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IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment reserved on: 11.09.2023**

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Judgment delivered on: 26.09.2023

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LPA 36/2019 & CM APPL. 45583/2023**ROHTASH KUMAR & ORS****..... Appellant****Through: Mr. Varun Prasad, Advocate.****versus****SOUTH DELHI MUNICIPAL CORPORATION Respondent****Through: Mr. Tushar Sannu, Standing Counsel.****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****J U D G M E N T****SATISH CHANDRA SHARMA, C.J.**

1. The present Letters Patent Appeal (“LPA”) arises out of an order dated 06.12.2018, passed by the learned Single Judge in W.P.(C.) No. 5770/2013 and other connected matters (“**Impugned Order**”). The facts of the case reveal that a writ petition was preferred by the South Delhi Municipal Corporation (the “SDMC”) being aggrieved by a recovery certificate dated 29.08.2013 (“**the Recovery Certificate**”) which was issued by the Deputy Labour Commissioner, Govt. of NCT of Delhi, wherein it was stated that a sum of Rs. 45,21,402/- is recoverable from the SDMC in



pursuance to the implementation of the Award dated 01.04.2006 (“**the ID Award**”) passed in favor of the Appellant-herein by the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi, in Industrial Dispute No. 08/2004 (“**the Industrial Dispute**”).

2. The present case has a chequered history and the facts of the case reveal that the workmen through MCD General Mazdoor Union (“**MGMU**”) raised the Industrial Dispute and a reference was made by the appropriate Government i.e., Secretary (Labour), Government of NCT of Delhi (“**GNCTD**”) for adjudication to the Industrial Tribunal. The reference made by the appropriate Government reads as under:

“Whether the action of the Management in not allowing the next higher pay scale of Rs. 3050-4590/- to Gardeners as first promotional scale after completion of 12 years of service under Assured Career Promotional scheme is illegal/ and or unjustified and if so, what relief are they entitled and what directions are necessary in this respect?”

3. The Industrial Tribunal after hearing the parties at length has passed the ID Award, and the operative paragraphs of the same read as under:

“14. A perusal of the aforesaid recital show that once a workman is unfit for the grant of benefit under the ACP Scheme he has to be given the pay scale in the hierarchy in the cadre without giving him the higher status in the hierarchy.

15. It appears that the Management has merely given the next scale as shown in Annexure 1 with reference to Para 7 of the OM dt. 09.8.99 and have not given the next scale in the hierarchy in the cadre. This act of the Management is contrary to the spirit of the ACP Scheme.



16. *There is no dispute that the ACP Scheme has been adopted by the Management. The Corporation vide its Resolution dt. 04.9.2000 Ex.MW 1/1 has proved the implementation of the ACP Scheme as recommended by the 5th Pay Commission and notified by the Govt. of India. Under these circumstances, I find that the Gardeners, who have been found fit for the grant of benefit under the ACP Scheme, are entitled to the pay scale of Rs.3050-4590/- from the date from which they have been granted the benefit under the ACP Scheme.*

17. *In view of the findings in the Issues no. 1 & 2 an award is passed directing the Management to grant the pay scale of Rs.3050-4590/- to the Gardeners who have been found fit for grant of the benefit under the ACP Scheme as first up-gradation. Reference is answered accordingly. Let a copy of this award be sent to the appropriate Government i.e., Secretary (Labour), Government of National Capital Territory of Delhi for necessary action at their end.*

File be consigned to Record Room after due compliance.”

4. The Industrial Tribunal while passing the aforesaid award had directed the management to grant to the Gardeners/workmen who have been found fit for grant of benefit under the Assured Career Progression Scheme (“**ACP Scheme**”) as first up-gradation, the pay scale of Rs.3050-4590/-.

5. The erstwhile MCD being aggrieved by the ID Award preferred a writ petition being W.P.(C.) No. 15003/2006, and the same was dismissed by the learned Single Judge by an order dated 01.10.2012. The Operative paragraphs of the order passed by the learned Single Judge in W.P.(C.) No. 15003/2006 as contained in paragraphs 6 to 8 read as under:



“6. A perusal of the written statement of the Petitioner before the learned Trial Court shows that the reliance was placed on clarification on condition No.7 and not condition No.9 before the learned Trial Court. Thus the Petitioner is now trying to make out a totally new case before this Court, which was not before the learned Trial Court. This is not permissible. In Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Ors. AIR 1978 SC 851 it was held:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji A.I.R. 1952 S.C. 16. Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

7. Be that as it may, the learned Trial Court after hearing the contentions of the parties, has directed the management to grant the pay scale of Rs.3050-4590 to the Gardeners/Malis, who have been found fit for grant of benefit under the ACP scheme as first upgradation. Thus, direction is subject to the Gardeners/Malis being found fit as per the benefit of ACP scheme. In view of this, the Petitioner should have no



grievance as it has still to examine the eligibility and fitness of the workmen before granting the benefit of the ACP scheme.

8. The petition and application are dismissed.”

6. The aforesaid order passed by the learned Single Judge reveals that only those gardeners/malis who were found fit as per the ACP Scheme will be entitled for the upgradation and in those circumstances, keeping in view the order passed by the learned Single Judge in W.P.(C.) No. 15003/2006, a circular was issued by the SDMC on 26.02.2013, which reads as under:

*“ South Delhi Municipal Corporation
Horticulture Department (HQ)
3rd Floor, E-BLOCK, CIVIC CENTRE,
MINTO ROAD, NEW DELHI-10002*

NO. DOH/SDMC/2013/1007

Dated:26/02/2013

Hon’ble High Court of Delhi vide judgment dated 01.10.2012 in the matter of WP(C) 15003/2006 and C.M. No. No.11854/2006(stay) in the matter of MCD Vs workmen has ordered the following: -

“Be that as it may, the learned Trial Court after hearing the contentions of the parties, has directed the management to grant the pay scale of Rs.3050-4590 to the Gardeners/ Malis, who have been found fit for grant of benefit under the ACP scheme as first upgradation. Thus, direction is subject to the Gardeners/ Malis being found fit as per the benefit of ACP scheme. In view of this, the Petitioner should have no grievance as it has still to examine the eligibility and fitness of the workmen before granting the benefit of the ACP scheme”

In compliance of above orders Horticulture Department is going to hold trade test for those Malies etc. who fulfill the educational qualifications for promotion to the post of Garden



Chaudhary (as per RR) for giving promotions on merit and as per the available vacancy from the post of Mali etc. to Chaudhary as well as giving benefit of ACP to the eligible and successful candidates (Mali etc of SDMC, EDMC & NDMC).

This issues with the approval of Competent Authority

Director of Horticulture

SDMC”

7. The aforesaid circular makes it very clear that all those Gardeners who fulfilled the requisite educational qualifications for promotion were permitted to appear in a trade test which was to be held by the Horticulture Department for grant of benefit under the ACP Scheme.

8. The Appellant workmen and other persons after the aforesaid circular was issued, instead of appearing in the Trade Test, preferred an application under Section 33C(1) of the Industrial Disputes Act, 1947 (“**ID Act**”) stating that the Respondent SDMC has failed to implement the ID Award and the order dated 01.10.2012 passed by this Court and on 29.08.2013, the Deputy Labour Commissioner (South District), GNCTD has passed an order as well as issued a recovery certificate for a sum of Rs.45,21,402/-.

9. The Respondent SDMC being aggrieved by the Recovery Certificate directing payment of the ID Award amount to the workmen on account of upgradation as per the ACP Scheme, even though, they have not passed the trade test, came up before this Court by filing the underlying writ petition. The learned Single Judge while passing the impugned order has set aside the Recovery Certificate and the order of the Tribunal which directed payment of first upgradation as per the ACP Scheme without qualifying the trade test.



The relevant Paragraphs of the order passed by the Learned Single Judge read as follows:

“11. As per the Recruitment Regulations for the Chaudhary (Annexure P-4), passing of Trade Test is essential and in the considered opinion of this Court, it cannot be diluted while relying upon decision of this Court in W.P. (C) 170/2011 titled Municipal Corporation of Delhi Vs. Rajpal and 232 Ors. rendered on 9th October, 2018 as a Single Bench of this Court has clarified that Gardeners from DDA, who have been absorbed in MCD, are governed by the Recruitment Rules of DDA and not by the Recruitment Regulations of petitioner-SDMC. It is clear from the Recruitment Regulations that for the post of Chaudhary (Annexure P-4), the prescribed qualification for direct recruitment will apply in case of promotion also. Since selection /promotion has to be made on the basis of Trade Test, therefore, the fitness aspect, as highlighted in the Award of 1st April, 2006 (Annexure P-2) and this Court’s Order of 1st October, 2012 (Annexure P-3), essentially pertains to the passing of Trade Test.

12. Evidently, Malis from DDA absorbed in MCD and Malis from MCD are governed by different set of Recruitment Regulations and thus, they cannot be put at par. Thus, plea of discrimination is without any substance and is repelled.

13. During the course of hearing, it is brought to the notice of this Court that some respondents/workmen have passed the Trade Test. Needless to say that petitioner shall grant the pay scale of Chaudhary to such respondents/workmen, who have passed the Trade Test from the date when they have cleared the Trade Test and the differential of the pay scale shall be paid to such respondents/workmen forthwith. So far as remaining respondents/workmen are concerned, petitioner shall ensure that a Trade Test for them is held within a period of four months from today, so that they can be granted the pay scale of Chaudhary upon their clearing the Trade Test. Such a course is adopted as merit cannot be sacrificed at any cost. Pertinently,



meritorious amongst respondents have already cleared the Trade Test.

14. In light of the aforesaid, impugned order/ Recovery Certificates being oblivious of the fitness angle, i.e., of passing the Trade Test, are held to be unsustainable and are accordingly set aside, with direction to petitioner to hold the Trade Test for respondents/workmen at the earliest, but not later than 6th May, 2019, to ensure compliance of Award of 1st April, 2006 (Annexure P-2) and this Court's Order of 1st October, 2012 (Annexure P-3).

15. With the above-said directions, these petitions and the pending applications are accordingly disposed of. A copy of this order be given dasti to learned counsel for petitioner to ensure its compliance."

10. Learned counsel for the Appellants has vehemently argued before this Court that the Appellants are not at all required to pass the trade test in the matter of grant of upgradation under the ACP Scheme, especially in light of the ID Award.

11. The only issue before this Court is whether an employee is entitled for upgradation under the ACP Scheme automatically or can he be subjected to a trade test if he holds the necessary qualifications in respect of a promotional post or not.

12. In order to determine the said issue, it would be apposite to give a brief overview of the ACP Scheme. The ACP Scheme was introduced with a noble aim and object to grant financial upgradation to the employees stagnating in a particular post for various reasons, however, the ACP Scheme itself provided that an employee who has completed 12 years of service shall be entitled for grant of financial upgradation under the ACP



Scheme subject to the qualifications prescribed under the Recruitment Rules.

13. In the present case, the Appellants are holding the post of Gardener and the next promotional post is the post of Chowdhary. The extract of the Recruitment Rules governing the field are reproduced as under:

“ *Recruitment Regulation for the post of Chaudhary*

1. Name of the post:	Chaudhary
2. No. of posts:	98*-Subject to variation dependent on workload.
3. Classification:	Category 'C'
4. Scale of pay:	Rs. 260-6-290-EB-6-326-8-380-10-400
5. Whether selection post or non selection post:	Selection
6. Age limit for direct recruits:	Between 18 & 25 years. (Relaxable for Government servants and employees of the M.C.D upto 35 years in accordance with the instructions issued by the Central Government) Note: The crucial date for determining the age limits shall be the last date fixed for sending names by the Employment Exchange.
7. Educational and other qualifications required for the direct recruitment.	Essential-Matric or High School pass with the Agriculture as one of the subject from a recognized Board/School/ University or



	<i>equivalent.</i> <i>Desirable: Knowledge of Hindi.</i>
8. <i>Period of probation, if any:</i>	<i>Two years</i>
9. <i>Method of rectt. whether by direct rectt. or by promotion or by deputation/ transfer and percentage of the vacancies to be filled by the various methods.</i>	(i) <i>50% by promotion failing which by direct recruitments:</i> (ii) <i>50% direct recruitment.</i>
10. <i>Whether age and educational qualifications prescribed for recruitments will apply in the case of promotion.</i>	<i>Age: No</i> <i>Qualification: Yes</i> <i>Note: The recruitment about educational qualification shall not be applicable in case of those departmental candidates only who are holding posts of Hedgemen/ Machineman/Mali/Buleckman and Chowkidar on regular basis on the date of commencement of these rules.</i> <i>Note: The suitability of persons who were not working on regular basis in the scale of Rs.260-400 will be initially assessed for appointment in the scale of 260-400. Such of the person as are not assessed suitable shall continue to be in their respective pay-scale and their cases shall be reviewed annually.</i>
11. <i>In case of rectt. by promotion transfer grades from which promotion/deputation/transfer to be made:</i>	<i>Promotion:-</i> (i) <i>Hedgeman and Machineman with 5 years regular service in the respective grade, in Chowkidar and</i>



	<i>Bullockman with 8 years regular service in the respective grade.</i> <i>Note 1: The eligibility list for promotion shall be prepared with reference to the date of composition by the officers of the prescribed qualifying service in the respective grade/post.</i> <i>Note -2:- The selection shall be made on the basis of a trade test.</i>
<i>12. If a D.P.C. exists, what is its composition:</i>	<i>Category 'C' D.P.C.</i> <i>(To be given by the M.C.D. before notifying these regulations);</i> <i>Proposed:</i> <i>(i) D.O.H. -Chairman</i> <i>(ii) D.D.H. _ Member</i> <i>(iii) A.D.H. - Member</i> <i>(iv) A.H.D./S.C.- Member</i> <i>(Representative to be nominated)</i> <i>(v) A. O. (II)-Convenor-</i>
<i>13. Circumstances in which U.P.S.C. is to be consulted in making recruitment.</i>	<i>Consultation with U.P.S.C necessary while amending/ relaxing any of the provision of these regulations.”</i>

14. The Recruitment Rules provide for qualifications as well as passing of trade test for promotion to the post of Choudhary which carries a higher pay scale, which can be granted to the employee under the ACP Scheme.



15. The issue involved in the present case i.e., whether for grant of ACP, a person is required to pass the trade test is required to fulfill the requisite qualifications prescribed under the Recruitment Rules is no longer *res integra*.

16. The Government of India keeping in view the problem of stagnation and hardship faced by employees on account of non-promotion or due to lack of adequate promotional avenues, formulated a scheme known as ACP Scheme for Central Government civilian employees and the scheme was notified *vide* Office Memorandum dated 09.08.1999. Paragraph 6 of the conditions for grant of benefit under the ACP Scheme read as under:

“6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme; ”

17. The aforesaid condition under the ACP Scheme makes it very clear that grant of higher pay scale is subject to fulfillment of normal promotional norms which certainly include a trade test.



18. The Government of India *vide* Office Memorandum dated 10.02.2000 again clarified its ACP Scheme and the Office Memorandum dated 10.02.2000 read with the clarification No.16 reads as under:

*“F.No.35034/1/97-Estt (D) (Vol. IV)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)*

*New Delhi 110001
February 10, 2000*

OFFICE MEMORANDUM

***Subject: - ASSURED CAREER PROGRESSION SCHEME FOR
THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES -
CLARIFICATIONS REGARDING***

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum of even number dated August 9, 1999 regarding the Assured Career Progression Scheme (ACPS). Consequent upon introduction of the Scheme, clarifications have been sought by various Ministries/Departments about certain issues in connection with implementation of the ACPS. The doubts raised by various quarters have been duly examined and point-wise clarifications have accordingly been indicated in the Annexure.

2. The ACP scheme should strictly be implemented in keeping with the Department of Personnel and Training Office Memorandum of even number dated August 9, 1999 read with the aforesaid clarifications (Annexure). Cases where the ACP Scheme has already been implemented shall be reviewed/rectified if the same are not found to be in accordance with the scheme/clarifications.



3. All Ministries/Departments may give wide circulation to these clarificatory instructions for general guidance and appropriate action in the matter.

4. Hindi version would follow.

(K.K.JHA)
Director(Establishment)”

ANNEXURE

S. No.	Point of doubt	Clarification
x	x	x
16.	<i>The relevant Recruitment/Service Rules prescribe departmental examination/ skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPS.</i>	<i>As per the scheme (Condition No.6), all promotion norms have to be fulfilled for upgradation under the Scheme. As such, no upgradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion.</i>

19. Thus, in short, the ACP Scheme and the clarification issued subsequently makes it very clear that for grant of upgradation under the ACP Scheme, an employee is required to fulfil the requisite qualifications/ conditions which are mandatory for the next higher post. In the present



case, passing of the trade test for promotion to the post of *Mali* (Gardener) to *Chaudhary* is mandatory under the relevant Recruitment Rules and, therefore, the learned Single Judge was justified in setting aside the order passed by the Industrial Tribunal.

20. This Court in the case of ***Rajesh Sharma v. Union of India & Ors***, W.P.(C.) No. 11525/2015 decided on 02.11.2022, has dealt with the controversy involved in the present case and relying upon the judgment delivered in ***Bhakra Beas Management Board v. Krishan Kumar Vij & Anr***, (2010) 8 SCC 701, this Court in paragraphs 26 to 29 has held as under:

*“26. It is trite law that an employee cannot be granted financial upgradation without fulfilling the requisite qualification prescribed by the executive policy. In ***Bhakra Beas Management Board vs. Krishan Kumar Vij & Anr.***, (2010) 8 SCC 701 the Hon’ble Supreme Court considered the following issue: -*

“2. Precisely, we are required to consider whether in light of the order/circular issued by the Appellant Bhakra Beas Management Board (hereinafter shall be called as “Board”), Respondent 1 employee would be entitled to benefit of higher scale of pay/upgradation/stepping up of salary sans prerequisite qualification for the grant of the same.”

In the facts and circumstances of the said case, the Hon’ble Supreme Court proceeded to hold the following: -

“22. We have already mentioned hereinabove with regard to Clause 2 of the 1990 Order read with Regulation 9 which restricts the benefit only to directly recruited Assistant Engineers/Assistant Executive Engineers, meaning thereby that one must possess the requisite qualification as



prescribed under the Regulations, then only the benefit would accrue to the employee, not otherwise. The Note appended thereto clearly stipulates that even those employees who were promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be deemed to have been appointed by direct recruitment. This legal fiction is limited. It is applicable only to those employees who have been promoted in conformity with the provisions contained in Clause 4. Thus, the employees who had passed both Parts (A) and (B) of the AMIE examination and were promoted against 9% posts reserved for that class were fictionally treated as direct recruits. Thus, it clearly stipulates that only those Assistant Engineers who were either directly recruited or had acquired the requisite qualifications prescribed for direct recruitment were chosen to be granted higher scale if they had been promoted against the post falling within the quota of 9% of the cadre strength of the said post.

23. The 1990 Order contemplates that it is to be followed as per regulation which provides that only such persons as have been promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be treated as direct recruits. In other words, it does not apply to the category irrespective of their academic qualifications nor can they be treated on a par with the direct recruits. There was a purpose for treating them so, otherwise, it would have the effect of violating the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, on the premise that unequals have been treated as equals. It is with that intention, to avoid criticism and future litigation that such persons who possessed qualifications for direct recruitment and could be promoted against the posts falling vacant, would become entitled to



claim the benefit. Since Respondent 1 did not fall in this category, obviously, he was not entitled to the higher scale.

24. Thus, there appears to be no illegality committed by the Board in rejecting Respondent 1's representation. So, in our considered opinion, the High Court has clearly erred in setting aside and quashing the same.

25. The critical examination of the impugned judgment passed by the Division Bench of the High Court completely defeats primary purpose of the 1990 Order and provisions applicable to the employees of the Board. No doubt, it is true that the 1990 Order was issued only with an intention to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil prerequisite qualifications for holding the higher post. In other words, if he possesses the required qualifications but is unable to get the higher post on account of non-availability of such post, then only he can be categorized as suffering from stagnation as per Order of 23-4-1990. 26. Obviously, an employee who does not fulfil the qualification as per Regulation 10(4) for the higher post would be ineligible for promotion and/or higher pay scale. In that eventuality, such an employee cannot complain of stagnation. Moreover, even while adopting the 1990 Order, it was made clear by the Board vide its Order dated 26-6-1992 that the time-bound promotional/devised promotional scales after 9/16 years' service are admissible only in respect of the posts in which the initial induction is through direct recruitment.

X x x x x x x



31. *If the interpretation of the High Court to the 1990 Order is to be implemented, then it would lead to unsustainable consequences. It would then mean that every Assistant Engineer irrespective of his conduct, qualifications, performance or behaviour would become entitled to the higher scale on completion of particular length of service. If that be so, then even those employees with poor service record and doubtful integrity would also become entitled to claim higher scale merely because they had completed a particular length of service. If such an interpretation is to be given to the 1990 Order, then it would not only be improper but would also be against public policy and interest of the Board. It is too well settled that a statute or any enacting provision must be so construed as to make it effective and operative. Any such construction which reduces the statute to a futility has to be avoided.*

X x x x x x x

39. *At the cost of repetition, we may reiterate that the effect of the 1990 Order read with the Regulations would be that only those employees who fulfilled the prerequisite qualification for further promotion along with certain length of service as required would only be entitled to the benefit as per the 1990 Order. The other Assistant Engineers, even though they had completed the requisite length of service would not be entitled to claim the benefit, unless they had fulfilled the basic qualifications and minimum experience as required.”*

27. *The aforesaid judgment makes it evident that an employee claiming the benefit under a scheme for financial upgradation, such as the ACP Scheme in the present case, has to fulfill the requirement/ terms and conditions required for promotion to the next higher post and, in both the present*



cases, the requirement for promotion was passing the respective trade test and the employees were given the benefit of higher pay-scale in W.P.(C.) No. 11525/2015 from November, 2001 i.e. from the date he has qualified the trade test.

28. In the other connected matter i.e. W.P.(C.) No. 12375/2014, the Respondents have cleared their trade test of on 06.07.2000, and they were granted benefit from the aforesaid date only.

*29. However, the Tribunal has allowed the application holding that they are entitled for grant of ACP on completion of 12 years of service even from the date prior to passing of their trade test, and, therefore, the finding arrived at by the Tribunal in W.P.(C.) No. 12375/2015 is erroneous in the light of the judgment delivered by the Hon'ble Supreme Court in **Bhakra Beas Management Board** (supra). Hence, W.P.(C.) No. 11525/2015 filed by Mr. Rajesh Sharma is dismissed, and the other connected matter filed by the Union of India, i.e. W.P.(C.) No. 12375/2015 is allowed."*

21. In the aforementioned judgment this Court has also stated that an employee claiming the benefit under scheme for financial upgradation such as the, ACP scheme has to fulfil the requirement/ terms and conditions for promotion to the next higher post.

22. It is an undisputed fact that the Appellants before this Court have not passed the Trade Test and all those persons who have passed the Trade Test have been granted the benefit of ACP Scheme on completion of 12 years of service. Hence, the question of grant of benefit of upgradation without passing the trade test does not arise. The learned Single Judge was justified in setting aside the order passed by the Tribunal and the consequential Recovery Certificate issued in the matter.



2023:DHC:7022-DB



23. This Court does not find any reason to interfere with the order passed by the learned Single Judge and the LPA is accordingly dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

SEPTEMBER 26, 2023

N.Khanna

LPA 36/2019

Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 26.09.2023
14:55:30

Page 20 of 20