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

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Judgment delivered on: 24.08.2022

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+ W.P.(C) 5317/2018, CM APPL. 20627/2018 & CM APPL. 20631/2018

UNION OF INDIA & ANR Petitioners

versus

DR ANJUM N RIZVI Respondents

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+ W.P.(C) 7171/2018, CM APPL. 27344/2018 & CM APPL. 27348/2018

UNION OF INDIA & ANR Petitioners

versus

W BHARAT SINGH & ORS Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Ruchir Mishra, Advocate.

For the Respondents : Mr. R.K. Kapoor and Mr. Rajat Kapoor,
Advocates for R-1 to R-6 in W.P.(C)
7171/2018.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

**SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioners in W.P.(C) 5317/2018 and in W.P.(C) 7171/2018 respectively impugn order dated 21.02.2017 and 10.03.2017, whereby the Original Applications filed by the respondents have been allowed and it has been held that the respondents are entitled for the grant of promotion under Flexible Complementing Scheme ('FCS') from their due dates which would be 1st January or 1st July of the relevant year and they shall also be entitled for the arrear.
2. The Tribunal has passed this direction holding that a scientist cannot be denied his *in situ* promotion under FCS from his eligibility date, due to in action or delay in action at the end of the authority concerned. It is an admitted position that the respondents became eligible for consideration on the respective dates, however, the consideration could not take place because of non-constitution of the Assessment Board/ Committee by the petitioners.
3. Learned counsel for the petitioners submits that the Recruitment Rules dated 23.01.2015 called the Ministry of Environment, Forest and Climate Change, Scientific Group 'A' Posts Recruitment Rules, 2015, specifically stipulate as under :

“(12)

(14) *The date of in-situ promotion for those found suitable for in-situ promotion to the next higher grade under the Flexible Complementing Scheme (FCS) shall be the date on which the Competent Authority approves the in-situ promotion.*

(15) *There shall be no retrospective in-situ promotion.”*



4. Learned counsel submits that the date of *in situ* promotion is the date when the Competent Authority approves the promotion and there can be no retrospective *in situ* promotion.

5. This contention is disputed by learned counsel for the respondents, who submits that the rules particularly 12 (4) provides that assessment for *in situ* promotion shall be done twice a year, the cases maturing for promotion during January to June of a year shall be taken for assessment in the month of July of that year and the cases maturing for promotion during July to December of a year shall be taken up for assessment in the month of January of the next year.

6. Learned counsel submits that the said rule is mandatory and the cases have to be taken up for assessment during the period as stipulated by the said rule and in case of delay in constituting an Assessment Board/ Committee, the officers cannot be denied their promotion from the date they become eligible.

7. Learned counsel relies on the decision of a co-ordinate Bench of this Court in ***S.K. Murti vs. Union of India & Others*** judgment dated 03.12.2003 2010 SCC OnLine Del 4779.

8. Learned counsel further submits that the said decision was challenged before the Supreme Court and the Supreme Court by order dated 02.05.2011 in Special Leave to Appeal (Civil) 13133/2011 dismissed the Special Leave Petition.

9. Perusal of the impugned orders shows that the subject OM dated 24.05.2013 has been issued for granting benefit of antedating of *in situ* promotion under FCS to Scientists of MoEF.



10. It is observed that the Tribunal has relied on the decision of the co-ordinate Bench of this Court in *Dr. S.K. Murti (supra)*, which has been approved by the Supreme Court and consequently, held that the respondents are entitled for grant of promotion under FCS from their due dates which would be 1st July or 1st January of the relevant year and they are also entitled to arrears along with all consequential benefits.

11. In *Dr. S.K. Murti (supra)*, the respondents therein had relied on an Office Memorandum ('OM') dated 17.07.2002, which had specifically provided that promotions are made effective from a prospective date after the Competent Authority has approved the same and the said principle is also applicable in case of *in situ* promotion under FCS as well.

12. Reliance was placed by the Department in that case on an OM, which specifically provided that no promotion should be granted with retrospective effect. The co-ordinate Bench in *Dr. S.K. Murti (supra)* noticed that the Assessment Boards had to be constituted well in advance, keeping in view the fact that 1st January and 1st July of each year are crucial dates to effect promotions.

13. The view taken by the co-ordinate Bench in *Dr. S.K. Murti (supra)* was that nobody can take advantage of its own wrong and no justification was shown for not constituting the Assessment Boards/ Selection Committee in time. Further, the co-ordinate Bench has noticed that the said case of promotion was not the one where promotion has to be effected upon a vacancy arising and subject to



being found suitable, the petitioner therein was entitled to be promoted *in situ* and the situation would be akin to granting a selection scale to a person and the date of eligibility would be the date wherefrom the benefit has to be awarded.

14. The facts in the present case are identical to the said case inasmuch as, it is mandatory as per the Recruitment Rules to constitute an Assessment Board/ Committee on 1st July and 1st January respectively. The respondents herein are also not to be promoted upon a vacancy arising. Subject to being found suitable they are entitled to be promoted *in situ*, which is akin, as noticed in *Dr. S.K. Murti (supra)* to granting a selection scale. Consequently, the respondents would be entitled from the date they become eligible.

15. As noticed hereinabove, the decision of the co-ordinate Bench in *Dr. S.K. Murti (supra)* was assailed before the Supreme Court and the Supreme Court by its order dated 02.05.2011 rejected the petition holding that the view taken by the co-ordinate Bench of this Court in directing the Department to promote the officer with effect from the date of acquiring the eligibility, is a legally correct view.

16. It may also be noticed that in this petition one of the grounds taken by the petitioner is that the judgment in *Dr. S.K. Murti (supra)* is under consideration by the Supreme Court in Civil Appeal No. 6359/2016 titled as “*Union of India vs. Vinay Kumar*”.

17. It may be noticed that the Supreme Court has finally disposed of the said Civil Appeal No. 6359/2016 by judgment dated 25.08.2021. In *Vinay Kumar (supra)*, the Department had also referred to an OM



dated 19.06.2016, wherein also the crucial date for consideration was stipulated as 1st January and 1st July of every year.

18. Reference was made by the Department to an OM dated 12.02.2019, which stipulated that in case of delay in completion of the procedure for conducting the review promotion of future batches for any reason, the promotion shall be effected from the date of approval by the Competent Authority.

19. The Supreme Court in *Vinay Kumar (supra)* after considering the above referred OMs has held that the view taken by the High Court in *S.K. Murti (supra)*, which was affirmed by the Supreme Court, that the interest of the concerned Scientists could not be put to prejudice as a result of delay in constituting the Assessment Committee in time had been affirmed in *S.K. Murti (supra)* and thus, the Supreme Court was of the view that there was no reason to take a different view in the matter.

20. As noticed hereinabove, the case of the respondents is identical to that of the petitioners to that *Dr. S.K. Murti (supra)* and *Vinay Kumar (supra)*.

21. Reference drawn by learned counsel for the petitioners to Sub-Rule 12, 14 and 15 of the Recruitment Rules is of no consequence for the reason that in similar circumstances, where the Department rules provided that the promotion would be prospective from the date of approval by the Competent Authority, it has been held in *S.K. Murti (supra)* and in *Vinay Kumar (supra)* that the dates 1st January and 1st July for constituting the Assessment Board/ Committee are mandatory



and the Department has to constitute the Boards so that no prejudice is caused to the concerned officers. Department cannot take benefit of the delay in constituting the Board on the prescribed dates as the officers who are eligible for consideration cannot be denied promotion solely on the ground that the Board was not constituted in time as mandated by the rules.

22. Further, as noticed hereinabove, the Recruitment Rules referred to by learned counsel for the petitioner itself stipulates that the assessment 'shall' be done twice a year and the cases maturing for promotion during January to June 'shall' be taken up for assessment in the month of July of that year and cases maturing for promotion during July to December of a year 'shall' be taken up for assessment in the month of January of the next year.

23. The fact that the expression 'shall' has been used shows that it is mandatory on the part of the Department to constitute the Boards for conducting the assessment within the stipulated period.

24. In the present case, there is no fault attributed to the respondents for delay in consideration of their respective cases. The only reason is that the Board was not constituted within time and that cannot be a ground to deny the promotion from the date the concerned officers became eligible as has been held in *Dr. S.K. Murti (supra)* and in *Vinay Kumar (supra)*.

25. In view of the above, we find no merit in the petitions. The petitions along with pending applications are consequently dismissed.

26. Petitioners are directed to implement the impugned decision of



NEUTRAL CITATION NO: 2022/DHC/003306

the Tribunal dated 21.02.2017 (W.P.(C) 5317/2018) and 10.03.2017 (W.P.(C) 7171/2018) expeditiously preferably within a period of two months from today.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

AUGUST 24, 2022
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