

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of Decision: August 25, 2021**

+ W.P.(C) 2563/2020, CM Nos. 8914/2020, 8916/2021, 20072/2021

**PRATEEK KUMAR SINGH AND ORS.**

..... Petitioners

Through: Mr. R. Venkataramani, Sr. Adv. with  
Mr.Santosh Kumar, Mr.Chitavan  
Singhal, Mr.Aayushmaan Vatsyayana  
and Ms.Hemlata Rawat, Advs.

versus

**FOOD CORPORATION OF INDIA AND ANR.**

..... Respondents

Through: Mr.Ajit Pudussery, Adv. for R-1  
Mr.Pradeep Kumar Sharma, Adv. for  
R-2

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**V. KAMESWAR RAO, J (ORAL)**

**CM No. 8914/2020 (for exemption)**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**W.P.(C) 2563/2020, CM Nos. 8916/2021 & 20072/2021**

1. The present petition has been filed by the petitioners with  
the following prayers:-

*"It is, therefore, most respectfully prayed, that in  
conspectus of the facts, circumstances and grounds  
stated supra, this Hon'ble Court may graciously be  
pleased to:*

*a. Issue a writ in the nature of Mandamus or any  
other appropriate Writ, order or direction declaring  
First part of column 4, 7 & 8 of SI. No. 3 Part II of*

*Appendix I to the FCI (Staff) Regulations 1971 whereby appointment to the Category I post of Assistant General Manager (AGM) has been provided to be made 33.33% by Direct Recruitment and Eligibility in terms of Educational qualification and age is specified as being violative of Articles 14, 16 and 21 of the Constitution since it perpetuates stagnation in the lower Category II post of Manager (General, Movement, Technical, Depot & Accounts) who find themselves denied promotion for between 24-30 years in service and often retire from the same post; and  
AND*

*b. Issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction directing the Respondent Food Corporation of India to merge the direct recruitment quota (33.33%) in the initial post of AGM (General, Movement, Technical, Accounts) with their respective promotion Quota (66.67%) to make appointment to the post of AGM 100% through promotion; and  
AND*

*c. Issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction to the Respondent FCI for introduction of the Assured Career Progression Scheme (ACPS) within fixed timeframe to the Category II post of Manager (General, Movement, Technical, Depot & Accounts) on similar lines as Unionized employees (Group C) of Respondent FCI, FCI Medical Officers and FCI Engineering Cadre Officers for whom the ACPS stood introduced from 2000/2007 itself whereby they receive benefit of 2 promotions upon completion of 12 & 24 years continuous service with FCI pursuant to either agreement with the Unions or orders passed by the A.P High Court, Calcutta High Court and the Hon'ble Supreme Court in Food Corporation of India & Ors. v. Parashotam Das*

*Bansal & Ors (2008) 5 SCC100,  
AND*

*d. Issue rule Nisi in terms of prayer and confirm  
the same after hearing the parties;*

*e. Pass such other order(s) or directions(s) as  
this Hon'ble Court may deem fit and proper in the  
facts and circumstances of the case and in favour of  
the Petitioner.”*

2. The petitioners, in this petition are serving as Managers (General, Movement, Technical, Depot & Accounts) (category-II post) with the respondent-Food Corporation of India (respondent FCI). The next promotional grade for the petitioners is that of Assistant General Manager (AGM), which is a category-I post. As per the Food Corporation of India (Staff) Regulations, 1971 ('FCI Regulations', for short), the quota for appointment for the post of AGM is 66.66% through promotion and 33.33% through direct recruitment. Pursuant to the representation of the petitioners among others, in 2019, the respondent FCI constituted a High-Powered Committee to consider; a) merging Direct Recruitment Quota in AGM in General, Movement, Technical cadre or; b) converting vacancies in direct recruitment quota into promotion quota or; c) same to be filled through departmental examination. The High-Powered Committee by its Report dated September 09, 2019 *inter-alia* recommended that the break-up of the quota among direct recruitment and promotion at AGM (General/Tech/Movement/ Accounts) may be revised to 25% and 75% from the present 33 1/3<sup>rd</sup> and 66 2/3<sup>rd</sup>.

3. It is the petitioners' case that despite the

recommendations of the High-Powered Committee, no steps were taken by the respondent FCI till June 2021, i.e., when on June 17, 2021 FCI notified Food Corporation of India (Staff) (Third Amendment) Regulations, 2021. By way of this amendment, the quota for appointment for the post of AGM has been changed to 25% by direct recruitment, 65% by promotion and 10% by Accelerated Promotion Scheme through departmental examination.

4. It is the submission of Mr. R. Venkataramani, learned Senior Counsel for the petitioners that the intent behind the amendment is to restructure the promotion avenues and to ensure that the current batch of 2011 Managerial Cadre get due opportunities for promotion without further loss of time. In other words, the intent of the amendment is, it must apply to all vacancies, which are available and which are in the pipeline for being filled up. In this regard, Mr. Venkataramani has submitted that the respondent FCI issued advertisement dated February 27, 2021 for filling up the vacancies by direct recruitment under the old quota of 33.33%. According to him, due to the inaction of the respondent FCI, there has been a considerable delay in implementing the recommendations of the High-Powered Committee. Had the respondent FCI taken the decision to amend the FCI Regulations in time, the advertisement dated February 27, 2021 would have been limited only to 25% vacancies to be filled by direct recruitment and no prejudice would have been caused to the petitioners, who have been stagnating over the last 10 years for no fault of theirs.

5. In this regard, Mr. Venkataramani submitted, the 2021 amendment has not altered the service conditions like age and eligibility to the detriment of any candidate who may aspire to apply. The said amendment has only reduced the quota of vacancies for direct recruitment for the post of AGM from 33.33% to 25%. According to him, it is a settled position of law that there is not only, no vested right to promotion but only a right to be considered for promotion and also no direct recruit has any right or a claim in regard to, or under a proposed selection process. Consequently, for valid reasons, the selection process can be amended, modified or even recalled completely. In support of this submission, he has referred to the judgment of the Supreme Court in the case of *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47. He also relied upon the judgment in the case of *Anupal Singh and Ors. v. State of Uttar Pradesh, Through Principal Secretary, Personnel Department and Ors.* (2020) 2 SCC 173. That apart, even in the case of *High Court of Delhi and Anr. v. A.K. Mahajan & Ors.* (2009) 12 SCC 62, after the interviews on the basis of combined seniority list had already been held and results were awaited, the recruitment rules were amended retrospectively providing that there would be a separate seniority lists for Private Secretaries, Court Masters and Superintendents. The Supreme Court upheld the retrospective application of said amended rules holding that mere chance of promotion being affected by amendment is inconsequential as it does not take away any benefit already available. In substance, it is his plea that there is no impediment in giving effect to the said

amendment, which will, to a considerable extent, alleviate the stagnation issue. He has also referred to the judgment in the case of *Y.V. Rangaiah and Ors. v. J. Sreenivasa Rao and Ors. (1983) 3 SCC 284* to contend that in the said case, rules required that the promotional exercise must be completed within the relevant year and, thus the Court held that the vacancies that accrued prior to the amendment of the Rules will be filled as per the un-amended Rules. In the present case, the FCI Regulations do not indicate that the vacancies must be filled in the relevant year or on the basis of the rules prevailing at the time of occurrence of the vacancies. Thus, the ratio of the judgment in *Y.V. Rangaiah (supra)* does not apply to the facts of this case. He also referred to the cases where the judgment in the case of *Y.V. Rangaiah (supra)* has been distinguished by the Supreme Court by referring to the judgment in the cases of *H.S. Grewal v. Union of India & Ors. (1997) 11 SCC 758*; *Deepak Agarwal and Anr. v. State of Uttar Pradesh and Ors., (2011) 6 SCC 725*; *State of Tripura and Ors. v. Nikhil Ranjan Chakraborty and Ors., (2017) 3 SCC 646*; *Union of India and Ors. v. Krishna Kumar and Ors., (2019) 4 SCC 319*; *Rajasthan State Sports Council and Anr. v. Uma Dadhich & Anr., (2019) 4 SCC 316* and *State of Tripura and Ors. v. K.K. Roy (2004) 9 SCC 65*.

6. The other submission of Mr. Venkataramani is that the petitioners have not been given the benefit of Assured Career Progression Scheme though, the Unionized Employees (Group C) of the respondent FCI were given promotional benefits under Assured Career Progression in the year 2000 in addition to grant

of selection grade. Similarly, Assured Career Progression Scheme was introduced for Medical Officers working with FCI pursuant to judgment passed by the Andhra Pradesh High Court and as recorded by the Calcutta High Court in judgment dated March 27, 2003. He also takes support of the judgment of the Supreme Court in the case of ***Food Corporation of India and Ors. v. Parashotam Das Bansal and Ors. (2008) 5 SCC 100***, which upheld the judgment of the Calcutta High Court for formulation of suitable scheme for organisational structure so that promotional avenues are available to the Engineers. According to Mr. Venkataramani, this judgment of the Supreme Court is to be applied across the Board for all cadres of respondent FCI, who are stagnating and are denied due promotional avenues. Despite Assured Career Progression Scheme being formulated for similarly placed employees, no such scheme for the petitioners has been formulated. This inaction, is leading to stagnation of the petitioners, which is arbitrary, unreasonable, unfair and discriminatory. He qualifies his submission by stating that not providing acceptable career progression opportunities to the petitioners, is without any basis or intelligible differentia and thus, is violative of Article 14 of the Constitution of India. He placed reliance on the judgments in the cases of ***State of Jammu and Kashmir v. Triloki Nath Khosa and Ors., (1974) 1 SCC 19*** and ***Council of Scientific and Industrial Research and Anr. v. K.G.S. Bhatt and Anr., (1989) 4 SCC 635*** in support of his submission that restricting the avenues of promotion leads to stagnation and opportunity to advance and takes away incentive

for the employee to excel, thereby affecting the overall progress of any organisation. He also referred to the judgment of the Supreme Court in the case of ***Dr. Ms. O.Z. Hussain v. Union of India, 1990 Supp SCC 688*** whereby the Supreme Court directed the Union of India to frame appropriate rules, *inter alia*, providing suitable promotional avenue for the 'A' Group scientists in the non-medical wing. In substance, it is his plea that the respondent FCI has a duty to provide the benefit of Assured Career Progression Scheme available in the category of AGM as well, since there does not exist any room for discrimination. He also referred to the judgments of the Supreme Court in ***Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Anr. v. K.S. Jagannathan and Anr., (1986) 2 SCC 679*** and ***Indra Sawhney and Ors. v. Union of India and Ors., 1992 Supp (3) SCC 217*** to contend that this Court under Article 226 of the Constitution of India has issued the Writ of Mandamus where the State has failed to exercise discretion conferred upon it.

7. On the submission made by Mr. Pudussery, learned Counsel for respondent No.1 that there is an automatic time scale upgradation on completion of five years for the Managers, Mr. Venkataramani stated that the said upgradation is more beneficial to the AGM and above level Officers where there is no stagnation. The said revision / upgradation of pay scales as far as Managers are concerned has not made any difference to the issue of stagnation. Additionally, except that the upgradation is applicable to all CAT-I and CAT-II employees nothing special or

particular alleviating the stagnation issue with Managers has happened. In this regard, he has referred to the Circular dated February 27, 2019, which reads as under:-

| <i>Designations</i>                                     | <i>Existing Pay Scale as per 3<sup>rd</sup> PRC w.e.f 01.01.2007</i> | <i>Scales after re-organisation of pay scales w.e.f 07.02.2019</i> |
|---------------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------------------------|
| <i>Manager</i>                                          | <i>40000-140000, E-1</i>                                             | <i>40000-140000, E-1</i>                                           |
| <i>Medical officer / Manager (after 5 yrs)</i>          | <i><u>Non-Existent</u></i>                                           | <i>50000-160000, E-2</i>                                           |
| <i>Asst. General Manager / Equivalent</i>               | <i>50000-160000, E-2</i>                                             | <i>60000-180000, E-3</i>                                           |
| <i>Asst. General Manager / Equivalent (After 5 yrs)</i> | <i><u>Non-Existent</u></i>                                           | <i>70000-200000, E-4</i>                                           |
| <i>Dy General Manager / Equivalent</i>                  | <i>60000-180000, E-3</i>                                             | <i>80000-220000, E-5</i>                                           |
| <i>Dy General Manager / Equivalent (After 4 yrs)</i>    | <i><u>Non-Existent</u></i>                                           | <i>90000-240000, E-6</i>                                           |
| <i>General Manager / Equivalent</i>                     | <i>80000-220000, E-5</i>                                             | <i>100000-260000, E-7</i>                                          |
| <i>Chief General Manager</i>                            | <i>100000-260000, E-7</i>                                            | <i>120000-280000, E-8</i>                                          |
| <i>Executive Director</i>                               | <i>120000-280000, E-8</i>                                            | <i>150000-300000, E-9</i>                                          |

8. He has also made an attempt to demonstrate the anomalies in the upgraded pay-scales after the issuance of circular dated February 27, 2019 in the following manner:-

| <i>POST</i>    | <i>Existing pay scales</i>   | <i>Upgraded Pay Scale</i>     | <i>Gap</i>                         | <i>Financial increment in Basic pay</i> |
|----------------|------------------------------|-------------------------------|------------------------------------|-----------------------------------------|
| <i>Manager</i> | <i>E1<br/>(40000-140000)</i> | <i>E1<br/>(40000-140000)</i>  | <i>No hike</i>                     | <i>NIL</i>                              |
| <i>AGM</i>     | <i>E2<br/>(50000-150000)</i> | <i>E3<br/>(60000-180000)</i>  | <i>Immediate Hike of 1 scale</i>   | <i>10,000/-</i>                         |
| <i>DGM</i>     | <i>E3<br/>(60000-180000)</i> | <i>E5<br/>(80000-220000)</i>  | <i>Immediate Hike of 2 scale *</i> | <i>20000/-</i>                          |
| <i>GM</i>      | <i>E5<br/>(80000-220000)</i> | <i>E7<br/>(100000-220000)</i> | <i>Immediate Hike of 2 scale*</i>  | <i>20000/-</i>                          |
| <i>CGM</i>     | <i>E7</i>                    | <i>E8</i>                     | <i>Immediate Hike of 1</i>         | <i>20000/-</i>                          |

|    |                       |                       |                              |         |
|----|-----------------------|-----------------------|------------------------------|---------|
|    | (100000-220000)       | (120000-280000)       | scale                        |         |
| ED | E8<br>(120000-280000) | E9<br>(150000-300000) | Immediate Hike of 1<br>scale | 30000/- |

9. By showing the aforesaid charts, it is his submission that the Managers are not only denied the benefit of higher scale but it is pay degradation as far as the Managers are concerned as their basic pay at the end of 12<sup>th</sup> year which has to be fixed as Rs.64,660/- (prior to February 07, 2019) is now fixed as Rs.62,770/-. He further highlighted that the circular dated February 27, 2019 has not provided any justification for immediate hike of two scales in relation to posts namely DGM and AGM and no corresponding immediate hike in respect of Managers. Even with respect to 2011 batch, the Managers and AGMs of the 2011 batch belong to the same age group and same educational qualification which further blocks the promotion avenue for Managers. With lateral entry through direct recruitment at the AGM level, growth opportunities for Managers has inevitably reduced with the post 2011 batch Managers being ineligible for promotion even beyond the year 2035. Hence, the fresh blood theory is not applicable in the case at hand because the Managers and AGM belong to the same age group and are having more or less same educational qualification. He seeks the prayers as made in the writ petition.

10. On the other hand, Mr. Ajit Pudussery at the outset would submit that in view of the notification dated June 17, 2021, the prayers at (a) and (b) of the writ petition have become infructuous

as the direct recruitment quota at the level of AGM has been reduced from 33 $\frac{1}{3}$ % to 25%. He stated that the respondent FCI is a statutory corporation set up under the Food Corporation Act, 1964. Under Section 13 of the said Act, the functions of the Corporation are of purchase, storage, movement, transportation, distribution and sale of food grains and other food stuffs on behalf of the Central Government. The operations of the Corporation are funded through the food subsidy of the Government of India and the Corporation operationalises the various schemes of the Government for dealing with food grains by utilizing this subsidy.

11. The services under the Corporation are governed by the FCI (Staff) Regulations framed under Section 45 of the Food Corporation Act, 1964, which are statutory in nature. The promotions in FCI are vacancy based and employees with the minimum qualifying service in the feeder cadre and having minimum benchmark APAR grades are assessed by DPC in order of seniority of employees in the feeder grade. Promotions are given to only those employees who are senior most and upto the vacant promotional posts. It is not possible to create promotional avenues for all the candidates at the lower level because the creation of posts is done taking into account the requirement of the Corporation and is a policy decision of the Corporation which is taken on the directions / with the approval of the Central Government as provided under Sections 6 and 45 of the Food Corporation Act, 1964.

12. Mr. Pudussery disputes the claim of the petitioners that

there are no promotional avenues for Managers. Managers are entitled to promotion to the post of AGM, from AGM to DGM, from DGM to GM, from GM to Chief General Manager and from Chief General Manager to Executive Directors. He states that the judgments in the case of *K. K. Roy (supra)*, *O. Z. Hussain (supra)* and *Council of Scientific and Industrial Research (supra)* are distinguishable inasmuch as in these cases there were no promotional avenues at all.

13. As regards the medical officers in FCI, he stated that the same is a miniscule cadre where there were no promotional avenues at all and it is for this reason that the Andhra Pradesh High Court has gave a judgment for creating additional avenues to the medical officers.

14. He relied upon the judgment in the cases of *Mallikarjuna Rao and Ors. v. State of Andhra Pradesh and Ors.*, (1990) 2 SCC 707; *T.P. George & Ors. v. State of Kerala and Ors.*, 1992 Supp. (3) SCC 191; *Indian Railway Service of Mechanical Engineers Association & Ors. v. Indian Railway Traffic Service Association & Anr.*, 1993 Supp. (4) SCC 473 and *B. Bharat Kumar and Ors. v. Osmania University and Ors.*, (2007) 11 SCC 58 in support of his submission that the Court will not interfere in the policy laid down by the Executive.

15. Insofar as advertisement dated February 27, 2021 is concerned, Mr. Pudussery justified the advertisement as the amendment to the Regulations came into force only on June 17, 2021 during the recruitment process. It is a settled law that recruitment has to be done in accordance with the un-amended

Regulations. Thus, the recruitment has to be done in accordance with the quota rule as provided in the un-amended Staff Regulations, which is 66%, i.e.,  $\frac{2}{3}$  promotions and 33%, i.e.,  $\frac{1}{3}$  direct recruitment. He relied upon the judgments in the cases reported as *N. T. Devin Katti and Ors. v. Karnataka Public Service Commission and Ors.*, (1990) 3 SCC 157; *Dr. P.N. Dubey and Ors. v. State of MP*, (1997) 3 SCC 497 and *Assam Public Service Commission and Ors. v. Pranjal Kumar Sarma and Ors.*, 2019 SCC Online SC 1526.

16. He justified the direct recruitment at the level of AGM to bring in fresh and more qualified talent as the basic qualification for direct recruitment as AGM is a post graduate degree. Also, the policy is designed to encourage the existing staff to better their qualifications and be eligible for direct recruitment as AGMs. For this reason, age relaxation of upto 50 years has been prescribed in the advertisement for direct recruitment for inhouse candidates while the prescribed age limit is between 28 to 39 years except for Legal and Medical Officers where the prescribed upper age limit is 33 years and 35 years respectively. He highlighted the cadre strength of Managers, AGMs, DGMs and GMs as under:-

|                         |   |      |
|-------------------------|---|------|
| Managers                | : | 6206 |
| Asst. General Managers  | : | 770  |
| Deputy General Managers | : | 202  |
| General Managers        | : | 98   |

17. Thus, this pyramidal structure reduces the chances of promotion at all the levels. This structure cannot be changed due

to the nature of work in the Corporation. According to Mr. Pudussery, against the advertisement dated February 27, 2021, 1,38,549 applications have been received. The written examinations are over and the candidates who have been shortlisted, have been called for interview / physical verification between August 16, 2021 and September 01, 2021.

18. The stand of the petitioners that they are not getting any benefit on account of upgradation of scales is not factually correct because their original scale was Rs.40000-140000 and the upgrades scale is Rs.50000-160000. This is being granted to all the Managers on completion of five years on the post of Manager. Thus, they are being given the scales originally drawn by AGMs which is Rs.50000-160000. On account of this, all the other posts above them have to be also upgraded to maintain parity.

19. The grievance of the petitioners that there are lack of chances of promotion on account of lack of vacancies is concerned, he stated that the chances of promotion are not a condition of service and confer no right on an employee and the law is well settled in a number of judgments including the judgment reported as ***Paluru Ramkrishnaiah and Ors. v. Union of India and Anr., (1989) 2 SCC 541*** and connected writ petitions.

20. On the plea of Mr. Venkataramani that Assured Career Progression Scheme needs to be granted to the petitioners, Mr. Pudussery stated that the said Scheme is applicable only to the Central Government / State Government employees and has not

been introduced in FCI either for the medical or the engineering cadres. Some modified schemes of upgradation either by introducing new scales for granting time bound promotion or by granting two increment has been introduced in the FCI both for the unionized category and as per Circular dated February 27, 2021. Similar benefits have been extended to the Managers, a reference of which has already been made above.

21. On the plea of Mr. Venkataramani that the vacancies need to be reviewed and the said vacancies need to be filled up under the promotion quota, Mr. Pudussery has relied upon the judgment in the cases of ***Dr. P.N. Dubey (supra)*** and ***Assam Public Service Commission (supra)*** to state that such a submission need to be rejected. Mr. Pudussery seeks the dismissal of the writ petition.

22. Having heard the learned counsel for the parties and perused the record and the written submissions filed by the counsels, at the outset, I may state that the prayers at (a) & (b) of the prayer clause, in view of the notification dated June 17, 2021, does not survive for consideration as the direct recruitment quota from Manager to AGM has been decreased from 33 $\frac{1}{3}$ % to 25%. Resultantly, the promotion quota through selection and accelerated promotion has been fixed at 75% (65%+10%). If the plea of the petitioners is that the complete quota of direct recruitment of 25% needs to be merged with promotion quota then such a prayer cannot be granted for the following reasons:

- (i) It is the case of the respondent FCI that direct recruitment quota at the level of AGM is to bring

fresh and more qualified talent for which they want to retain direct recruitment quota.

- (ii) No *Mandamus* can be issued to the respondent FCI to frame regulations in a particular manner as it is for the employer to decide manner of recruitment to be made in an organisation.
- (iii) The Managers having the requisite qualifications, with age relaxation up to 50 years can also apply for appointment under the direct recruitment quota.
- (iv) There is a provision for accelerated promotion to the extent of 10%.
- (v) In effect, a Manager, apart from having his own channel of promotion, based on selection can also seek appointment as AGM through direct recruitment (below 50 years) / accelerated promotion which in fact means, that he can seek appointment to the post of AGM under all three categories / quota / channel.

23. Coming to the submission of Mr. Venkataramani that the advertisement dated February 27, 2021 need to be reviewed / amended / modified / recalled completely in view of the notification dated June 17, 2021 decreasing the quota of direct recruitment from 33<sup>1</sup>/<sub>3</sub> % to 25%, is concerned, the same is unmerited, for the reason, that the advertisement was issued much before the regulations were amended in June, 2021 when

the direct recruitment quota was 33<sup>1</sup>/<sub>3</sub>%. The respondent FCI is within its right to notify the vacancies in terms of the quota which existed then. I may refer to the judgment of the Supreme Court in the case of **Dr. P.N. Dubey & Ors. (supra)** on which reliance has been placed by Mr. Pudussery, wherein the Supreme Court has held as under:

*“This appeal by special leave arises from the judgment of the Madhya Pradesh High Court, Jabalpur Bench, made on 10-2-1981 in Miscellaneous Petition No. 812 of 1980. The appellants were working as Veterinary Assistant Surgeons in the Madhya Pradesh Veterinary Services Gazetted. The Madhya Pradesh Veterinary Services is governed by the rules called Madhya Pradesh Services (Gazetted) Recruitment Rules, 1966. The channel of recruitment to the post of Assistant Director Veterinary Service was from two sources, namely, direct recruitment and promotion in the proportion of one is to one. An advertisement came to be made by the Madhya Pradesh Public Service Commission of 28 posts of Assistant Directors. The appellants had challenged the validity of the notification and selection on the ground that the Government had, by then decided, to provide recruitment to the post of Assistant Directors by promotion with 100% from the feeder cadre, namely, Veterinary Assistant Surgeon. It is found, as a fact, by the High Court that as on the date of the notification, the Rules were not amended. Unamended rules provide that the recruitment was to be made from two sources, namely, direct recruitment and by promotion in the ratio of one is to one. Consequently, the advertisement for recruitment of Assistant Directors by the Public Service Commission and selection and appointment of the candidates were valid in law. The same came to be challenged in this appeal. It is seen that undoubtedly though decision was taken by the Government, the Rules have not been amended. Therefore, the advertisement made for recruitment to fill up the posts of Assistant Directors, by*

direct recruitment and consequential selection as per the unamended rules for the 50% of the vacancies earmarked for direct recruitment was in accordance with the aforesaid Rules. As a consequence, the view taken by the High Court is consistent with the Rules. We do not find any illegality warranting interference.”

*(Emphasis supplied)*

24. Further in the absence of any restraint order by this Court, the advertisement has been issued, around 1,38,549 applications have been received; written examination has been conducted and candidates who have been shortlisted have been called for interview / physical verification between August 16, 2021 and September 1, 2021. The process having been initiated with the issuance of advertisement and selection being in progress, it is too late in the day to interdict the same. The plea of Mr. Venkataramani that no candidate applying for selection as a direct recruit has any vested right though sounds appealing but, in the facts, the plea need to be rejected.

25. Insofar as the judgments relied upon by Mr. Venkataramani in support of this submission (i) that vacancies even if exist, are not required to be filled; (ii) the vacancies can be reduced or recalculated during the selection process (iii) the seniority can be redetermine during the selection process, are concerned, in the case of ***Shankarsan Das (Supra)***, the Supreme Court was concerned with the facts, wherein the appellant was selected in Combined Civil Services Examination held by the UPSC for appointment to Civil Services including IPS and Police Service, Group B.

26. The examination was held in October, 1977 and the result was announced in May, 1978. A combined merit-list for the IPS and the Police Services (Group B) was announced, which included the name of the appellant therein. Out of the total 70 vacancies in the IPS, 54 were of general category and remaining 16 reserved for scheduled castes / scheduled tribes. The position of the appellant in the merit-list was not high enough to be included in the IPS and he was offered appointment to Delhi Andaman and Nicobar Police Service ('DANIP' for short) (in Police Service Group-B), which he accepted. In June, 1979, 14 vacancies arose in the IPS due to the selected candidates not joining the service. Out of the 14, 11 were in general category and 3 in reserved category. The 3 vacancies in reserved category were filled up by the candidates who were appointed in DANIP service, but no appointments were made to the general category vacancies. The appellant made a representation praying that the vacancies in the general category should also be filled up through the candidates appointed in the DANIP services. The petition of the petitioner before this Court was dismissed.

27. The case of the appellant therein before the Supreme Court was that since several vacancies in the general category of the IPS remained unfilled, he was entitled to be appointed in one of them and the authorities were not right in rejecting his representation. The Supreme Court held, even if number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing

vacancies. Ordinarily, the notification merely amounts to an invitation to the qualified candidates for application to recruitment and on their selection, they do not acquire any right to the posts. Unless the relevant recruitment rules indicate so, the State is under no obligation to fill up all or any of the vacancies. Further the Supreme Court held that it does not mean that the State has a licence to act in an arbitrary manner. The decision not to fill up the vacancies has to be taken in a *bonafide* for appropriate reasons. The Supreme Court held, in these facts, there is no arbitrariness and justified the filling up of the reserved vacancies on account of special circumstances only. This judgment has no applicability to the case in hand, more specifically when the facts are not common. In the case relied upon, the selection has taken place and it is after selection, the vacancies have not been filled up for good valid reasons, but in the case at hand, the advertisement has been issued to fill up vacancies before the amendment of the regulations and selection process undertaken and is at the final stage.

28. In **Anupal Singh** (*supra*), the Supreme Court was concerned with the facts where the Uttar Pradesh Public Services Commission issued an advertisement on October 22, 2013 inviting applications for 6628 vacancies in the Subordinate Agricultural Services. The appellant as well as many private respondents applied for and appeared for the written examination held on March 30, 2014. As per the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, specified percentage of

vacancies have been reserved for different categories, viz., SC-21%, ST-2% and OBC-27%. It was brought to the notice of the State Government that there was a wrongful calculation of category-wise vacancies in the earlier requisition and therefore the earlier requisition was required to be revised in order to fulfil the requirement of Constitution and statutory mandate of reservation. The State of UP after taking opinion, approved the revised vacancies for different categories and accordingly sent the revised requisition to the Uttar Pradesh Public Service Commission. The issue which arose for consideration was, whether the revised requisition could have been sent, thereby decreasing the number of vacancies to be filled. The Supreme Court justified the decision, holding that the same was only to rectify the wrongful calculation of the number of vacancies in different categories and to comply with the requisite percentage of quota of reservation in different categories. This judgment relied upon by Mr. Venkataramani in support of his submission that the vacancies can be revised would not be applicable in the facts of this case and also in view of my conclusion above, inasmuch as when the vacancies were advertised, the process had already been initiated on the basis of the position which existed under the regulations then and the same is at the final stage.

29. In so far as the judgment in the case of the **A.K. Mahajan** (*supra*) is concerned, the Supreme Court was concerned with the facts where respondents working as Private Secretaries in this Court were aggrieved by the notification dated August 7, 1995 through which Recruitment Rules were amended retrospectively

from July 1, 1993 providing that there would be separate seniority list for Private Secretaries, Court Masters and Superintendents and further promotion as Assistant Registrar would be considered by representation of vacancies amongst these feeder cadres namely Private Secretaries, Court Masters and Superintendents. The amendment was made to correct the imbalance in the previous system where there was combined seniority list of Private Secretaries, Court Masters and Superintendents and most of the posts of Assistant Registrars went to the share of Private Secretaries. In the said case, though prior to the amendment, interview on the basis of combined seniority list had already been held, results had been declared, the respondents did not challenge the trifurcation of the combined seniority list into separate seniority list of Private Secretaries, Court Masters and Superintendents, but confined their challenge to retrospectivity of the amendment. Their contention was that their right to be considered for promotion has already been crystalized which were sought to be taken away by retrospective operation of the notification dated August 7, 1995. Reliance in that regard was placed on the judgment of the Supreme Court in the case of ***Chairman, Railway Board and Ors. v. C.R. Rangadhamaiah and Ors., (1997) 6 SCC 623***. The Supreme Court held that the amendment having retrospective operation and the date fixed for giving effect to said amendment is relevant as it was immediately after the last promotion was effected, there is no absolute, accrued or vested right of consideration which could not be effected by retrospective amendment. The only

condition is that such retrospective amendments should be constitutionally valid.

30. In the case at hand, there is no retrospective amendment of the regulations, rather the Notification dated June 17, 2021, states, amendment is from the date of Notification. Concedingly, the Notification is not under challenge. The Notification has a prospective effect and shall not have a bearing / nor shall have any effect on the advertisement already issued, under the old regulations. Hence the judgment has no applicability to the case in hand.

31. During the course of his submissions, Mr. Venkataramani has also referred to judgments in the cases of *H.S. Grewal (supra)*; *Deepak Agarwal (supra)*; *Nikhil Ranjan Chakraborty (supra)*; *Krishna Kumar (supra)*; *Rajasthan State Sports Council (supra)* and *K.K. Roy (supra)*. The Supreme Court in these cases has held that there is no universal rule or absolute obligation that the vacancies are to be filled invariably according to the law as existing on the date when the vacancies have arisen. I am afraid this proposition of law has no applicability to the facts of this case. Reliance on the judgments overlooks the fact that in the case in hand the vacancies have arisen before amendment of regulations and the advertisement for filling up the said vacancies has also been issued much prior to the amendments. The plea of Mr. Venkataramani that sufficient indication has been given in the advertisement that the selection / appointment will be subject to the vacancies in terms of clause 20 and 26, hence, the vacancies cannot be filled by direct

recruitment is unmerited for the reason that after the issuance of the advertisement, the notification issued on June 17, 2021, amending the regulations specify the amendments to be effective from the same date, i.e., prospective, which means the amendment has no bearing on the vacancies under direct recruitment quota which existed before that date. It follows, the advertisement shall govern the recruitment to the post of AGM under direct recruitment quota as per the vacancies available.

32. In so far as the submission of Mr. Venkataramani that the petitioners need to be given the benefit of Assured Career Progression Scheme, which benefit was given to the unionised employees (Group C) and Medical Officers, I agree with the plea of Mr. Puduserry that the said Scheme is applicable only to the Central Government and State Government employees. It is his submission that the scheme has not been introduced in the respondent FCI for medical or engineering cadres. Nothing has been placed before this Court to show that the Assured Career Progression Scheme has been introduced in the medical and engineering cadres. In any case, petitioners having promotional avenues to AGM like promotion based on selection, accelerated promotion Scheme and direct recruitment wherein the upper age is relaxed till the age of 50 years for Manager and coupled with the fact that an upgraded pay-scale of Rs. 50,000 – Rs.1,60,000/- is available for the Managers after completion of five years, surely the demand for Assured Career Progression Scheme is not justified.

33. The plea of Mr. Venkataramani that the Manager should also be given the upgraded scale like the one given to AGM / DGM is concerned, the same is not appealing as granting of similar benefit as that of AGM / DGM shall have repercussion on the pay-scales as being given to the higher posts in the hierarchy; and in any case, it is not for this Court to direct the grant of further upgraded scale to the petitioners. It is for the respondents to provide appropriate recruitment process to higher posts / grade, and the Court cannot issue *Mandamus* in that regard. This is so held by the Supreme Court in the case of ***State of Himachal Pradesh & Ors. v. Satpal Saini, (2017) 11 SCC 42***, wherein the Supreme Court has held as under:

*“8. In State of H.P. v. Parent of a Student of Medical College [State of H.P. v. Parent of a Student of Medical College, (1985) 3 SCC 169] this Court deprecated the practice of issuing directions to the legislature to enact a law:*

*“4. ... The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging....”*

*The same principle was followed in Asif Hameed v. State of J&K [Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364] where this Court observed that:*

*“19. ... The Constitution does not permit the court to direct or advise the executive in matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or executive....”*

*In Union of India v. Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] this Court observed that:*

*“19. ... it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules.”*

9. Similarly, in *Supreme Court Employees' Welfare Assn. v. Union of India* [*Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187], this Court held that a court cannot direct the legislature to enact a particular law. This is because under the constitutional scheme, Parliament exercises a sovereign power to enact law and no other authority can issue directions to frame a particular piece of legislation. This principle was reiterated in *State of J&K v. A.R. Zakki* [*State of J&K v. A.R. Zakki*, 1992 Supp (1) SCC 548], where this Court observed that:

*“10. ... A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J&K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J&K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court.”*

In *V.K. Naswa v. Union of India* [*V.K. Naswa v. Union of India*, (2012) 2 SCC 542], this Court referred to a large number of decisions and held that:

*“18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue*

*directions to the legislature to enact the law in a particular manner.”*

10. A discordant note had been struck by a Bench of two Judges in *Gainda Ram v. MCD* [*Gainda Ram v. MCD*, (2010) 10 SCC 715]. A direction was issued to the legislature to amend legislation before a particular date. The Constitution Bench in *Manoj Narula v. Union of India* [*Manoj Narula v. Union of India*, (2014) 9 SCC 1] held that this direction by a Bench of two Judges was contrary to the law laid down earlier by three Judges. In that context, the Constitution Bench has conclusively enunciated the legal position thus:

*“127. The law having been laid down by a larger Bench than in Gainda Ram [Gainda Ram v. MCD, (2010) 10 SCC 715] it is quite clear that the decision, whether or not Section 8 of the Representation of the People Act, 1951 is to be amended, rests solely with Parliament.”*

11. Having regard to the settled position, the impugned directions are unsustainable.”

34. Mr. Venkataramani has relied upon the judgments of the Supreme Court in the cases of *Triloki Nath Khosa (supra)*; *Council of Scientific and Industrial Research (supra)*; *O.Z. Hussain (supra)* and *Parashotam Das Bansal (supra)* in support of his submission for grant Assured Career Progression Scheme / Promotion Channels to remove stagnation. I am afraid that all the four judgments have no applicability in the facts of this case. In those cases, the Supreme Court has given direction to the respondents for framing of promotion rules where none existed. It is not such a case here, as is clear from the above, the promotion regulations exist in the organization and the petitioners who are working as Managers can apply for all

channels of recruitment like selection / accelerated promotion / direct recruitment (below 50 years). I note the Supreme Court in paragraph 13 in the judgment of *Parashotam Das Bansal (supra)* has held that it is only if there is no channel of promotion in respect of a particular group of officers, a Court can issue direction for framing of a Scheme, but shall not interfere with the operation of existing channel of promotion. The Supreme Court has held thus:

*“If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country.”*

*(Emphasis supplied)*

35. From the above, it is clear, this Court cannot interfere with the operation of the existing channel (s) of recruitment to the post of AGM. In view of my discussion above, I do not see any reason to grant the reliefs in the petition. The petition is dismissed.

No costs.

**CM Nos. 8916/2021 & 20072/2021**

In view of my conclusion in the writ petition, the applications are dismissed as infructuous.

**V. KAMESWAR RAO, J**

**AUGUST 25, 2021**/ak/jg