

22 December 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10578 OF 2022

General Manager, BEST Undertaking

...Petitioner**V/s.**

U.B. Mokashi and Ors.

...Respondents

Mr. Sudhir Talsania, senior advocate a/w. Mr. Vishal Talsania, Mr. Sagar Shetty, Ms. Sonia Redkar i/by. Airavt Chambers for the Petitioners.

Ms. Neeta Karnik, for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.**Resd. On : 13 December 2023.****Pron. On : 22 December 2023.****JUDGMENT :**

1. Petitioner-BEST Undertaking has filed the present petition challenging the order dated 20 March 2021, passed by the Industrial Court, Mumbai in Complaint (ULP) No. 495 of 2015. By that Order, the Industrial Court has directed the Petitioner-Undertaking to give benefits of additional increments as per BCR No.19 dated 23 April 1987 to the Respondents. The issue involved in the petition is whether the Drivers and Conductors holding the qualification of Graduation are entitled to benefit of additional increments on their

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promotion to the post of Clerk under the Order dated 1 July 1987. The Industrial Court has upheld entitlement of drivers and conductors to such additional increments. The BEST Undertaking is aggrieved by the decision of the Industrial Court and has filed the present petition.

2. Briefly stated, facts of the case are that Brihanmumbai Electric Supply & Transport Undertaking (BEST Undertaking) is constituted under the provisions of the Mumbai Municipal Corporation Act, 1888 and it is a statutory undertaking of the Municipal Corporation of Greater Mumbai. It provides utility services of mass public transportation and distribution and supply of electricity in and around the city of Mumbai. Respondents were working as Conductors, Drivers, Mechanics, etc. in the Transport Division of the Petitioner-Undertaking. They held the qualification of Graduation. After participating in the selection process, they have been promoted to the post of 'Clerk' on various dates.

3. It is Petitioner's case that by an Agreement dated 21 May 1965 entered into between the Petitioner and BEST Workers' Union, it was *inter-alia* agreed under Clause-4 that steps would be taken to fill at least 50% of the clerical posts in the undertaking from amongst the employees in the lower categories, who had the requisite qualifications. Vide Clause-17 it was also agreed that on promotion, the existing wage/salary of the employees would stepped up to the next higher step in the grade to which he is promoted, and, on such fixation, one additional increment of the higher grade would be granted. It is

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submitted that all the Respondents, being employees from the lower grade were in fact granted increments upon being promoted to Grade A/GV in the manner as set out hereinabove.

4. Thereafter, an Award dated 30th March 1974 came to be passed by the Industrial Court in Ref. IC No.10 of 1969 directing the Petitioner-Undertaking that the clerks who were not graduates, when they were appointed or promoted as clerks but became graduates (with honors or otherwise) should be given a rise of two increments on such graduation, if the graduation was within 6 years of their appointment or promotion and one increment if the graduation was after 6 years of their appointment or promotion, is hereby granted.

5. By a notice of change dated 19 April 1971 issued by the BEST Workers' Union to the Petitioner, it was demanded that employees in categories of Clerks in grade C-6 and 11-7 and are now in grade A/GV, who graduated or-and promoted thereafter be granted two increments if they graduated within 6 years or prior from the date of appointment or promotion and one increment, if they have graduated after 6 years from the date of promotion or appointment. This demand was adjudicated by the Industrial Court in Ref. (IC) No.15 of 1972 by its Award dated 12th March 1974, the said demand of the union was rejected.

6. Thereafter, the BEST Workers' Union raised a demand for the grant of two increments in addition to the increment they had

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received for being or becoming graduates The said demand was adjudicated upon in Reference (IC) No. 40 of 1974 vide Award dated 29 September 1975 wherein certain scale was set for grant of increments for clerks who are already in employment.

7. In another reference being Reference (IC) No. 131 of 1976, by consent of parties, the aforesaid Award in Reference (IC) No. 40 of 1974 was made applicable to the corresponding categories of employees in the Transport Industry of the Petitioner vide Award dated 31st March 1978. A Department Circular dated 10th May 1978 was issued by the Petitioner.

8. The Petitioner submits that since the date of the said Awards, the benefit of increments is being granted to clerks only on the basis of them being graduates at the time of appointment by way of recruitment or having become graduates while working as clerks. It is Petitioner's case that though there was representative Union and several other Unions functioning in the Petitioner Undertaking, but none of them raised demand for additional increments for promote graduate clerks.

9. Since the University of Bombay deleted the word 'Honours' from the Degree awarded by them, even such graduates who were acquiring II Class or 1st Class or even distinction were not being eligible for additional increments. Therefore by BEST Committee Resolution-19 (**BCR-19**), the same was corrected and the usage of the

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word 'Honours' was dropped from the eligibility criteria. The same was implemented vide the Petitioner's Circular dated 1 July 1987.

10. Respondents raised demands for grant of additional increments on account of their promotion to the post of Clerk on the basis of BCR-19 dated 23 April 1987. They approached the Industrial Court by filing Complaint (ULP) No. 495 of 2015. The complaint was resisted by the Petitioner-Undertaking by raising various defences including that of limitation as well as inapplicability of BCR-19 dated 23 April 1987. The Industrial Court has allowed the Complaint by its Judgment and Order dated 20 March 2021 and has directed the Petitioner-Undertaking to grant the benefits of additional increments as per BCR-19 dated 23 April 1987 to the complainants. The Petitioner-Undertaking is aggrieved by Industrial Court's decision and has filed the present petition.

11. Mr. Talsania, the learned senior advocate would appear on behalf of the Petitioner-Undertaking and submit that the complaint filed by Respondents was hopelessly barred by limitation. That they were promoted to the post of Clerk in the year 2007 and they agitated the grievance about non-grant of additional increment for the first time by letter dated 19 October 2015. That no application for condonation of delay was filed and the Industrial Court has erred in holding that the cause agitated by the Respondents is continuing in nature. He would further submit that there is no unfair labour practice on the part of the Petitioner-Undertaking as its' action is based on interpretation of its

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own BCR-19 and the interpretation has been applied for the last several decades. That no other Clerk in Group-A/GV or even any Trade Union or Association ever claimed grant of additional increments on promotion to the post of Clerk. That the roots of the benefits under BCR-19 is in the Awards passed by the Industrial Adjudicator in complaints filed by Trade Unions/Associations. That therefore individual employees cannot complain of unfair labour practice on account of interpretation of BCR-19 by the Petitioner-Undertaking.

12. Mr. Talsania, would further submit that Respondents cannot compare themselves with the direct recruits. That the distinction between promotee and direct recruit Clerks was noted in the Award dated 12 March 1974 in Reference (IC) No. 15 of 1972. That upon promotion, Clerks were already granted benefit of one increment as well as fitment in the revised pay scale. He would draw my attention in this regard to the Agreement dated 21 May 1965 executed with the Trade Unions. That once graduation is prescribed as a minimum qualification for promotion to the post of Clerk, they cannot be granted additional increment on the basis of possession of such minimum qualification. No additional benefit can be granted to an employee for possessing prescribed minimum educational eligibility criteria. He would pray for setting aside the Order of the Industrial Court.

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13. Ms. Karnik, the learned counsel appearing for the Respondents would oppose the petition and support the order passed by the Industrial Court. She would submit that plain reading of BCR-19 dated 23 April 1987, would leave no room for doubt that every person who is graduate at the time of appointment is entitled for grant of additional increment, after being granted appointment in A/GV. That the post of Clerk falls in Group- A/GV. That BCR-19 nowhere restricts the benefit to only direct recruits as sought to be falsely suggested by the Petitioner-Undertaking. That the word “appointment” includes promotion as well. That restricting the benefit of additional increment only to direct recruits amounts to discrimination as the minimum qualification for graduation applies even to direct recruits as well. If a direct recruit can be granted additional increment for possessing minimum educational criteria, there is no reason why the same benefit cannot be extended to promote clerks.

14. Ms. Karnik would further submit that BCR-19 does not specifically refer to any particular Award. That the minimum qualification required for promotion and direct recruitment to the post of Clerk were totally different when awards during the period from 1965 to 1974 were delivered. That upon adoption of BCR-19, the effect of the earlier awards would be negated. That reliance on the earlier award is sought to be placed for the first time before this Court to deny lawful rights to the Respondents. That the Agreement dated 21 May 1965 is totally irrelevant. That the action of the Petitioners is

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in violation of equality clause enshrined under Article 14 of the Constitution of India. She would rely upon the judgments of the Apex Court in *Manmad Reddy Vs. Chandra Prakash Reddy* (2010) 3 SCC 314 B and *Food Corporation of India V/s. Ashish Kumar Ganguly* (2009) 7 SCC 734 in support of her contention that Courts and Tribunals are empowered to intervene where the decision of the employer is found to be unreasonable, unjust and prejudicial to only one section of employees. Relying upon the Full Bench Judgment of this Court in *MSRTC versus Premlal Khatri Gajbhiye* 2003 (3) All MR 1022 she would contend that as long as the default in the obligation continues, the wrong is deemed to continue. That denial of benefits flowing from BCR-19 gives rise to recurring cause of action and that the complaint was not time barred. She would pray for dismissal of the petition.

15. Rival contentions of the parties now fall for my consideration.

16. The short issue that arises for consideration of this Court is entitlement of Conductors, Drivers, Mechanics, etc. to claim additional increments under BCR-19 dated 23 April 1987 upon their promotion to the post of Clerk. It is Petitioner-Undertaking's case that BCR-19 is applicable only for appointments made under G/AV by way of direct recruitment and that the same has no application to appointment made by promotion. Since the issue involved revolves around interpretation

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of BCR-19 dated 23 April 1987, it would be opposite to reproduce BCR-19 which reads thus :

Item 18**15-4-1987**

Letter from the General Manager No. CPO/L/345/87 dated 24-3-1987.

Sub: Grant of additional increments to the clerical staff
in Grade A/GV for Honours Graduation.

As per the existing practice/procedure and the Award of the Industrial Court, the employees in Grade A/GV alone viz. Clerks, Shop Recorders, Meter Reader & Bill Collectors, Telephone Operators, Stenographers, etc, are being granted additional increment/s for Graduation/Honours Graduation/Double Graduation, as follows :-

a)	Graduation at the time of appointment.	2 additional increments.
b)	Honours/Double Graduation at the time of appointment.	4 additional increments
c)	Graduation within a period of 6 years from the date of appointment	2 additional increments
d)	Honours/Double Graduation within a period of 6 years from the date of appointment.	4 additional increments
e)	Graduation after six years from the date of appointment	1 additional increment
f)	Honours Graduation after 6 years from the date of appointment	2 additional increments
g)	Double Graduation within 9 years from the date of appointment	2 additional increments
h)	Double Graduation after 9 years from the date of appointment	1 additional increment

Subject to the condition that the maximum additional increment for Graduation will not exceed 4 in any case.

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2. The University of Bombay has now deleted the word “Honours” from the Degree awarded by them. As a result, the Graduate even though they acquire IInd Class or Ist Class or even distinction, are not being held eligible for additional increment/s for Honours Graduation, as against the Honours Graduate Candidates coming from other Universities and appointed in Grade A/GV to the posts of Clerks, Shop Recorders, Meter Readers & Bill Collectors, Stenographer etc./ in Grade A/GV in the Undertaking are granted additional increments for Honours Graduation. This has led to an anomalous position and requires rectification. Formerly the candidates secured 45% or above marks in the Degree Examination and that now they have discontinued their practices, as a result of which this anomaly has cropped in, in the matter of grant of additional increments for Honours Graduation. To rectify this anomaly, it is proposed to grant additional increments to the member of staff in Grade A/GV proposed as follows :-

- | | | |
|----|--|-------------------------|
| a) | Graduation at the time of appointment. | 2 additional increments |
| b) | Graduating with 45% and above marks/Double Graduation at the time of appointment | 4 additional increments |
| c) | Graduation within a period of 6 years from the date of appointment | 2 additional increments |
| d) | Graduation with 45% and above marks/Double Graduation within a period of 6 years from the date of appointment. | 4 additional increments |
| e) | Graduation after 6 years from the date of appointment | 1 additional increment |
| f) | Graduation with 45% and above marks after 6 years from the date of appointment. | 2 additional increments |
| g) | Double Graduation within 9 years from the date of appointment | 2 additional increment |
| h) | Double Graduation after 9 years from the date of appointment | 1 additional increment |

Subject to the condition that the maximum additional increments for graduation will not exceed in any case.

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3. I now request the sanction of the Committee under Section 450(R) of the Bombay Municipal Corporation Act, 1888 to my proposal contained in para.(2) above and to vary the Establishment Schedule accordingly.

SANCTIONED

B.C.R. NO. 19

DATE : 23.4.87

SECRETARY

17. Based on BCR-19 adopted by BEST Committee, the Chief Personnel Officer issued Circular dated 1 July 1987 for giving effect to BCR-19 which reads thus :

**THE BRIHAN MUMBAI ELECTRIC SUPPLY & TRANSPORT
UNDERTAKING (Of the Brihan Mumbai Mahanagarpalika)**

Ref.No. CPO/L/W-1877/85470/87.

Date : 1st July 1987.To : HEADS OF DEPARTMENT :

Sub : Grant of additional increments for
Graduation/Double Graduation.

In partial modifications of the existing procedure of granting additional increments for Graduation/Hon.Graduation/Double Graduation, the B.E.S.T & T. Committee in its Resolution NO. 19 dated the 23rd April, 1987 sanctioned the proposal of grant of additional increments with effect from 23rd April, 1987 to the member of the staff in Grade A/GV viz. Clerks, Shop Recorders, Meter Reader and Bill Collectors, Telephone Operators, Stenographers etc. as follows :-

a)	Graduation at the time of appointment	:	2 additional increments.
b)	Graduation with 45% and above marks/Double Graduation at the time of appointment	:	4 additional increments.
c)	Graduation within a period of 6 years from the date of appointment	:	2 additional increments.

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d)	Graduation with 45% and above marks/Double Graduation within a period of 6 years from the date of appointment	:	4 additional increments.
e)	Graduation after 6 years from the date of appointment	:	1 additional increment.
f)	Graduation with 45% and above marks after 6 years from the date of appointment	:	2 additional increments.
g)	Double Graduation within 9 years from the date of appointment	:	2 additional increments.
h)	Double Graduation after 9 years from the date of appointment	:	1 additional increments

Subject to the condition that the maximum additional increments for graduation will not exceed 4 in any case.

Heads of Departments are requested to take necessary action in the matter and give wide publicity for the same amongst the staff.

(C.R. Samant)
CHIEF PERSONNEL OFFICER.

18. Thus, the General Manager of the Petitioner-Undertaking had placed agenda Item No.18 before the BEST Committee vide letter dated 15 April 1987 for correction of anomaly resulting out of deletion of the word 'Honours' by the Mumbai University while issuing Graduation Degree. It appears that prior to adoption of BCR-19, distinct benefits were grantable to clerks holding graduation with Honours. The General Manager brought to the notice of the BEST Committee that the University of Bombay had deleted the word 'Honours' from its degrees. With the result, the graduates acquiring second or first class or distinction in graduation were not being held

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eligible for additional increments on account of non-reflection of the word 'Honours' in the degree certificates. To correct this anomaly, BCR-19 came to be sanctioned by BEST Committee on 24 April 1987, under which instead of using the word 'Honours', the Petitioner-Undertaking prescribed percentage of marks for grant of additional benefits. To illustrate, a simple graduate within six years of first appointment was to be granted two additional increments, whereas completion of graduation with 45% and above marks within six years made a candidate eligible for grant of four additional increments. Similarly, acquisition of graduation after six years of appointment, made employee eligible for one additional increment, whereas one securing 45% and above marks is made eligible for award of two additional increments. This is the only change brought about in BCR-19 dated 23 April 1987.

19. Thus, BCR-19 did not, in itself, create a right either in favour of direct recruits or promotees to the post of Clerk to receive additional increments. The benefit was already available as per the existing practice/procedure and the Awards of the Industrial Court. The history leading to decisions taken by the BEST Undertaking owing to various Awards passed by the Industrial Court has already been narrated above. The BCR-19 does not make specific reference to any particular Award or Circular, under which the Scheme of grant of two additional increments was implemented after appointment to the post of Clerk. But BCR-19 vaguely refers to '*as per the existing practice/procedure and the Award of the Industrial Court*'. In my view,

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it is not really necessary to delve deeper into the history of various Awards and agreements leading to the decision of grant of additional increments in view of limited controversy in the present petition.

20. There is no doubt to the position, and in fact Mr. Talsania fairly confirms that directly recruited clerks with qualification of graduation are granted the benefit of additional increments as per the Scheme provided under BCR-19. There is also no doubt to the position that the minimum qualification required for direct recruitment to the post of Clerk is graduation. Thus, no Clerk can be directly recruited unless he holds the qualification of graduation. This would essentially mean that every Clerk upon being directly recruited would be granted the additional increments as envisaged in BCR-19. However, such benefit would essentially be restricted to Clause-(a) i.e. *“graduation at the time of appointment”* or Clause (b) *“graduation with 45% and above marks/Double graduation at the time of appointment”*. This is so because the Clauses providing additional increments for acquisition of graduation within nine years from the date of appointment would become really irrelevant on account of prescription of graduation as the minimum qualification for appointment on the post of Clerk. Mr. Talsania did attempt to suggest that there could be few cases where the person can be directly appointed to the post of Clerk without holding the qualification of graduation viz. compassionate appointments, etc. However this Court is not really concerned with the appointments granted in relaxation of the recruitment qualifications. Thus, in respect of every direct

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recruitment to the post of Clerk, grant of 2/4 additional increments is automatic depending upon marks secured at the time of graduation. Thus for clerical cadre, grant of 2/4 additional increments is virtually guaranteed immediately upon taking over the charge on the post of Clerk. The only issue is whether this benefit could be restricted for direct recruits or whether it can also be extended on promotions as well.

21. It is the grievance of the Respondents that there is no rationale in restricting the benefit of additional increments in case of direct recruitment alone. Mr. Talsania has sought to defend the action of restricting the benefit of additional increments only in the case of direct recruits by placing reliance on the Agreement dated 21 May 1965. Clauses-4 and 17 of the said Agreement reads thus .

4.	Every effort shall be made to fill at least 50% new clerical posts from among conductors, drivers and other employees who have the requisite qualifications	It is agreed that every step shall be taken to fill at least 50% of the clerical posts in the Undertaking from among the employees in the lower categories who have the requisite qualifications.
17.	The employee shall on being promoted to a higher post be granted; one increment in the new post	It is agreed that on promotion the salary will be fixed in the following manner :- The existing basic wage/salary of the employee shall be adjusted by stepping it in the grade to which he is promoted and on such fixation, one additional increment of the higher grade will be granted.

22. Thus under the Agreement dated 21 May 1965, BEST Undertaking agreed to provide grant of one increment upon fixation in the promotional post. It must however be noted here that though Clause-4 applies specifically to clerical cadre, Clause-17 has general application and is not restricted to clerical cadre alone. This essentially means that every employee in BEST on his/her promotion to higher post would be entitled to grant of an additional increment, while fixing his/her pay in the promotional post. It is sought to be suggested that since additional increment is already granted on promotion under Agreement dated 21 May 1965, there is no question of grant of any further benefit of additional increments under BCR-19 to Conductors, Drivers, Mechanics, etc on their promotion to the post of Clerk. In my view, the justification sought to be advanced by BEST deserves rejection for variety of reasons. Firstly, the benefit of promotional increment is not restricted to promotions effected to the post of Clerk and is made applicable across the board where every employee, on promotion to higher cadre, is made eligible for promotional increments. Secondly, in most of the services established under the Central or State Government, the concept of grant of promotional increment is recognised. It therefore cannot be contended that promotional increment earned by drivers, conductors, mechanic, etc. on their promotion as Clerk would in any manner be compared to additional increments for acquisition of qualification of graduation. Therefore, grant of promotional increment under Agreement dated 21

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May 1965 cannot be a valid justification for denial of additional increment under BCR-19.

23. It is sought to be suggested on behalf of Petitioners that benefit of additional increments under BCR-19 is restricted to direct recruitment and is not available for promotion to clerical cadre. I do not see any provision in the BCR-19 or in any of the earlier Awards, under which the benefit is meant to be restricted only for direct recruitment or that there is any specific exclusion for promotions. On the contrary, various awards, to which reference is made by the Petitioner-Undertaking, clearly uses the word 'promotion'. In this regard it would be relevant to refer to the Award dated 30 March 1970 reference to which is found in the Award (IC) Ref. No. 15/1972 (10 of 1969). It would be relevant to reproduce the relevant portion of the award dated 30 March 1970 which reads.

“In the result, then, the Award directing the undertaking that the clerks who are not graduates, when they were appointed or promoted as clerks but became graduates (with honours or otherwise) should be given a rise of two increments on such graduation, if the graduation was within 6 years of their appointment or promotion and one increment if the graduation was after 6 years of their appointment or promotion, is hereby granted.”

(emphasis supplied)

24. Thus the word 'promoted as clerks' clearly appear in the Award dated 30 March 1970, which envisaged grant of two additional increments to Clerks upon acquisition of qualification of Graduation.

25. It appears that a notice of change was given by BEST Workers Union to the Petitioner-Undertaking demanding grant of benefit of additional increment upon acquisition of qualification of graduation to various other posts such as Stenographer, C-3 clerks, Assistants, Conductors, Drivers, etc. The demand was however rejected by the Industrial Court by Award dated 12 March 1974. The Petitioner-Undertaking has sought to rely upon para-12 of the Award dated 12 March 1974, in which the Industrial Court considered the argument of the Union that a non-graduate Conductor upon his promotion as Clerk gets additional increment but a Graduate Conductor does not get the same. Reliance is placed on para-12 of the Award which reads thus :

"12. It was urged on behalf of the union that there were certain anomalies in the case of conductors promoted as clerks because if a non-graduate conductor was promoted as a clerk and became a graduate he would be entitled to the increments under award but not a graduate conductor. The anomaly is apparent than real. As explained by the Undertaking a conductor is eligible to promotion as a clerk in spite of being over age in competition with outside candidates to clerical posts. Moreover the salary he is earning is stepped up to the appropriate stage in the clerical grade and in addition as stated by the Undertaking he is given one increment when he starts his career as a clerk. All these advantages are given to conductors appointed as clerks and his chances of promotion as a clerk are superior if he is a graduate as against a conductor who is a non-graduate. Having regard to all these advantages when considered for promotion as a clerk, the grievance made on behalf of graduate conductors does not appear to be justified."

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26. In my view, the observations of the Industrial Court in para-12 of the Award dated 12 March 1974 would not assist the case of Petitioners.. Before the Industrial Court, there was a demand by Conductors for grant of additional increment upon acquisition of qualification of Graduation. The Union sought to argue that a Conductor who already possesses qualification of Graduation, he does not get additional increments, but the moment he becomes a Clerk, he becomes eligible for grant of additional increments. Thus in the Award dated 12 March 1974, the Industrial Court dealt with the demand made on behalf of Conductors for grant of benefit of additional increment before becoming Clerks. However, if any relevance is to be found in the findings of the Industrial Court in para-12 of the Award dated 12 March 1974, the same is about use of the word '*Conductors promoted as Clerks*'. From para-12 of the Award dated 12 March 1974, it clearly appears that the benefit of additional increments was always available for Conductors on their promotion as Clerks. Thus the submission made on behalf of the Petitioners that the benefit of additional increment is restricted only to direct recruitment and is not applicable for promotion cannot be accepted.

27. In my view, the Industrial Court has rightly held that the word. 'appointment' cannot be restricted to direct recruitment and would cover in its ambit promotion as well.

28. From various Awards, as well as well as BCR 19, it appears that the whole intention of granting the benefit of additional

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increments was to encourage the employees in clerical cadre to acquire the qualification of graduation. At that time, it appears that graduation was not the minimum prescribed qualification for appointment/promotion on the post of Clerk. This is the reason why the BCR-19 or the Circulars issued before issuance of BCR-19 envisages a situation where a Clerk can be appointed/ promoted without the qualification of Graduation. The Petitioner-undertaking possibly felt that acquisition of qualification of Graduation would help the employees in the clerical cadre to render their services more efficiently. This is the reason why the scheme for grant of additional increment was introduced to encourage the employees in clerical cadre to acquire the qualification of Graduation. One who acquires Graduation with higher marks would get more increments. Similarly, one who acquires the qualification of Graduation faster would get more increment than his counterpart acquiring it later. The Scheme therefore clearly aims at encouraging the Clerks to acquire Graduation as early as possible. Thus, Clerks without graduation could be continued in service, but those who acquired graduation would be rewarded with additional increments.

29. However, the picture has apparently changed subsequently. Now graduation has become essential qualification both for recruitment, as well as promotion to the post of Clerk. Therefore, the very concept of encouragement has ceased to exist. However, the BEST Undertaking has still continued the scheme of grant of additional increments even after graduation being prescribed as the minimum eligibility criteria for being direct recruitment and

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promotion to the post of Clerk. Whether the scheme of grant of additional increment could be continued after prescription of graduation as the minimum eligibility criteria is something for the Petitioner-Undertaking to ponder. However, so long as the scheme continues, the benefit thereof cannot be continued to only one class and denied to other similarly placed Clerks. If a directly recruited clerk holding the qualification of graduation gets additional 2/4 increments immediately upon his/ her appointment, I do not see any reason why the same benefit cannot be granted to a graduate Driver, Conductor, or Mechanic on their promotion as Clerk.

30. Turning to the aspect of delay, the Industrial Court has held the cause of action of Respondents to be of continuous nature. In ***M.R. Gupta v. Union of India***, (1995) 5 SCC 628, the Apex Court had held as under:

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.

31. In ***Union of India v. Tarsem Singh***, (2008) 8 SCC 648 the Apex Court has held as under:

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7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

32. Thus law is well settled that right to correct amount of salary gives rise to continuous cause of action and can be exercised at any point of time during service. However limitation would apply for payment of arrears, which need to be restricted to three years prior to filing of claim. Applying the ratio of judgments of the Apex Court in ***M. R. Shah and Tarsem Singh*** the compliant of the Respondents could not have been rejected for delay. However the industrial Court has erred in not restricting the arrears arising out of grant of additional increments to three years prior to the date of filing of the Compliant.

33. In my view, therefore no patent error can be traced in the order passed by the Industrial Court, except to the extent of not restricting arrears arising out of grant of additional increments to three

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years prior to the date of filing of the Compliant. The order passed by the Industrial Court is therefore upheld with a modification that the Respondents shall be entitled to arrears of salary and allowances in respect of period of three years prior to filing of the Complaint. Writ Petition is accordingly **disposed of**. There shall be no orders as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

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