82 days and for consequential retrospective promotion from T-6 to T-7/8 with effect from 30.08.2009. While the said O.A. was pending consideration, the petitioners' authority issued the order dated 26.02.2015, rejecting the claim of the respondent. Therefore, the Tribunal dismissed the said O.A. as withdrawn with liberty to challenge the order dated 26.02.2015. Challenging the said order, respondent filed O.A. No.311 of 2015 and the same was allowed by the Tribunal. Aggrieved by the said order, the petitioners filed the present Writ Petition.

3. The 6th petitioner herein filed a counter-affidavit before the Tribunal denying the averments made in the affidavit filed in support of the Original Application. It is stated that promotion of the respondent could not be considered in respect of the period for which ACRs and Five-Yearly Assessment Forms were not available, as per the provisions under ICAR Technical Service Rules. The respondent has been extended all the promotional benefits at relevant times. It is further stated that the respondent cannot ask for retrospective promotions and other benefits by challenging the order dated 26.02.2015. Hence, the O.A. is liable to be dismissed on the

ground of laches since through the impugned order, the respondent was not denied any promotion.

4. Heard Smt. Vani Reddy, learned Standing Counsel for the petitioners, and Sri A. Raghu Kumar, learned Counsel for the respondent.

5. Learned Standing Counsel for the petitioners submits that earlier, the case of the respondent for promotion could not be considered as she has not complied with the relevant provisions for submission of ACRs and only after submission of ACRs, she has been given promotion with effect from 17.07.2005. Learned counsel further submits that the respondent approached the Tribunal belatedly after accepting the promotion and, as such, the Tribunal could not have entertained the O.A. Learned counsel further submits that the finding of the Tribunal is not in consonance with the rules, as such, the O.A. is liable to be dismissed in limini.

6. On the other hand, the learned Counsel for the respondent submits that promotion of the respondent was delayed only on account of the mistake committed by the petitioners herein. The learned Counsel submits that the Tribunal rightly granted the relief relying on its earlier judgment dated 21.10.2011 passed in O.A. No.2894 of 201 and also basing on the judgment of the Hon'ble Supreme Court in **Union of India v. Tarsem Singh**¹ and, therefore, no interference is called for by this Court.

¹ CDJ 2008 SC 1444

7. We have carefully considered the pleadings of the parties, all the relevant materials and rival contentions.

8. The relief sought for by the respondent in the O.A. reads as under:

“It is prayed that the Hon’ble Tribunal may be pleased to call for the records pertaining to the 6th respondent Lr.F.No.1-2 (121/2014-E.1, dated 26.02.2015 rejecting the claim of the applicant in counting her Earned Leave and Half Pay Leave for 237 days and work done period of 82 days before proceeding on leave with a total of 319 days and consequent retrospective promotion from T-6 to T-7/8 with effect from 30.08.2009 and set aside the same as illegal, arbitrary and violative of rules and Articles 14 and 16 of the Constitution of India and consequently direct the respondents to count the work done period of 82 days, her E.L. and H.P.L. for 237 days availed by her from 21.09.1996 to 15.07.2000, totaling 319 days for the purpose of her promotion from T-6 to T-7/8 with all consequential benefits.”

9. The petitioners, in the counter-affidavit filed before the Tribunal, stated that the work done period of 82 days from 01.07.1996 to 20.09.1996 was not considered for promotion of the respondent for the following reasons:

“(i) Her Annual Confidential Reports for the period was not sent by IISR, Lucknow. IISR forwarded ACR dossiers for the period from 1986 to 31.03.1996, stating that for the rest of the period the applicant was on various kinds of leave until her relieving from that Institute on 10.07.2000.

(ii) Five yearly assessment form for the period 01.07.1996 to 20.09.1996 was not furnished by the applicant.”

The petitioners have also stated that the work done period of 139 days from 01.07.1996 to 15.07.2000 was not considered for promotion due to the following reasons:

“(i) Her ACRs for the period was not sent by IISR, Lucknow.

(ii) Five yearly assessment form for the period was not furnished by the applicant.”

10. The Tribunal relied on the guidelines of DoP&T No.50, which reads as under:

“50. Consideration of C.Rs. for -

(a)

(b)

(c) Where one or more CRs have not written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.”

11. The Tribunal, in paragraph No.15 of its order, held that if the respondent (applicant) has not submitted the ACR for any particular period, then the Reporting Authority should have submitted his own Assessing Report to the Accepting Authority. Since the petitioners herein have not followed the aforesaid guidelines of the

Department, the case of the respondent could not be considered for promotion. The petitioners had no answer as to why such procedure, as laid down in DoP&T guidelines, have not been followed, which caused great prejudice to the respondent. The Tribunal also found that the action of the petitioners in not considering the case of the respondent for promoting her as per the said guidelines is arbitrary and against the guidelines and instructions given in the 'Appendix of ICAR Handbook of Technical Services'. This aspect is not disputed by the learned Counsel for the petitioners. The Tribunal also relied on its earlier order in O.A.No.2894 of 2011, wherein it was held that the available ACRs should have been considered for promotion even though the ACRs for some relevant period were not available and the same is not disputed by the learned Counsel for the petitioners. Even in the writ affidavit, the said aspects were not disputed, which goes to show that the guidelines and the earlier order of the Tribunal in O.A.No.2894 of 2011 on which the Tribunal placed its reliance, were not taken into consideration by the petitioners' authority for considering the case of the respondent for promotion.

12. In **Syed Yakoob v. K.S.Radhakrishnan**², the Hon'ble Supreme Court held as follows:

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a

² AIR 1964 SC 477

result of failure to exercise jurisdictions. A writ can similarly be issued wherein exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these

limits that the jurisdiction conferred on the High Courts under [Art. 226](#) to issue a writ of certiorari can be legitimately exercised (vide [Hari Vishnu Kamath v. Syed Ahmed Ishaque](#)), [Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam](#) ([1958] S.C.R. 1240.), and [Kaushalya Devi v. Bachittar Singh](#)".

13. With regard to delay in filing the O.A., the Tribunal has relied on the decision of the Hon'ble Supreme Court in **Tarsem Singh's case** (supra 1) and gave cogent reasons for granting the relief by relying on its own order in O.A.No.2894 of 2011 and the guidelines of DoP&T, and granted the relief by exercising its discretionary power, which, we are not inclined to interfere with in writ jurisdiction by exercising the power of judicial review under Article 226 of the Constitution of India that too under certiorari jurisdiction.

14. For the aforesaid reasons, the Writ Petition is dismissed. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any pending, in the writ petition shall stand closed.

THOTTATHIL B.RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

18th February, 2019
Gsn.

