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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2744 OF 2019

The State of Maharashtra and Anr. .. Petitioners
vs.
Yeshwant Maruti Patil and Ors. .. Respondents

**WITH
WRIT PETITION NO. 2745 OF 2019**

The State of Maharashtra and Anr. .. Petitioners
vs.
Dr. Pralhad Raghunath Harinkhede
and Ors. .. Respondents

Mr. L. M. Acharya, Special Counsel a/w Mr. M. M. Pabale,
AGP for petitioners – State.

Mr. Vijay D. Patil for respondent nos.1 to 4 and 6 in
WP/2744/2019 and for respondent nos.1 and 2 in
WP/2745/2019.

Mr. Rui A. Rodrigues, Amicus Curiae.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JULY 13, 2022

ORAL JUDGMENT (Per the Chief Justice):

1. These two writ petitions are at the instance of the State of Maharashtra through its Secretary, Higher and Technical Education Department and the Director, Higher

Education, Maharashtra State. The challenge herein is common. The petitioners have challenged the common order dated 3rd May 2018 passed by the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) whereby Original Application Nos.70 and 786 of 2017, instituted by the respondents in these two writ petitions, were allowed with the following order: -

- “(i) Both the Original Applications are hereby allowed without any order as to costs.
- (ii) The provision of Rule 3 of 2015 Recruitment Rules to the extent removing in the quota for promotion to the senior collegiate branch is hereby quashed and set aside.
- (iii) The State of Maharashtra is hereby directed to make suitable amendment in the light of the observations made in paragraph No.12 above and by taking into consideration any other parameters, within a period of four months from the date of this order.
- (iv) In view of disposal of O.A. No. 786/2017, the M.A. No. 356/2017 does not survive and hence the same also stands disposed of.”

2. The respondents in the writ petitions approached the Tribunal with a grievance that the recruitment rules for appointment on the post of Lecturer (Group A), notified by the Higher and Technical Education Department, Government of Maharashtra vide notification dated 13th March 2015 takes away their right of promotion and, therefore, should not be acted upon. As can be seen from the operative part of the order of the Tribunal extracted supra, the respondents obtained the relief that they had

claimed from the Tribunal. Not only that, the Tribunal proceeded to direct the State of Maharashtra to make suitable amendment in the rules in the light of the observations made in paragraph 12, within the time stipulated by it.

3. Appearing in support of the writ petitions, Mr. L. M. Acharya, learned special counsel, has taken serious exception to the order of the Tribunal. According to him, the Tribunal's order is indefensible and ought to be set aside.

4. Before we note the contentions advanced by Mr. Acharya and Mr. Patil, learned advocate for the respondents, we need to notice what the respondents in Writ Petition No.2744 of 2019 pleaded before the Tribunal.

5. The respondents have been working on the posts of Lecturer (Group B) in a Government college, i.e., Ismail Yusuf College at Jogeshwari (East), Mumbai, in different subjects upon being selected by the Maharashtra Public Service Commission. They are members of the Maharashtra Education Service (Group-B) (Collegiate Branch). All but one of the respondents were appointed in the year 2012; only the respondent no.1 was appointed in the year 1996. Recruitment rules of 1995 framed by the Government provided that nomination was the only mode of appointment to the post of Lecturer (Group A) in senior college. There was no promotional avenue for lecturers in junior college for promotion as lecturer in senior college. Various representations were made on behalf of the

lecturers working in the junior colleges and belonging to the cadre of Maharashtra Education Service (Group-B) (Collegiate Branch) for providing them promotional avenue to the post of lecturers in senior college (Group-A). The Government, through its Higher and Technical Education Department, sought a clarification from the University Grants Commission (hereafter "the UGC", for short) seeking permission to effect changes in the recruitment rules. At the relevant time, the UGC Regulations of 2000 on Minimum Qualification for Appointment and Career Advancement of Lecturers, Readers and Professors in the Universities and Colleges were in force. Although the said regulations laid down the minimum qualifications to be possessed by those candidates seeking direct recruitment, the UGC by letter dated 15th September 2004 informed the Government that it was within the purview of the Government to provide for 25% reservation by way of promotion and that the UGC had no role to play. The said letter further clarified that the UGC had no objection to the request of the Government seeking exemption from 100% direct recruitment to the post of lecturer of a college (Degree Level), provided the candidate fulfills minimum eligibility conditions. The recruitment rules were amended in 2005, which came into force on 3rd July 2006, opening up promotional avenues for Lecturer (Group B) for promotion as Lecturer (Group A) in 25% of the posts. In due course of time, the UGC framed the University Grants Commission (Minimum Qualifications for

Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (hereafter "the 2010 UGC Regulations", for short) vide notification dated 30th June 2010. The 2010 UGC Regulations were adopted by the Government of Maharashtra by issuing Government Resolution dated 15th February 2011, whereupon by a notification dated 13th March 2015, the Higher and Technical Education Department notified the Assistant Professor, College Librarian and College Director of Physical Education, Maharashtra Education Service, Group-A in the Government College of Arts, Commerce and Science, Government Institute, Government Institute of Science, Government Institute of Forensic Science, Sydenham Institute of Management Studies and Research and Entrepreneurship Education and Government College of Education and in the Government College of Law General State Service, Group-A, (Law) (recruitment) rules, 2015 (hereafter "the 2015 rules", for short). Rule 3 thereof provided as follows:

"3. Appointment to the post of the Assistant Professor of Government College of Arts, Commerce & Science, Government Institute, Government Institute of Science, Government Institute of Forensic Science, Sydenham Institute of Management Studies and Research & Entrepreneurship Education & Government College of Education & Government College of Law shall be made by nomination, from amongst the following candidates who, -

(a) Are not more than thirty-three years of age :

Provided that, the upper age limit shall be relaxed upto five years in case of candidates already working in the Government service;

(b) Possess educational qualifications and experience in teaching and research and fulfills other conditions of eligibility for the post of 'Assistant Professor' as prescribed by the U.G.C. or A.I.C.T.E. or N.C.T.E., as the case may be, from time to time."

6. Although the UGC Regulations 2010 provide for direct recruitment to the post of Assistant Professor (earlier Lecturer), the respondents claimed that nowhere does it close the avenue of promotion. Right to promotion being a Fundamental Right, rule 3 of the 2015 rules was assailed by claiming that the same was an invasion of the respondents' Fundamental Right and, therefore, ought to be so declared. It is this claim of the respondents that succeeded before the Tribunal.

7. While hearing the writ petitions on an earlier occasion, we had considered it appropriate to request Mr. Rui Rodrigues, learned advocate, who generally appears for the UGC, to assist us as *amicus curiae*. Mr. Rodrigues has advanced extensive submissions on the effect of the 2010 UGC Regulations as well as referred to various decisions of the Supreme Court in support of the contention that the 2010 UGC Regulations, if adopted by the Government, would assume a mandatory character. Referring to the Government Resolution dated 15th February 2011, it has been contended by Mr. Rodrigues that paragraph 3.0.0, i.e.,

from 3.1.0 to 3.9.0, and paragraph 4.0.4 (sic, 4.0.0), i.e., from 4.1.0 to 4.4.2, having been adopted by the Government, no avenue has been kept open for appointment on the post of Assistant Professor (earlier Lecturer) by promotion and appointment could only be by selection on the basis of merit through all India advertisement and by duly constituted Selection Committees.

8. Mr. Rodrigues has, in the course of his submission, relied on the decision of the Supreme Court reported in (2015) 6 SCC 363 (**Kalyani Mathivanan vs. K.V. Jeyaraj & Ors.**) in support of the contention that the UGC Regulations, if approved by both the Houses of Parliament, would be binding on the Universities and consequent failure of any University to comply with the UGC Regulations may result in withholding of grants to the University made out of the fund of the UGC.

9. Mr. Rodrigues has also brought to our notice a decision of recent origin of the Supreme Court reported in 2022 SCC OnLine SC 256 (**Gambhirdan K. Gadhvi vs. State of Gujarat & Ors.**). Paragraph 57 of the said decision was relied upon in support of the proposition that the UGC Regulations become a part of the University Grants Commission Act, 1956 and in case of any conflict between any State legislation and any Central legislation, it is the Central legislation that will prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of

the Constitution.

10. Mr. Acharya referred to paragraphs 62.4 and 62.5 of the decision in **Kalyani Mathivanan** (supra), where the Court held as follows: -

“62.4. The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.

62.5. The UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise. Once they are adopted by the State Government, the State legislation to be amended appropriately. In such case also there shall be no conflict between the State legislation and the Central legislation.”

11. Referring to the Government Resolution dated 15th February 2011, Mr. Acharya contended that the 2010 UGC Regulations were adopted by the Government and, therefore, the notification dated 13th March 2015 embodying the 2015 rules, issued by the Higher and Technical Education Department, was absolutely in consonance with the 2010 UGC Regulations; and the Tribunal grossly erred in interfering with the 2015 rules and setting aside rule 3 thereof.

12. Mr. Acharya also placed reliance on the decision of the Supreme Court reported in (2003) 2 SCC 632 (**P. U. Joshi & Ors. vs. Accountant General, Ahmedabad & Ors.**) in

support of the contention that the Tribunal did not have any jurisdiction to direct the State to make suitable amendment in the 2015 rules in the light of what was observed by the Tribunal in paragraph 12 of its order.

13. Resting on the aforesaid contentions, Mr. Acharya prayed that the order of the Tribunal, under challenge herein, be set aside.

14. Appearing on behalf of the respondents, Mr. Patil contended that the 2010 UGC Regulations merely lay down the qualification for appointment and has nothing to do with the mode of appointment. According to him, the Tribunal was right in holding that the respondents have a right of consideration for promotion and doing away with the promotional avenues once and for all, was in clear abrogation of the Fundamental Rights of the respondents guaranteed under Article 16 of the Constitution.

15. In support of his aforesaid contention, Mr. Patil relied on the decisions of the Supreme Court reported in (2004) 9 SCC 65 (**State of Tripura & Ors. vs. K. K. Roy**), (2008) 5 SCC 100 (**Food Corporation of India & Ors. vs. Parashotam Das Bansal & Ors.**) and (2008) 5 SCC 416 (**A. Satyanarayana & Ors. vs. S. Purushotham & Ors.**).

16. Mr. Patil, accordingly, prayed that the writ petitions be dismissed.

17. Having heard learned advocates for the parties and the learned *amicus curiae*, and on perusal of the materials on record, we are tasked to decide two questions: (i)

whether the Tribunal was justified in striking down rule 3 of the 2015 rules? and (ii) whether the Tribunal was justified in directing the State of Maharashtra to make suitable amendment in the light of the observations made in paragraph 12 of its order?

18. We would preface our answers to the questions formulated above by a brief discussion on whether any employee has a "right to be promoted" and how far is it permissible for a statutory tribunal to provide for promotional avenues, if it finds that an employee is likely to stagnate because of lack of a chance of promotion. Promotion in common parlance means vertical movement from a lower post to higher post. It is well known that promotion is an incidence of service and not a Fundamental Right. Law is well settled that if a post in terms of the recruitment rules is to be filled up by promotion from amongst those in the feeder post and there are employees in the feeder post qualified for being considered for promotion in accordance with such rules, the qualified employees can claim a Fundamental Right to be considered for promotion in accordance with the rules once the exercise for promotion is initiated. By any arbitrary action, any of the qualified employees in the feeder post cannot be deprived of his right of consideration. Therefore, the expression "right to be promoted" is used in the sense that an employee can, as a matter of right, claim that he must be considered for promotion when the promotional

opportunity arises for the higher post upon creation of a vacancy. A right of consideration for promotion, however, is distinct and different from a right of promotion. The right to be considered for promotion would arise only if the recruitment rules provide a channel of promotion. If the recruitment rules do not provide for a promotional channel, it is not open to the Court by a judicial fiat to direct the employer to provide a promotional channel. This is because legitimate expectation to be promoted has no relevance as nobody has a vested right to be promoted and any direction by the Court to provide for a promotional channel, despite existence of rules in the field not so providing for promotion, would amount to judicial legislation.

19. It must also be remembered that a mere chance of promotion is not a condition of service and cannot form the basis of any enforceable right to challenge rules or instructions or policies prejudicially affecting such chance. Instances are not rare where, in the absence of promotional avenues for an employee or class of employees, the appropriate Government frames schemes like Assured Career Progression Scheme to mitigate hardships arising out of stagnation. This essentially is a policy decision, which is required to be arrived at by the competent authority upon consideration of various factors. However, such policy decisions are generally not interfered with unless the same violate any Fundamental Right. The right of the Government to frame a policy to ensure efficiency and proper

administration has to be conceded, and correctness of such policy is an aspect from which any tribunal must stay at a distance.

20. The Tribunal, in our considered opinion, by the impugned order has sought to provide a promotional channel for the respondents which it was not authorized to do. The decisions of the Supreme Court in **K. K. Roy** (supra) and **A. Satyanarayana** (supra), we are inclined to hold, were misread by the Tribunal.

21. The Supreme Court in **K. K. Roy** (supra), after finding that the public servant could not be promoted for want of a promotional post, directed grant of higher scale of pay upon his/her completion of 12 years and 24 years in service.

22. The decision in **A. Satyanarayana** (supra) also refers to the legal principle that nobody has a right to be promoted but his right is confined only to the right to be considered therefor and also that the power of the State to take a policy decision as a result whereof an employee's chance of promotion is diminished cannot be a subject matter of judicial review as no legal right is infringed thereby.

23. The decision in **Food Corporation of India** (supra) lays down that if there are no avenues for promotion in an organization which is a "State" under Article 12 of the Constitution of India, leading to stagnation of the employees for 30 years, the superior courts have jurisdiction to issue directions to the concerned authority for

framing an appropriate scheme though the modalities may be decided by the authorities. It, therefore, refers to the powers of the superior Court of the country and obviously the Tribunal, a creature of a statute, cannot be given the exalted position of a superior Court. The decision in **Food Corporation of India** (supra), therefore, does not advance the case of the respondents.

24. At this stage, we are reminded of the decision of the Supreme Court reported in (1998) 2 SCC 198 (**Govt of Tamil Nadu vs S. Arumugham**) where it has been held that since it is a matter of policy, the Courts should not direct the Government to frame or reframe a promotional scheme in a particular manner in exercise of the power of judicial review. We have found that **Food Corporation of India** (supra) did not notice **S. Arumugham** (supra); hence, it would be proper to read superior Court, referred to in the former decision, as the Supreme Court and not the High Courts.

25. Bearing these settled principles in mind, we now proceed to answer the two questions.

26. The 2010 UGC Regulations expressly states that the same are issued for minimum qualifications for appointment and other service conditions of University and College Teachers, Librarians, Directors of Physical Education and Sports for the maintenance of standards in higher education and revision of pay scale. Clause 3.0.0 and sub-clause 3.1.0 provide as follows: -

"3.0.0. RECRUITMENT AND QUALIFICATIONS

3.1.0 The direct recruitment to the posts of Assistant Professors, Associate Professors and Professors in the Universities and Colleges shall be on the basis of merit through all India advertisement and selections by the duly constituted Selection Committees as per the provisions made under these Regulations to be incorporated under the Statutes/Ordinances of the concerned university. The composition of such committees should be as prescribed by the UGC in these Regulations."

27. Once the clauses referred to above speak of recruitment and qualifications and go further to say that recruitment would be by way of direct recruitment without, of course, referring to appointment by way of promotion, it is clear that the contention of Mr. Patil that the 2010 UGC Regulations only deal with qualifications, has to be seen as one without substance. It is these regulations and more particularly clauses 3.0.0 and 4.0.0, which also starts with the words "Direct Recruitment", that are sufficient to dislodge the contention raised by Mr. Patil. The provisions of the 2010 UGC Regulations having been adopted by the Government by the GR dated 15th February 2011 and the 2015 rules framed, based on such adoption, and notified by the notification dated 13th March 2015, we have failed to comprehend as to how the Tribunal could be justified in setting aside rule 3 of the 2015 rules without any challenge being laid to the UGC Regulations as well as the GR dated 15th February 2011. The Tribunal, though had considered the relevant file that was produced before it on behalf of the

State, does not appear to have spared a word about the process leading to the policy decision that appointment by way of promotion to the post of Assistant Professor would be done away with and that appointment on such post would only be by way of direct recruitment. We, therefore, answer the first question in the negative.

28. Moving on to answer the second question, we hold that reliance placed by Mr. Acharya on paragraph 10 of the decision in **P. U. Joshi** (supra) is apt. Paragraph 10 of the decision is quoted below: -

“10. *** Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute

and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(emphasis ours)

29. Apart from the decision in **P. U. Joshi** (supra), we are reminded of the decision of the Supreme Court reported in (1990) 2 SCC 707 (**Mallikarjuna Rao vs. State of Andhra Pradesh**), wherein law has been laid down in the following terms: -

"13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."

(emphasis ours)

30. The aforesaid binding precedents do not appear to have been in the mind of the Tribunal when it proceeded to order the State of Maharashtra to make an amendment in

the rules to provide promotional channel for the respondents. The second question is, thus, also answered in the negative.

31. For the forgoing reasons, the impugned order of the Tribunal is set aside and the original applications filed before the Tribunal by the two sets of respondents stand dismissed. No costs.

32. We record our sincere appreciation for the assistance rendered by Mr. Rui Rodrigues.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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