

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.506 of 2018

In
Civil Writ Jurisdiction Case No.2765 of 2018

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1. The Union of India.
 2. The General Manager (P), E.C. Railway, Hazipur.
 3. The Divisional Railway Manager, E.C. Railway, Danapur.
 4. The Senior Divisional Personnel Officer, E.C. Railway, Danapur.
 5. The Assistant Personnel Officer (IR and W), E.C. Railway, Hazipur.
 6. The Assistant Personnel Officer, E.C. Railway, Danapur.

... .. Petitioner/s

Versus

1. Ambika Prasad Upadhyay, Son of Late Sarju Upadhyay, Resident of Railway Quarter 549-B, New Colony, Khagaul, P.O.-Khagaul, District-Patna, Bihar-801105.
2. Sri Ravi Kumar Shukla, Teacher (TGT), E.C. Railway Inter College, Mughalsarai.
3. Amrendra Kumar, TGT (officiating PGT) in E.C. Railway Inter College, Mughalsarai.

... .. Opposite Party/s/Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Naresh Dikshit, Adv.
For the Respondent No.1	:	Mr. Gautam Bose, Sr. Adv.
		Mr. Vikash Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-04-2023

Heard Mr. Naresh Dikshit, the learned
counsel for the appellants/Railway Administration and
Mr. Gautam Bose, the learned Senior Advocate for the



respondent No. 1, who initially was an employee of the Railways but now stands substituted by his heirs because of this death in the meanwhile.

2. Late Mr. Ambika Prasad Upadhyay (respondent No. 1) had approached the Central Administrative Tribunal Bench *vide* O.A. No. 97 of 2010 seeking a direction to the Railway Administration to give him the benefit of PGT (Maths) in the Railway Schools with effect from 31.01.2005 when one Sri S.B. Tiwary had superannuated from the Inter College, E.C. Railway, Mugalsarai. He was the senior most teacher as PGT and, therefore, was required to be treated as a confirmed Principal with effect from 28.07.2008 when he had been appointed as In-charge Principal in BE. C.R.B.H.S., Danapur. It was prayed by him that he be appointed on the pay-scale of Headmaster from 28.07.2008 or, in the alternative, give at least officiating allowance of In-charge Headmaster (Principal) from 28.07.2008.



3. The O.A., bearing No. 97 of 2010, preferred by late Ambika Prasad Upadhyay was disposed off on 14.03.2014, directing the respondents to complete the process of promotion to the post of PGT (Maths) in accordance with the notification dated 13.05.2005 as per Rules within a stipulated period and if the applicant was found fit for promotion to the post of PGT (Matha), then that promotion would be granted to him notionally with effect from the date on which any one of the PGT juniors to the applicant in the seniority list or TGTs. had been granted promotion as PGT or from the date he was discharging the responsibilities of the Headmaster/Principal at Danapur against a higher post, whichever was earlier.

4. The Railway Administration filed a review petition before the Patna Bench of Central Administrative Tribunal (*in short the Tribunal*) in the year 2014, seeking a review of the order on the ground that the notification of 2005 had already been cancelled in the



year 2006 and, therefore, the promotion process could not have been carried out.

5. The Tribunal rejected the review petition *vide* order dated 04.05.2017, holding that no review of such order could be passed in view of the provisions contained in Order XLVII CPC read with Section 22(f) of the Administrative Tribunals Act. Only for limited purpose, such a jurisdiction could be exercised, which could only be for mistakes apparent on the face of the record or any arithmetical or clerical error. Even erroneous decision by the Tribunal would not warrant a review. The Tribunal, while passing the aforesaid order, had relied upon the judgments in ***Parsion Devi Vs. Sumitra Devi; (1997) 8 SCC 715*** and ***Subhash Vs. State of Maharashtra; AIR 2002 SC 2537***.

6. Both the orders by the Tribunal were challenged by the Railway Administration before a Division Bench of this Court *vide* C.W.J.C. No. 2765 of 20185, but the objection of the Railway Administration



could not be sustained.

7. The Division Bench *vide* judgment date 18.06.2018 took note of the objection of Railway Administration, but found that no material or notification recalling the notification of 13.05.2005 was brought before the Tribunal and a model employer like the Railways could not have exploited its employees and denied them their original claim for consideration for promotion if they were otherwise eligible and entitled to, by not holding such process or concluding such exercise for years together. The Bench found such action of the Railway Administration to be violative of Article 14 if not Article 16 of the Constitution of India.

8. The Division Bench also took note of the fact that the original applicant had left the world of living, but held that the orders passed by the statutory authority could not have been washed away with his death. The obligation upon the Railways is to do away with ad-hocism prevailing in such matters of promotion.



9. Mr. Dikshit seeks to have such judgment reviewed on the ground that it has been mis-stated in the order passed by the Division Bench that the recall notification of 2006 was not brought on record before the Tribunal. He submits that a review petition was filed before the Tribunal, but the same was not entertained as it was not considered to be error apparent on face of record or that it was any minor error, like typographical or arithmetical error, which could have been taken note of. He, therefore, submits that that part of the order of the Tribunal be done away with and to that extent the order passed by the Division Bench be reviewed.

10. The other grounds urged on behalf of the Railways for the review of the order of the Tribunal as also of the Division Bench is that the original applicant has died and even after his death, his officiating allowance has been paid. The process of giving promotion to PGT (Maths) was done away with after the recall of the notification of 2005. The process



shall have to be begun afresh notionally for complying with the order of the Tribunal as also of the Division Bench of this Court, which would cause unnecessary burden on the Railway Administration.

11. Mr. Gautam Bose, the learned Senior Advocate, on the other hand has submitted that merely because the Railway Administration would be overburdened, in this instance, would be no ground for seeking a review of the judgment by the Division Bench of this Court. It may be true that the Railway Administration had brought to the notice of the Tribunal by seeking review of the original order that the notification of 2005, initiating the process of promotion to PGT (Maths) was recalled in 2006, but that by itself would not take away the other grounds in the Division Bench order. He has taken us to the relevant portion of the judgment passed by the Division Bench in which ad-hocism on the part of as big an employer as Railways has been castigated and commented upon.



12. It has been held by the Division Bench that such process of promotion cannot be forestalled as it would amount to violation of Articles 14 and 16 of the Constitution of India. The process is required to be completed even notionally as the original applicant had died by that time. With this clarification in the judgment of the Division Bench, it has been urged by Mr. Bose that even if it is found that the fact of recall of 2005 notification was brought to the notice of the Tribunal, the Division Bench order could be reviewed to that extent.

13. After having heard the learned counsel for the parties, we find that the Division Bench was not happy to record that the process of promotion was recalled midway. This was termed as ad-hocism and rightly so. The Railway Administration cannot be content by giving only officiating allowance to its employees and eschew from taking the process of promotion to its logical conclusion.

14. Under the aforesaid circumstances, since



even the consequence of carrying out the order of the Tribunal to its logical end was appreciated by the Division Bench, the argument on behalf of the Railways was not accepted.

15. Under such circumstances, it would be difficult for us to review the order passed by the Division Bench of this Court to that extent.

16. The petition is, accordingly, dismissed.

17. Interlocutory application(s), if any, also stands disposed off.

(Ashutosh Kumar, J)

(Harish Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
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