



Neutral Citation Number: 2023:DHC:5497-DB

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

Judgment reserved on: 18.07.2023

% **Judgment delivered on: 03.08.2023**

+ **LPA 424/2019 and CM APPL. 29244/2019**

INTER UNIVERSITY ACCELERATOR CENTRE..... Appellant

Through: Mr. Ankit Yadav & Ms. Prakrit Rastogi, Advocates.

versus

MANISHA RANI & ORS

..... Respondents

Through: Mr. M.K. Bhardwaj, Mr. Maria Mugesh Kannan H. & Mr. P. Arun Prakash, Advocates for respondent No.1.
Mr. Ravinder Agarwal, Advocate for respondent No.2.

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 LPA is arising out of the judgment dated 29.05.2019 passed by the Learned Single Judge in W.P.(C.) No. 4367/2016 titled *Manisha Rani Vs. Inter-University Accelerator Centre & Ors.*, wherein, the learned Single Judge has allowed the Writ Petition and has directed the Appellant herein to grant promotion to Respondent No.1 (Writ Petitioner in



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the Writ Petition) as Personal Assistant with effect from 22.01.2014 i.e. the date on which she became eligible with all consequential benefits if she is otherwise eligible as per Recruitment Rules within a period of four weeks from the date of judgment passed by this Court.

2. The undisputed facts of the case reveal that the Respondent No1. Manisha Rani joined the services in the Appellant Organization as Stenographer on 22.01.2009 against a reserved vacancy reserved for Scheduled Caste (SC) category.

3. The By-laws in respect of the Appellant Organization were initially notified in 1987 and the By-laws and the Recruitment Rules were subsequently modified by Governing Board, Governing Council with due approval of the University Grants Commission. The By-laws which are on record provides for promotion from the post of Stenographer to the post of Personal Assistant. The By-laws do not provide for promotion from the post of Assistant to the post of Personal Assistant.

4. In the year 2013, a Departmental Promotion Committee (DPC) took place and considered the candidature of one Mr. R. N. Dhyani, Respondent No.3 herein for appointment as Personal Assistant in the grade pay of Rs. 4200/- and based upon the recommendation of the DPC, Respondent No.3 Mr. R. N. Dhyani was promoted on 03.12.2013 to the post of Personal Assistant.

5. The Recruitment Rules provide for promotion from the post of Stenographer to the post of Personal Assistant and the eligibility criteria



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provides for 5 years of service as stenographer. The Respondent No. 1 (Writ Petitioner) became entitled to be considered for promotion on 22.01.2014.

6. The facts further reveal that in the Appellant Organization, there is only one post of Personal Assistant and against the solitary post of Personal Assistant, Respondent No.3 who was not in the feeder cadre was promoted, though the Respondent No.1, the Writ Petitioner was entitled to be considered for promotion on acquiring requisite experience i.e. 5 years as she was in the feeder cadre.

7. The Respondent No.1 protested in the matter stating that the person who is not in the feeder cadre has been promoted to the next higher post. However, instead of considering her for promotion to the next higher post, on 10.12.2015 she was informed that her request for promotion will be considered subject to availability of post in the next hierarchy.

8. The Appellant Organization issued an Advertisement No. 2/2016 for direct recruitment for the post of Senior Assistant and as the Writ Petitioner (Respondent No.1 herein) was entitled for promotion with effect from 22.01.2014 to the post of Personal/ Senior Assistant, she came up before this Court by filing a Writ Petition and the same was registered as W.P.(C.) No. 4367/2016.

9. The learned Single Judge has allowed the Writ Petition by holding that Respondent No.3 Mr. R. N. Dhyani could not have been promoted to the post of Personal Assistant as per the By-laws. The post of Assistant (clerical cadre) and stenographer (technical cadre) are two different cadre having different avenues of promotion and, therefore, arrived at a conclusion



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that Mr. R. N. Dhyani (Respondent No.3) herein was erroneously promoted to the next higher post for which the Respondent No.1 herein was entitled, de-hors the Recruitment Rules even though he was not from the feeder cadre and the learned Single Judge has allowed the Writ Petition. The operative Paragraphs i.e Paragraph Nos. 18 to 34 of the Judgment passed by the learned Single Judge read as under:

“18. It is not in dispute that the feeder cadre for promotion to the post of Personal Assistant is Stenographer and not Assistant. As per amended Bye Laws, November, 2012, the hierarchy of promotion from post of Stenographer is Personal Assistant and then Personal Secretary. The eligibility conditions of promotion from stenographer is a Bachelor's degree of a recognised university with a minimum speed of 80 wpm in shorthand and 40 wpm in typing with three years experience as stenographer. As per earlier Bye Laws of August, 1997, the eligibility condition of promotion from Stenographer was same whereas hierarchy of promotion from post of Assistant is Senior Assistant and then Section Officer. Post of Assistant (Clerical Cadres) and Stenographer (Technical Cadre) are two different cadres having different avenues of promotion. While the post of Assistant is filled 50% by promotion and 50% by Direct Recruitment whereas the post of Stenographer is filled by 100% Direct Recruitment.

19. The petitioner was appointed to the post of Stenographer with respondent no.1 on 22.01.2009. She thus, became entitled for promotion i.e. fulfilling the eligibility condition for promotion from Stenographer to Personal Assistant on 22.01.2014 whereas post of Personal Assistant had become vacant on 01.08.2013.

20. The respondent no.3 was initially appointed as Helper-Auxiliary Staff-LDC-Assistant-Senior Assistant-Personal Assistant. Respondent no.3 is only 12th pass. Thus, the two posts of Personal Assistant and Senior Assistant are not



comparable. While post of Personal Assistant is a technical post with feeder cadre being Stenographer whereas the post of Senior Assistant is in the nature of a clerical post with feeder cadre being Assistant. Respondent no.1 has sought to justify its action by stating that the post of Personal Assistant was grouped with the post of Senior Assistant. This contention is totally wrong because respondent has not placed any amended Recruitment Rules/Bye Laws which provides for such grouping/merger of these two posts for purposes of promotion. In fact, even after bye-laws were modified, the requirement of educational and other qualifications have remained the same for promotion to the post of Personal Assistant and even Senior Assistant. There is no unified cadre with respect to two posts of Assistant and Stenographer or Senior Assistant and Personal Assistant. There is no unified or combined seniority list maintained by respondent for the two cadres. Even the two posts of Personal Assistant and Senior Assistant are advertised separately by the respondent no.1. This itself shows that the contention of respondent no.1 regarding merger/grouping of posts of Personal Assistant and Senior Assistant is wrong. In addition to above, the Bye Laws and Rules existing as on date show the two cadres of Assistant and Stenographer on the one hand and Senior Assistant and Personal Assistant on the other hand, as separate and independent cadres.

21. In cases where merger of two posts have been done by Government, in such cases, formal orders are issued by the Government for merger of posts in question and then both the merged posts are indentified as one post only. However, in the present case, the posts of Stenographer and Assistant on the one hand and post of Personal Assistant and Senior Assistant have always remained separate and independent.

22. The period of probation is computed towards length of service and considered for the purposes of promotion. Therefore contention of respondent no.1 is that the petitioner did not have qualifying service for promotion at the relevant time, is totally wrong. Further, contention regarding respondent no.3 being senior most having put in 25 years of



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service, is totally erroneous as any experience in some other cadre will not entitle respondent no.3 to be promoted as Personal Assistant, when he does not even belong to the feeder cadre. Respondent has referred to a Handbook to justify its action whereas said Handbook deals with grouping of posts of similar duties and responsibilities, but under different designations. However, present case is not a case of two posts of similar duties and responsibilities with different designations. In the present case, there are two separate and independent cadres exist with separate Recruitment Rules and separate eligibility criteria for qualifying service for promotion. The Recruitment Rules for both Assistant and Stenographer are different. Duties and functions of Assistant and Stenographer are not of similar nature and are totally different. Thus, there is no unified cadre for the two posts of Assistant and Stenographer or Senior Assistant and Personal Assistant. There is no document to show that any amendment in Rules has been carried out for purposes of clubbing these cadres for promotion. These posts have existed as separate and independent cadres and there is no merger of posts.

23. The plea raised by respondent no.1 in promoting respondent no.3 in December, 2013 is that the Government of India directives do not allow posts to be kept vacant for more than a year, also does not help the case of respondent no.1. Firstly, the post of Personal Assistant became vacant on 01.08.2013. Secondly, the petitioner became entitled for promotion to the post of Personal Assistant on 22.01.2014. Even as per the case put forward by respondent, the ACR of the petitioner was to become available after 31.03.2014. Even as per the Bye Laws of the respondent, Clause 4.3.1, the assessment work towards ACR's would be completed within outer limit of May 15th. Thus, the ACR of the petitioner would have become available before May 15th in the year 2014. Thus, the petitioner possessed all requisites for promotion to the next higher post i.e. Personal Assistant as per her cadre and was eligible for promotion. Thus, promotion of petitioner to the post of Personal Assistant would have been within the time period of 1 year from the date of arising of vacancy i.e. 01.08.2013.



24. Respondent No.3 is neither from the feeder cadre for promotion to the post of Personal Assistant nor does he had the requisite qualifying service of five years continuous regular service as Stenographer, as stipulated in the Recruitment Rules of respondent no.1. Even the Bye Laws of respondent no.1 clearly stipulates in Clause 4.3.2 that the eligibility for promotion would be determined by the Recruitment Rules as approved by the Governing Board. Modified Recruitment Rules as well as the earlier Recruitment Rules clearly stipulates five years continuous regular service as Stenographer as eligibility criteria for promotion to the post of Personal Assistant.

25. Respondent No.3 was wrongly granted promotion in December, 2013, when he does not even constitute feeder cadre to the post of Personal Assistant. Contention of respondent no.1 regarding discretion of DPC, is erroneous. A post cannot be filled by DPC for the sake of filling vacancy in the absence of availability of eligible candidate for such promotion. Respondent No.3 was neither eligible at the time when he was granted promotion to the post of Personal Assistant nor is he eligible now for holding the said post.

26. In case of State of Gujarat & Ors. vs. Arvind Kumar T. Tiwari & Ors.: AIR 2012 SC 3281 whereby the Hon'ble Supreme Court held that a person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such person would amount to serious illegibility and not mere irregularity.

27. The aforesaid judgment was relied upon in case of Rakesh Kumar Sharma vs. Government of NCT of Delhi & Ors.: (2013) 11 SC 58.

28. In case of State of Orissa & Anr. vs. Mamta Mohanty: (2011) 3 SCC 436, the Hon'ble Supreme Court has held that any appointment made in contravention of the statutory



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requirement i.e. eligibility cannot be preserved, or protected, merely because a person has been employed for a long time.

29. In case of B. Mutyalamma & Ors. vs. The High Court of A.P., represented by its Registrar Administration, High Court, Hyderabad & Ors. in W.P.(C) No. 28028/2011 decided on 27.01.2012 and held that statutory rules cannot be amended or superseded by way of administrative instructions/executive orders.

30. The case of S.P.Shiv Prasad Pipal (supra) relied upon by respondent no.1 is not applicable for the reason that in the above cited case, there was formal order of merger whereas in the present petition, no such order is there.

31. The case of Ashok Kumar Uppal (supra) is also not relevant because in the said case, rules were amended but in the case in hand, no rules were amended while granting permission to respondent no.3.

32. So is Vinay Kumar Verma (supra) is also not applicable because in para 5, it reveals that there were formal order whereas in the present case, no such order has been passed. There is no dispute regarding the settled law relied upon by the respondents but those cases are not relevant to the facts and circumstances of the case in hand.

33. Vide prayer (b) of the writ petition, the petitioner seeks direction thereby directing respondent no.1 to promote the petitioner to the post of Personal Assistant in lieu of respondent no.3 w.e.f 22.01.2014 whereas respondent no.3 has already retired on superannuation.

34. Therefore, in view of above facts and circumstances and the settled position of law discussed above, I hereby direct respondents to promote the petitioner as Personal Assistant with effect from 22.01.2014, the date she became eligible with all consequential benefits, if she is otherwise eligible. The process thereto, shall be completed within four weeks from the receipt of this order.”



10. The Appellant Organization being aggrieved by the order passed by the learned Single Judge has filed the present LPA, and the Division Bench of this Court vide order dated 03.07.2019 has stayed the judgment only to the extent it relates to grant of consequential benefits.

11. Learned Counsel for the Appellant has vehemently argued before this Court that The Respondent No.3 was rightly promoted to the next higher post though he was not in the feeder cadre keeping in view the Government of India Handbook for Personal Officers, 2013. He has stated that under the sub-heading “Grouping of Posts”, it is provided that the post which are comparable in terms of duties and responsibilities and have a uniform pay-scale can be grouped or merged for efficiency and for providing better opportunities of promotion.

12. He has further stated that as the posts in question were comparable regarding the duties and responsibilities assigned to them, and they were having a uniform pay-scale, the posts were grouped and a person who was not even in the feeder cadre was rightly granted promotion after holding the DPC.

13. He has stated that the learned Single Judge has erred in law and fact in directing consideration of the case of the Respondent No.1 herein for promotion with consequential benefits.

14. Learned Counsel for the Appellant further contended before this Court that the posts of Stenographer and Personal Assistant have the same pay-scale and similar duties and once the post have been merged it would be immaterial that promotions are being done from different feeder cadres.



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15. It is further submitted by the counsel for the appellant that nowhere in the writ petition the Respondent no. 1 had questioned the merger of the posts. No prayer was made by the Respondent no.1 regarding the same. In fact, in the writ petition and the rejoinder affidavit, the Respondent no.1 herself had admitted that there was a merger and she wanted to take the advantage of the same merger for being promoted as Senior Assistant.

16. The Learned Counsel for the Appellant further submits that in the impugned order the Appellant has been directed to promote the Respondent no. 1 “with effect from 22.01.2014, with all consequential benefits”. The Learned Single Judge has not considered the “no work, no pay” principle of service law, which has been enunciated in several judgments of Hon’ble Supreme Court. Learned Counsel for the appellant by placing reliance on *Paluru Ramkrishnaiah v. Union of India*, (1989) 2 SCC 541, followed in *Telecommunications Engg. Service Assn. v. Union of India*, 1994 Supp. (2) SCC 222, *State of Haryana v. O.P. Gupta*, (1996) 7 SCC 533 and *A.K Soumini v. State Bank of Travancore*, (2003) 7 SCC 238 has stated that it has consistently been held in cases where the promotion is granted from an earlier date, no arrears of pay could be granted for the period the concerned employee has not actually worked on the post in question.

17. Learned Counsel for the Appellant has submitted that the Learned Single Judge in the impugned order has not considered that on the basis of the Annual Confidentiality Report (hereinafter “ACR”) placed before the DPC, the DPC recommended Mr. R.N. Dhyani (Respondent no. 3) for promotion on the post of Personal Assistant. It has been further stated that Mr. R. N. Dhyani had 25 years of service and had been stagnating without



promotion since 2005 and was on the verge of retirement. He further submits that at the time the DPC met, the Respondent no. 1 was not eligible for promotion to the post of Personal Assistant. In the case of the Respondent no. 1, the ACRs for five preceding years became available only on 31.03.2014 and therefore she was not entitled to be considered for sole vacancy which arose in the year 2013.

18. The Learned Counsel for the Appellant also submits that even in case if a candidate is fulfilling the eligibility criteria for promotion to a particular post, he is not entitled to claim promotion as a matter of right and an employee is having a right of consideration only.

19. Learned Counsel for the Respondent No.1 has vehemently argued that in spite of there being a judgment in her favour for granting her promotion, her case was not considered and, therefore, she submitted a representation dated 30.05.2019 to the Appellant and vide office order 04.07.2019 the Appellant promoted the Respondent no.1 and placed her in next higher level however failed to comply with the judgment, which ordered for grant of promotion of the Respondent no. 1 with all consequential benefits.

20. The Learned Counsel for Respondent no. 1 further submitted that being aggrieved on account of non-compliance of judgment dated 29.05.2019, she submitted a fresh representation dated 09.07.2019 to the Appellant organization. After considering her representation the appellant finally passed an office order dated 03.09.2019 and the office order stated that her promotion will be on notional basis and the consequential benefits will be governed by the final outcome of the LPA.



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21. Learned counsel for Respondent no. 1 has further submitted that the Appellant erroneously promoted the Respondent no. 3, who merely holds the qualification of 12th standard, from the post of Assistant to the post of Personal Assistant, in spite of the fact that feeder cadre for promotion to post of Personal Assistant is Stenographer and not Assistant. The post of Assistant (clerical cadre) and Stenographer (technical cadre) are two different cadres having different promotional avenues. The experience of Respondent no. 3 was relevant only for the purposes of promotion to the post of Senior Assistant as per the prevailing Bye Laws/RRs and not relevant for the purposes of promotion to the post of Personal Assistant, which was a separate and independent cadre.

22. The Learned counsel for Respondent no. 1 further submits that appellant has not placed any rule/bye laws which provide for such grouping or merger of these two posts for purposes of promotion. There is no unified cadre with respect to the two post of Assistant and Stenographer or Senior Assistant and Personal Assistant. There is no unified or combined seniority list maintained by the Appellant for the two cadres. It has been further contended that in case of merger of two posts a formal order is required to be issued by the Government for merger of post and then only both the merged posts are identified as one post. However, in the present case, the posts of Stenographer and Assistant on the one hand and post of Personal Assistant and Senior Assistant on the other hand have always remained in different cadre.

23. Learned Counsel for the Respondent no. 1 further submits that the plea raised by the Appellant in promoting Respondent no. 3 in 2013 that the



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Government of India directives do not allow posts to be kept vacant for more than a year, also does not help the case of Appellant. Firstly, the post of Personal Assistant became vacant on 01.08.2013. Secondly, the Respondent no. 1 became entitled for promotion to the post of Personal Assistant on 22.01.2014. Even as per the Bye Laws of the Appellant organization, the ACR of the Respondent no.1 was to become available after 31.03.2014. The assessment work towards ACR's would have been completed within outer limit of May 15th. Thus, the ACR of Respondent no.1 would have become available before May 15th in the year 2014. Thus, it was the Respondent no. 1 who was entitled for promotion to the higher post i.e. Personal Assistant as per her cadre and the recruitment rules governing the field. Thus, promotion of Respondent no.1 to the post of Personal Assistant would have been within the time period of 1 year from the date of arising of vacancy i.e. 01.08.2013.

24. Learned counsel for the Respondent No.1 has further contended that the Appellant organization has taken a stand before this Court in respect of promotion of Respondent No.3 in the year 2013 stating that in the year 2013, one post was available and Government of India directives provide for filling up of the posts by the end of the year and, therefore, Respondent No.3, though, was not in the feeder cadre, was considered and promoted to the post of personal assistant. The Respondent No.1 has further contended that the reasoning assigned by the Appellant organization is an absurd reasoning. The post of Personal Assistant became vacant on 01.08.2013 and the Respondent No.3 was not in the feeder cadre, it was only Respondent No.1 who was in the feeder cadre and she became eligible for promotion on



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22.01.2014 as she completed 5 years of service which was the mandatory qualification required for promotion.

25. The contention of Respondent No.1 is that the organization has favoured Respondent No.3 by promoting him to the post of Personal Assistant even though he was not in the feeder cadre and, therefore, the learned Single Judge was justified in allowing the Writ Petition directing promotion of Respondent No.1 with all consequential benefits w.e.f. 22.01.2014.

26. Heard both the counsel for the parties and perused the material on record. The matter is being heard at the motion hearing stage itself with the consent of the parties.

27. The undisputed facts of the case reveal the Respondent No.1 was appointed as a Stenographer on 22.01.2009. The recruitment rules governing the field provide for promotion to the post of personal assistant after completion of 5 years of service and, therefore, Respondent No.1 became entitled to the post of Personal Assistant on 22.01.2014. The record of the case reveal that the Appellant organization, though the Respondent No.1 was in the feeder cadre and the post of Personal Assistant became vacant on 01.08.2013, promoted Respondent No.3 to the post of Personal Assistant on 03.12.2013 from the post of Assistant.

28. It is noteworthy to mention that the Respondent No.1 and Respondent No.3 were from different cadres. The relevant extract of the recruitment rules governing the field are reproduced as under:



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RECRUITMENT RULES FOR ADMINISTRATIVE & SUPPORTING STAFF FOR IUAC

Sl. No.	IUAC Designation	Classification	Pay in the pay band + GP	Whether selection or non-selection post	Age limit for direct recruitment (for Cent. & State Govt, Autonomous Bodies, Univ. employees)	Educational and other qualifications required for direct recruitment	Whether age & educational qualifications for the direct recruitment is applicable for promotion/ deputation contract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Assistant	Group C	5200-20200 + 2400	N.A.	18-27 years (40 years)	A Bachelor's degree of a recognized university with three years experience in the field of Purchase & Stores/ Accounts/ Establishment in a Univ./ Govt./ Autonomous Body/ reputed Pvt. Firm	N.A.
2.	Senior Assistant	Group C	9300-34800 +4200	Non-Selection	30 years (35 years)	A Bachelor's degree of a recognized university with atleast second class with five years experience in the field of Purchase & Stores/ Accounts/ Establishment in a Univ./ Govt./ Autonomous Body/ reputed Pvt. Firm	N.A.
3.	Section Officer	Group B	9300-34800 +4600	Selection	35 years (40 years)	Master's degree of a recognized university with five years experience in Personnel/ Purchase & Stores/ Finance/ Accounts/	



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						General Administration in a University/ Govt/ Autonomous Body/ Reputed Pvt. Firm OR A Bachelor's degree of a recognized university with second class and 8 years experience in related field. OR A Bachelor's degree of a recognized university with at least second class and a pass at the final examination of Institute of Chartered Accounts or a pass in SAS examination conducted by the Comptroller and Auditor General of India or equivalent thereof- with three years experience in general administration/ finance and accounts in a University/Govt/ Autonomous Body public or private sector undertaking	
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RECRUITMENT RULES FOR ADMINISTRATIVE & SUPPORTIVE STAFF FOR IUAC

Sl. No.	IUAC Designation	Classification	Pay in the pay	Whether select	Age limit for direct recruitment (for Cent. & State Govt,	Educational and other qualifications required for direct	Whether age & educational
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Signing Date: 04.08.2023
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	on	ion	band + GP	ion or non- select ion post	Autonomous Bodies, Univ. employees)	recruitment	qualification s for the direct recruitment is applicable for promotion/ deputation contract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Stenograp her	Grou p C	5200- 20200 + 2400	N.A.	25 years (35 years)	A Bachelor's degree of a recognized university with a minimum speed of 80wpm in shorthand and 40 wpm in typing. Three years experience as Stenographer in Univ./ Govt./ Autonomous Boy/reputed Pvt. Firm. Experience in computer operation/Data logging desirable	N.A.
2.	Personal Assistant	Grou p C	9300- 34800 +420 0	Non- Selec tion	28 years (35 years)	A Bachelor's degree of a recognized university with a minimum speed of 100 wpm in shorthand and 40 wpm in typing. Five years experience as Stenographer in Univ./ Govt./ Autonomous Boy/reputed Pvt. Firm. Experience in computer operation/Data logging desirable	
3.	Personal Secretary	Grou p B	9300- 34800 +	Selec tion	35 years	A Bachelor's degree of a recognized	



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			4600		(40 years)	university with a minimum speed of 120 wpm in shorthand and 40 wpm in typing. Eight years experience as Personal Assistant in Univ./ Govt./ Autonomous Boy/reputed Pvt. Firm. Experience in computer operation desirable.	
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29. The aforesaid recruitment rules make it very clear that the post of Stenographer and the post of Personal Assistant are in different distinct cadres. As per the recruitment rules it is only the Respondent No.1 who was entitled for promotion from the post of Stenographer to the post of Personal Assistant and Respondent No. 3 who was not in the feeder cadre was certainly not at all eligible to be considered for promotion to the post of Personal Assistant though she was having 5 years continuous service. The Respondent No.3 was not at all having 5 years continuous qualifying service as a Stenographer as provided under the recruitment rules as he was not a Stenographer.

30. The record of the case also reveals that the post of Personal Assistant and Senior Assistant are not comparable. The post of Personal Assistant and Senior Assistant may be carrying a similar pay scale but the recruitment rules provide them to be in different cadres and the post of Stenographer is in the feeder cadre for promotion to the post of Personal Assistant.



31. The recruitment rules were never amended at any point of time and, therefore, merely by making a statement that the two posts were having a similar pay scale & similar responsibilities, they were clubbed for the purpose of promotion, does not help the appellant organization in any manner.

32. Another important aspect of the case is that the post of Assistant is filled up 50% by promotion and 50% by direct recruitment and the post of Stenographer is filled up 100% by direct recruitment. It was only the Respondent No.1 who was entitled for promotion from the post of Stenographer to the post of Personal Assistant as she was in the feeder cadre and, therefore, the learned Single Judge was justified in directing the Appellant organization to consider the case of Respondent No.1 for promotion from the date she became entitled for promotion by completing 5 years of service. This Court does not find any reason to interfere with the order passed by the learned Single Judge.

33. The Appellant organization has very conveniently argued before this Court that the Respondent No.1 was having 25 years of service and was stagnating without promotion till 2005 and, therefore, as he was at the verge of retirement, he was granted promotion to the post of Personal Assistant even though he was not in the feeder cadre.

34. This Court is of the considered opinion that promotions cannot be granted *de hors* recruitment rules. If a person is not in a feeder cadre, the question of considering him and granting promotion does not arise and, therefore, merely because the Respondent No.3 has put in 25 years of



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service, it does not entitle him for promotion to the post of personal assistant as he was not a stenographer (feeder cadre) and, therefore, the learned Single Judge was justified in granting promotion to Respondent No.1.

35. Another important aspect of the case is that the Respondent No.3 is no longer in service and, therefore, the judgment is not going to affect him adversely. He has worked on the next higher promotional post and has attained the age of superannuation and, therefore, the organization was justified in holding a review DPC and granting promotion to Respondent No.1 with retrospective effect as directed by the learned Single Judge. This Court does not find any reason to interfere with the order passed by the learned Single Judge in the peculiar facts and circumstances of the case.

36. Learned Counsel for the Appellant has placed reliance upon a judgment delivered in the case of ***Palaru Ramakrishnaiah & Ors. Vs. UOI & Anr.***, (1989) 2 SCC 541, and his contention is that based upon the said judgment, back wages cannot be granted to a person who actually did not work in the promotional post. Paragraph Nos. 19 and 20 of the judgment reads as under:

“19. Since, however, the judgment of this Court dated 2-2-1981 in Civil Appeal No. 441 of 1981 has not been challenged and has become final, the next question which falls for consideration is as to what further relief, if any, are the appellants in Civil Appeal No. 441 of 1981 entitled in pursuance of the civil miscellaneous petitions referred to above filed by them. The reliefs which they have claimed have already been indicated above. It is now not disputed that the appellants of this appeal have in pursuance of the order of this Court dated 2-2-1981 been given a back date promotion to the post of Chargeman II synchronising with the dates of completion of



their two years of service as Supervisor 'A'. The grievance of the petitioners, however, is that this promotion tantamounts to implementation of the order of this Court dated 2-2-1981 only on paper inasmuch as they have not been granted the difference of back wages and promotion to higher posts on the basis of their back date promotion as Chargeman II. As already noticed earlier certain writ petitions filed in Madhya Pradesh High Court were allowed by that court on 4-4-1983 relying on the judgment of this Court dated 2-2-1981 in Civil Appeal No. 441 of 1981. Against the aforesaid judgment of the Madhya Pradesh High Court dated 4-4-1983 Special Leave Petitions (Civil) Nos. 5987-92 of 1986 were filed in this Court by the Union of India and were dismissed on 28-7-1986. The findings of the Madhya Pradesh High Court in its judgment dated 4-4-1983 thus stand approved by this Court. In this view of the matter to put them at par it would be appropriate that the appellants in Civil Appeal No. 441 of 1981 may also be granted the same relief which was granted to the petitioners in the writ petitions before the Madhya Pradesh High Court. As regards back wages the Madhya Pradesh High Court held:

“It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to re-fixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them.”

Insofar as Supervisors 'A' who claimed promotion as Chargeman II the following direction was accordingly given by the Madhya Pradesh High Court in its judgment dated 4-4-1983 aforesaid:



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“All these petitioners are also entitled to be treated as Chargeman Grade II on completion of two years' satisfactory service as Supervisor Grade A. Consequently, notional seniority of these persons have to be refixed in Supervisor Grade A, Chargeman Grade II, Grade I and Assistant Foreman in cases of those who are holding that post.... The petitioners are also entitled to get their present salary refixed after giving them notional seniority so that the same is not lower than those who are immediately below them.”

20. In our opinion, therefore, the appellants in Civil Appeal No. 441 of 1981 deserve to be granted the same limited relief. We are further of the opinion that it is not a fit case for initiating any proceedings for contempt against the respondents.”

37. This Court has carefully gone through the aforesaid judgment. The aforesaid judgment was in respect of inter-se seniority and promotion relating Chargeman Grade II to the post Supervisor 'A'. The Chargemen who were holding diplomas were granted accelerated promotion. The dispute of inter-se seniority was resolved by the Hon'ble Supreme Court, and, in the peculiar facts and circumstances of the case, as it was a dispute regarding inter-se seniority and promotions from the post of Chargeman Grade II to Supervisor 'A'. The promotions were granted based upon the judgment delivered by the Madhya Pradesh High Court, the persons who were granted promotion based upon the judgment were granted notional promotion as they were assigned a higher seniority in the gradation list and also keeping in view that juniors were promoted earlier. In the present case, there is no such contingency involved. The present case is an open and shut case where a person who is admittedly in the feeder cadre was not promoted to the post of Personal Assistant, and a person who was not in the feeder



cadre was promoted to the post of Personal Assistant depriving the Writ Petitioner of her valuable right of consideration for promotion to the next higher post. The judgment relied upon is distinguishable on facts and does not help the appellant at all.

38. Learned Counsel for the Appellant has placed reliance upon judgment delivered in the case of ***Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and Ors.***, (1990) 3 SCC 472. Heavy reliance has been placed upon Paragraph Nos. 15 and 16 of the aforesaid judgment, and the same read as under:

“15. As regards the emoluments of higher posts with retrospective effect, we find that the High Court had categorically denied the same to the respondents even on the basis of their claim to higher grades in Class III posts. Further, even the entitlement of the respondents to the higher grades in Class III posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself is both inequitable and irrational. Time and again, the rule has been criticised on account of the absurd result to which it leads, viz. the deemed appointments have to be given to the concerned employees even from the dates when they were not in service and probably when they were still in their schools and colleges. We are informed across the bar that this is the situation even with respect to some of the respondents herein. The quota and rota rule had to be worked out in the present case from the year 1954 as per the direction of the High Court and the Tribunal. There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect. It is for this reason that we are of the view that the decisions of this Court such as in P.S. Mahal v. Union of India [(1984) 4 SCC 545 : 1985 SCC (L&S) 61 : (1984) 3 SCR 847] directing the payment of higher emoluments with retrospective effect on account of the deemed promotions of



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earlier dates will not be applicable to the facts of the present case and have to be distinguished.

16. It is true that the appellant-railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in L.P.A. No. 220 of 1972, and had kept the matter hanging till this day for no fault of the respondents. The High Court by its said decision had directed the appellant-railways to prepare a seniority list within three months from the date of the decision, and also to proceed to make further promotions in the higher grades in accordance with law, rules and orders in force from time to time. But it is equally true that during all these years the higher posts were not vacant and were manned by others and the appellant-railways had paid the incumbents concerned the emoluments of the said posts. The respondents have not actually worked in the said posts and, therefore, on the principle of “no work no pay” they will not be entitled to the higher salary. Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit.”

39. This Court has carefully gone through the aforesaid judgment. In the aforesaid case, again there was a seniority dispute. Rota Quota Rule was not followed. The higher posts were not vacant and the employees have not actually worked in the said post, and in those circumstances, they were not granted back wages. In the present case, the employee in question was illegally deprived of her valuable right of consideration for the next higher post. There was no seniority dispute involved, and a person who was entitled for consideration for promotion was not considered for promotion, on the contrary, a person who was not in the feeder cadre was promoted, and, therefore, keeping in view the totality of case, the learned Single Judge was justified in granting consequential benefits to the Respondent No.1 herein.



40. Learned Counsel for the Appellant has further placed reliance upon judgment delivered in the case of ***Telecommunication Engineering Service Assn & Anr. Vs. UOI & Anr.***, 1994 Supp (2) SCC 222. He has placed heavy reliance upon Paragraph Nos. 5 to 8 of the said judgment, which read as follows:

“5. On the second question whether petitioners were entitled to the payment of arrears of pay and allowances from the respective dates of their promotion, the Tribunal took the view that the High Court and various Benches of the Tribunal do not appear to have considered the magnitude of the problem arising out of the large-scale revision of seniority and promotions consequent thereto retrospectively. It took the view that the normal rule of giving back wages to the persons concerned will not apply to such cases or in such situations. While relying upon Paluru Ramkrishnaiah v. Union of India [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : (1989) 1 Scale 830] it noted the observations of this Court that it is a well settled rule that there has to be no pay for no work although after due consideration a person is given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. At the most he would be entitled to refixation of his present pay on the basis of notional seniority granted to him so that his present salary would not be less than those who are immediately below him. The Tribunal further noticed that as large-scale revision of seniority and consequent promotions with retrospective effect might be anticipated in the instant case, the aforesaid ruling of the Supreme Court would apply and the relief should be moulded accordingly. In the light of these observations, the Tribunal gave the following orders and directions:

“(1) Subject to what is stated in (2) below, we hold that the decision of the Allahabad Bench dated 20-2-1985 in the cases of Parmanand Lal and Brij Mohan [Writ



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Petition Nos. 2739 and 2652 of 1991, decided on 20-2-1985] and the judgments of the Tribunal following the said decision lay down good law and constitute good precedents to be allowed in similar cases. We reject the contentions of the interveners to the contrary and further hold that having urged before the Supreme Court their various contentions and their SLP having been dismissed by the Supreme Court, they cannot reagitate the matter before us. We, therefore, dismiss MP Nos. 3396, 3397, 3493 and 3494 of 1991 in OA No. 2407 of 1988 as being devoid of any merit.

(2) We hold that the applicants are entitled to the benefit of the judgment of the Allahabad High Court dated 20-2-1985 except that in the event of refixation of seniority and notional promotion with retrospective effect, they would be entitled only to refixation of their present pay which should not be less than that of those who were immediately below and that they would not be entitled to back wages. We order and direct accordingly.

(3) We hold that in case the redrawing of the seniority list results in reversion of officers who had been duly promoted already, their interests should be safeguarded at least to the extent of protecting the pay actually being drawn by them, in case creation of the requisite number of supernumerary posts to accommodate them in their present posts is not found to be feasible. We order and direct accordingly.

(4) While effecting promotions, the respondents shall give due regard to the provisions for reservation in favour of Scheduled Castes/Scheduled Tribes.”

This view was again upheld by the impugned judgment passed by the Tribunal on review application.

6. So far as the first point is concerned, it appears that the interventionists filed parallel proceedings through Junior Telecom Officers' Forum v. Union of India [1993 Supp (4) SCC



693 : 1994 SCC (L&S) 366 : (1994) 26 ATC 367 : cited at pp. 90-116 of the paper book of C.A. Nos. 1813-13-A of 1993] and this Court (J.S. Verma and Anand, JJ.) in an elaborate judgment took the same view as that of the Allahabad High Court noticed by the Principal Bench of the Tribunal in the aforesaid case of Parmanand Lal and Brij Mohan [Writ Petition Nos. 2739 and 2652 of 1991, decided on 20-2-1985] which has become final and has been upheld by this Court on merits. It is thus not necessary to dwell on the first question decided by the Principal Bench any further.

7. The only question which survives relates to declining the order for payment of back wages from the due date of promotion to the petitioners before the Tribunal and some of the appellants/petitioners before us.

8. It would be noticed that the judgment of the Allahabad High Court was delivered in writ petitions which were filed by two individuals as far back as 1981 and the judgment was delivered in 1985 which was affirmed by this Court on 8-4-1986. Most of the petitioners before the Tribunal filed their applications claiming promotion from earlier date on the basis of the Allahabad High Court judgment only in 1988. They will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their present pay which should not be less than to those who are immediately below them and the question is only whether they would be entitled to back wages from the date of notional promotion. We are of the view that the Tribunal was justified, in view of the peculiar circumstances of the case and enormity of the problem dealing with 10,000 persons, in declining to grant back wages except with effect from the date they actually worked on the higher post. The same view was taken by this Court in the aforesaid judgment of Paluru Ramkrishnaiah [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : (1989) 1 Scale 830] where this Court declined similar reliefs.”



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41. This Court has carefully gone through the aforesaid judgment. In the aforesaid case, there was a claim for retrospective promotion benefiting very large number of persons (10,000), that too, after several years. In those circumstances, the Hon'ble Supreme Court has arrived at a conclusion that the Central Administrative Tribunal (CAT) has rightly declined back wages except with effect from the date of actually working on the higher post. The facts are again distinguishable. In the present case, the Respondent No.1 was not granted promotion. She was entitled for consideration against the solitary post in the year 2014. However, the Respondents violating the Recruitment Rules have promoted a person who was not in feeder cadre depriving the Writ Petitioner of a valuable right of consideration for higher post. Meaning thereby, denying her to work on a higher post and, therefore, the judgment relied upon is again distinguishable on facts.

42. The Learned Counsel for the Appellant has again placed a reliance upon a judgment delivered in the case of *State of Haryana Vs. O. P. Gupta & Ors.*, (1996) 7 SCC 533. The aforesaid case again relates to seniority dispute and consequential promotion. In the present case, there is no such seniority dispute involved, rather the present case relates to violation of statutory Recruitment Rules by the Appellant Organization depriving the Respondent No.1 of her legitimate right of consideration for promotion by promoting a person who was not in feeder cadre, and, therefore, the aforesaid judgment does not help the Appellant in any manner.

43. Learned Counsel for the Appellant has placed reliance upon another judgment delivered in the case of *A. K. Soumini Vs. State Bank of Travancore & Anr.*, (2003) 7 SCC 238. This Court has carefully gone



through the aforesaid judgment and the fact of the case reveal that the relief was granted to the Appellant therein by the Hon'ble Supreme Court keeping in view the delay due to pendency of proceedings before it. It was more in the nature of a gesture of gratis and not by way of any right. In those circumstances, the claim for payment of arrears was held to be far-fetched and without any basis in law, and, therefore, the judgment again does not help the Appellant herein in any manner.

44. Learned Counsel for the Appellant has also placed reliance upon a judgment delivered in the case of ***Union of India & Anr. Vs. Tarsem Lal & Ors.***, (2006) 10 SCC 145. In the aforesaid case, the Hon'ble Supreme Court was dealing with Para 288 of Indian Railway Establishment Manual which deals with erroneous promotion. In the present case, there is no such issue involved. On the contrary, the present case is a case where an SC category Employee was deprived of her valuable right of promotion by granting benefit of promotion to a person who was not in feeder cadre against the solitary promotion post available in the Organization de-hors the Recruitment Rules.

45. In the considered opinion of this Court, the Learned Single Judge was justified in granting backwages and granting consequential benefits to the Writ Petitioner (Respondent No.1 herein).

46. In the case of ***Union of India v. K.V. Jankiraman***, (1991) 4 SCC 109: 1993 SCC (L&S) 387. The Supreme Court has held that:

“24. It was further contended on their behalf that the normal rule is “no work no pay”. Hence a person cannot be allowed to



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draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension, When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

*25. We are not much impressed by the contentions advanced on behalf of the authorities. **The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his.** This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”*

(Emphasis supplied)

47. In light of the aforesaid judgment, as the Respondent No.1 was illegally denied her right of promotion by the authorities, for no fault of her, she is certainly entitled for back wages as has been held by the learned Single Judge.

48. The Respondents have certainly promoted the Petitioner by an order dated 03.09.2019. However, she has not been granted consequential benefits. The order dated 03.09.2019 is reproduced as under:

“Inter-University Accelerator Centre



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New Delhi

Ref: IUAC/II.314/5696

September 3, 2019

Office Order

In compliance of order dated 29th May, 2019 passed by Hon'ble High Court of Delhi in Writ Petition (C) 4364/2016 read with order dated 3rd July, 2019 passed by Division Bench in LPA No. 424/2019 and pursuant to the recommendations of review DPC, Smt. Manisha Rani is promoted as Personal Assistant in the PB-II Rs. 9300-34800 with GP 4200/- w.e.f 22nd January, 2014. The pay fixation on promotion will be on notional basis.

The consequential benefits which has presently been stayed by the Division Bench of Hon'ble High Court of Delhi vide order dated 3rd July, 2019 will be governed by the final outcome of the said appeal.

This supersedes earlier order nos. IUAC/II.314/870 dated 04.07.19 granting MACP from 22.01.19 and no. IUAC/II.314/871 dated 04.07.19 granting promotion to the post of Personal Assistant.

This issue with the approval of the Competent Authority.

-sd-

(Administrative Officer)

Personnel"

49. The Respondent No.1 has placed reliance upon a judgment delivered in the case of ***Renu and Ors. Vs. District and Session Judge, Tis Hazari Courts, Delhi and Ors.,*** (2014) 14 SCC 50, and Paragraph Nos. 11, 12 and 13 of the judgment read as under:



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“11. In UPSC v. Girish Jayanti Lal Vaghela [(2006) 2 SCC 482 : 2006 SCC (L&S) 339 : AIR 2006 SC 1165] this Court held : (SCC p. 490, para 12)

“12. ... The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made ... Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.”

(emphasis supplied)

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in M.P. State Coop. Bank Ltd. v. Nanuram Yadav [(2007) 8 SCC 264 : (2007) 2 SCC (L&S) 883] as under : (SCC pp. 274-75, para 24)

“(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.



(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

13. *A similar view has been reiterated by the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753 : AIR 2006 SC 1806] , observing that any appointment made in violation of the statutory rules as also in violation of Articles 14 and 16 of the*



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Constitution would be a nullity. “Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.” The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.”

50. In light of the aforesaid judgment, it can be safely gathered that in the case of public employment, appointments made in violation of statutory rules are in violation of Article 14 and 16 of the Constitution of India and are in nullity.

51. The order passed by this Court and the record establishes that promotion of Respondent No.3 Mr. R. N. Dhyani was a nullity as he was not in a feeder cadre and, therefore, as the Respondent No.1 Writ Petitioner was in the feeder cadre, and was deprived of her valuable right of consideration against the solitary post, the learned Single Judge was justified in granting the consequential benefits.

52. In the case of *J.N. Shrivastava v. Union of India*, AIR 1999 SC 1571, the Supreme court has held that when the employee has always been ready and willing to work but the employer prevents him from doing his work, then the principle of ‘no work no pay’ would not be applicable.

53. In the present case, Respondent no. 1 was denied the promotion for no fault of her own, and therefore, the appellant’s contention that on the ground of “no work no pay” the respondent No.1 is not entitled to the consequential



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relief is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***K.V. Jankiraman*** (supra).

54. In the considered opinion of this court the Learned Single Judge has extensively dealt with the issues in his judgment. Accordingly, we do not find any merit in this Letters Patent Appeal and the same is dismissed and direct the promotion of Respondent no 1 to the post of Personal Assistant with all consequential benefits w.e.f. 22.01.2014.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

AUGUST 03, 2023

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