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

% *Date of Decision: 8th May, 2023*

107

+ W.P.(C) 7916/2019

DR. UPENDER KRISHEN WALI Petitioner
Through: Mr. B.L. Wali, Advocate.

versus

GOVERNMENT OF J & K AND ANR. Respondents
Through: Mr. Rushab Aggarwal,
Standing Counsel for U.T. of J&K with
Ms. Riddhima J. Aggarwal and Mr. Japnish
Singh Bhatia, Advocates.

108

+ W.P.(C) 7917/2019

DR. RAJINDER KUMAR TRISAL Petitioner
Through: Mr. B.L. Wali, Advocate.

versus

GOVERNMENT OF J&K AND ANR. Respondents
Through: Mr. Rushab Aggarwal,
Standing Counsel for U.T. of J&K with
Ms. Riddhima J. Aggarwal and Mr. Japnish
Singh Bhatia, Advocates.

109

+ W.P.(C) 7922/2019

DR. CHAMAN LAL DULLOO Petitioner
Through: Mr. B.L. Wali, Advocate.

versus

GOVERNMENT OF J&K AND ANR. Respondents
Through: Mr. Rushab Aggarwal,
Standing Counsel for U.T. of J&K with
Ms. Riddhima J. Aggarwal and Mr. Japnish
Singh Bhatia, Advocates.

110

+ W.P.(C) 7926/2019

DR. VIJAY KUMAR KACHROO Petitioner

Through: Mr. B.L. Wali, Advocate.

versus

GOVERNMENT OF J & K AND ANR. Respondents
Through: Mr. Rushab Aggarwal,
Standing Counsel for U.T. of J&K with
Ms. Riddhima J. Aggarwal and Mr. Japnish
Singh Bhatia, Advocates.

111

+ W.P.(C) 7928/2019

DR. RAVI RAMAN DHAR Petitioner
Through: Mr. B.L. Wali, Advocate.
versus

GOVERNMENT OF J & K AND ANR. Respondents
Through: Mr. Rushab Aggarwal,
Standing Counsel for U.T. of J&K with
Ms. Riddhima J. Aggarwal and Mr. Japnish
Singh Bhatia, Advocates.

112

+ W.P.(C) 7932/2019

DR. BHARAT BHUSHAN KACHROO Petitioner
Through: Mr. B.L. Wali, Advocate.
versus

GOVERNMENT OF J & K AND ANR. Respondents
Through: Mr. Rushab Aggarwal,
Standing Counsel for U.T. of J&K with
Ms. Riddhima J. Aggarwal and Mr. Japnish
Singh Bhatia, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This judgment will dispose all the six writ petitions which were heard together on account of similitude of the legal issues raised therein. For the sake of convenience and reference facts in W.P. (C) 7916/2019 are referred to hereinafter.

2. Petitioner joined Government Medical College, Srinagar, Kashmir on 26.07.1980 after qualifying MBBS from the same College and doing one year internship from SMHS and associated hospitals affiliated with Government Medical College, Srinagar. After completing his house job in 1980-81, Petitioner was appointed as Assistant Surgeon on 31.03.1981 in Medical Department, Srinagar. Degree of Medicine and Surgery was issued by the University of Kashmir on 30.10.1980. Petitioner was appointed as Assistant Surgeon vide Government Order dated 31.03.1981 and later he completed his Masters Degree in 1989.

3. A Government Order bearing No. 595-FME of 1988 was issued by Government of Jammu and Kashmir, Health and Medical Education Department on 22.07.1988 introducing a Scheme of time-bound promotions for Doctors in the Health Services Department, including Dental Surgeons/Specialists and relevant terms are as follows:-

***“Government of Jammu and Kashmir
Health and Medical Education Department***

*Subject:- i) Scheme of time-bound promotions for the doctors
in the Health Services Department*

ii) Enhancement in the rates of NPA

Reference:- Cabinet Decision No.: 116 dated 20.7.1988

.....

*Government Order No. 595 - FME 01 1988
Dated 22.7.1988*

.....

Sanction is hereby accorded to the introduction of a scheme of timebound promotions for doctors in the Health Services Department (including Dental Surgeons/ specialists), as detailed in the Annexure, subject to the following conditions:-

- (i) the cut off date for computation of the number of years for purpose of the aforesaid scheme shall be march 31,1988, to begin with, and March 31 each year for future;*
- (ii) in such computation the number of years spent by a doctor on a particular post, in adhoc capacity, except at the entry level, shall also be taken into account;*

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- (iii) *the benefit of time-bound promotion shall be applicable only if the APRs of the doctor concerned for the last 3 years show no adverse comment.*
- (iv) *The scheme shall not have any bearing on inter-se-seniority of doctors in a particular class/category/scale and an undertaking to the effect that no such claim shall accrue as a result of the scheme shall be obtained by the concerned Heads of Department/ Institution from each beneficiary.*

Sanction is further accorded to enforcement of the following pattern of non-practicing allowance for such of the doctors as are entitled to this allowance under rules; with immediate effect:-

<i>Pay</i>	<i>Rate</i>
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1. <i>Below Rs. 3000/- P.M.</i>	<i>Rs. 500/- P.M.</i>
2. <i>Rs. 3000/-and below Rs. 3700/-</i>	<i>Rs. 600/-P.M.</i>
3. <i>Rs. 3700/- and above</i>	<i>Rs. 750/- P.M.</i>

By Order of the Government of Jammu and Kashmir.
Sd/-
(H.L. Kadlabju) IAS,
Commissioner/ Secretary to Government
Health and Medical Education
Department

No: MDG-163/87

Dated : 22.7.1988

Copy to the :-

- 1. All Commissioners/ Secretary to Government -----*
- 2. Accountant General Srinagar*

Annexure to the Government Order No. 595 – HME of 1988
Dated 22.7.1988

<i>S.No.</i>	<i>Category</i>	<i>Existing Scale</i>	
<i>1.(a)</i>	<i>Assistant Surgeons/ Dental Surgeons (and equivalent)</i>	<i>1900-4000</i>	<i>As a principle, any of the doctor working in these categories, after putting in a service of 10 years will be promoted to the next higher grade of 2350-4050 to be designated as grade I of Assistant Surgeons/ Dental Surgeons. Those doctors who have done P.G. in any of the disciplines will get</i>
<i>& (b)</i>	<i>Block Medical Officers (and equivalent)</i>		

Signature Not Verified

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By: KAMAL KUMAR
Signing Date: 22.05.2023
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W.P.(C) 7916/2019 & connected matters

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- the next higher grade of 2350-4050 after a service of seven years as such.*
2. Chief Medical Officers (and equivalent) 2350-4050) Upon 15 years cumulative service in category 1(a&b) or a service of 10 years in category 2, the doctors shall get into the next higher scale of 2700-4250. The beneficiary doctors shall be designated as CMO (Grade I)-
- 3 B-Grade Specialists (including Dentistry) (2350-4050) After putting in a service of seven years as such, a B-Grade specialist shall be elevated to the next higher scale of 2700-4250 and designated B-grade specialist (class I)-
4. Dy. Director of Health Services (and equivalent) (2700-4250) After a service of five years as such, an officer of this category shall get the next higher scale of 3000-5050 and designated Dy. Director/ Medical Superintendent (Grade I).
5. A Grade Specialist including Dentistry) (2700-4250) Upon ten years service as A -Grade Specialist the doctor shall be placed in the next higher scale of 3000-5050 and designated as A-Grade Specialist (class I).

Sd/-
(Mohammad Rafi)
Under Secretary to government”

4. Petitioner was appointed as Assistant Surgeon at Sub-District Hospital, Kashmir Division under Directorate of Health Services,

Signature Not Verified Kashmir from 1989. On account of disturbed conditions in the State of

Jammu and Kashmir in 1990-91, large number of employees of the State Government left the Valley and shifted to other parts of the country, including in and around Delhi. Petitioner also left the Valley in 1990 but was in Jammu for few months from 1991 though he was drawing salary from the Office of Resident Commissioner, Jammu and Kashmir House, Delhi.

5. On 03.03.1994, Government Health and Medical Education Department, Government of Jammu and Kashmir issued an Order in respect of time-bound promotions of Doctors, in accordance with Resident Commissioner's letter dated 17.01.1994 and pursuant to the earlier Government Order dated 22.07.1988, whereby several Doctors including the Petitioner, working in pay scale of Rs.2200-4000 were placed in the scale of Rs.3000-4500 from the respective dates mentioned in the Order, but with no effect on their inter se seniority.

6. Government of Jammu and Kashmir, Health and Education Medical Department issued another Government Order dated 09.07.2010, according sanction to grant of second time-bound promotion in pay scale of Rs.2700-4250 (pre-revised) w.e.f. 01.04.1994 and third time-bound promotion in pay scale of Rs.4100-5300 (pre-revised) w.e.f. 01.04.1999 in favour of Dr. Vinod Kumar Bhat, Assistant Surgeon, also a migrant. A similar order was issued on 11.04.2018 according sanction for grant of second time-bound promotion in the pay scale of Rs.15600-39100 with Grade Pay of Rs.6600 w.e.f. 01.04.1995 and third time-bound promotion in pay scale Rs.37400-67000 with Grade Pay of Rs.8700 w.e.f. 01.04.2000 notionally and with actual monetary benefits w.e.f. 16.03.2017 to 34 migrant Doctors, including the Petitioner.

7. Since the second and third time-bound promotions were granted to the Petitioner only notionally from due dates i.e. 01.04.1995 and 01.04.2000 and actual monetary benefits from 16.03.2017 resulting in

enormous pecuniary loss, he made a joint representation with other similarly placed Doctors on 07.09.2018, seeking actual monetary benefits from the actual dates of grant of time-bound promotions. The representations did not yield any positive response and the Petitioner filed the present petition, seeking monetary benefits from the dates of promotions and arrears thereof.

8. Learned counsel for the Petitioner submits that the impugned action of the Respondents granting second and third time-bound promotions w.e.f. 01.04.1995 and 01.04.2000 notionally and actual monetary benefits only from 16.03.2017 is illegal and arbitrary with no justifiable rationale for the decision and has resulted in huge financial loss to the Petitioners and defeated the very objective of granting promotions. The action is also violative of Article 14 of the Constitution of India inasmuch as a different treatment has been meted out to the Petitioners in comparison to Dr. Vinod Kumar Bhat, who was similarly placed and had completed 20 years of service in 1999 while Petitioner also completed the same length of service in 2001. Dr. Bhat was granted second and third time-bound promotions w.e.f. 01.04.1994 and 01.04.1999 respectively with actual monetary benefits from the said dates and in his case the financial effect was not deferred to a later date.

9. Learned counsel further submits that the issue arising in the present writ petitions is squarely covered by the judgment of this Court in ***Umesh Kumar Moza v. Govt. of J & K and Anr., 2014 SCC OnLine Del 6491***, where similarly placed Doctors working in the same Department had sought and were granted actual monetary benefits from the respective dates of time-bound promotions and Respondents have not been able to point out any distinction or difference in the case of present petitioner in the counter affidavit. It is thus urged that monetary benefits be granted to the Petitioner from the

dates of grant of second and third time-bound promotions at par with Dr. Bhat and following the judgement of this Court in ***Umesh Kumar Moza (supra)***.

10. Learned counsel for the Respondents, at the outset, takes a preliminary objection to the territorial jurisdiction of this Court on the ground that no part of cause of action has arisen at Delhi. It is further contested that it is a Policy decision of the Respondents to grant notional time-bound promotions from the date of the said promotions with actual monetary benefits from a later date and there is no arbitrariness in the said decision warranting interference of this Court in the scope of judicial review under Article 226 of the Constitution of India. It is also urged that under Rule 17.13 (1) of Jammu and Kashmir Financial Code Vol. I, sanction of revision of pay or grant of concessions to Government servants cannot be given retrospectively.

11. I have heard the learned counsels for the parties and examined their contentions.

12. Insofar as the objection to the territorial jurisdiction of this Court is concerned, suffice would it be to state that a similar objection was raised by the Respondents in ***Umesh Kumar Moza (supra)*** and by a detailed reasoning and relying on several judgments of the Supreme Court and of this Court, the objection was overruled. I may profitably allude to few passages from the said judgment as follows:-

“11. Mr. Malik, learned counsel for the respondents, submits that this Court is not vested with the territorial jurisdiction to entertain the present petition in view of the fact that the petitioner is an employee of the State of Jammu & Kashmir, he was working as an Assistant Surgeon at Srinagar and his salaries were being released by the State of Jammu & Kashmir at Srinagar. He further states that the Department of Health & Medical Education is also situated at Jammu, which is the seat of the Government, and therefore the petitioner ought to have approached the High Court of Jammu & Kashmir for appropriate relief. He argues that merely because the salaries were being disbursed by the respondents from the Office of the Resident Commissioner, Jammu & Kashmir House, New Delhi

for the convenience of the petitioner, would not vest territorial jurisdiction on this Court.

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15. As regards the first objection with regard to territorial jurisdiction taken by the counsel for the Respondent, it is necessary to refer to Article 226 of the Constitution of India. Clause (2) of Article 226 of the Constitution of India prescribes that the power conferred under clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. For the interpretation of Article 226(2), this Court may usefully refer to a decision of the Supreme Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu* reported as (1994) 4 SCC 711, wherein, while discussing Article 226(2) of the Constitution of India, it was observed as below : -

“5..... Under Clause (2) of Article 226 the High court may exercise its power conferred by Clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.....

(emphasis added)

16. The aforesaid decision was taken note of by the Supreme Court in the case of *Union of India v. Adani Exports* reported as (2002) 1 SCC 567 and it held as follows : -

“17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear for the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless

those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.....”

(emphasis added)

17. *In Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income Tax reported as (2010) 1 SCC 457, while considering the scope of Article 226(2) of the Constitution, particularly the cause of action for maintaining a writ petition, the Supreme Court made the following observation : -*

“9. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a Petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.”

18. *In a recent decision, in the case of Nawal Kishore Sharma v. Union of India reported as (2014) (106) ALR 710, when required to interpret the very same provisions, the Supreme Court referred to the aforesaid decisions and to some others on the same aspect and held as below : -*

“11. On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged Under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the Plaintiff to prove in the suit before he can succeed.

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19. *Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings Under Article 226 of the Constitution. In order to maintain a writ petition, the Petitioner has to establish that a legal right*

claimed by him has been infringed by the Respondents within the territorial limit of the Court's jurisdiction."

19. *Coming closer home to a decision of the Division Bench of this Court in the case of University of Kashmir, Srinagar v. H.L. Warikoo, reported as 132 (2006) DLT 606 (DB), cited by learned counsel for the petitioner, in the aforesaid case, which was also arising from a service matter, the University of Kashmir had filed an appeal against the judgment of the learned Single Judge, wherein the preliminary objection raised by the appellant therein as to the maintainability of the writ petition filed in this Court by the respondent No. 1, who was a lecturer in the said University and had prayed for the release of his retiral benefits, was turned down with the observation that in circumstances where the respondent therein and other employees had fled the State of Jammu & Kashmir, apprehending danger to their lives and the State Government as also the University were conscious of the said reality and had provided for a mechanism whereunder, the salary and emoluments of the migrants/employees were being disbursed to the Resident Commissioner at Delhi, it could not be denied that a part of cause of action had arisen within the jurisdiction of the High Court of Delhi and as a result, the petition filed by the respondent was held to be maintainable.*

20. *The appellate court had agreed with the findings returned by the learned Single Judge on this aspect and had turned down the preliminary objection raised by the University of Kashmir as to the maintainability of the petition by observing that the respondent No. 1 therein was compelled to reside in Delhi on account of the disturbed situation prevailing in the Kashmir Valley since August, 1990 and therefore, the question of denying him access to justice by raising an objection as to the maintainability of the writ petition on the ground of lack of territorial jurisdiction of the High Court of Delhi, was without merits.*

21. *The facts pleaded by the petitioner in the instant case reveals that he has been residing in Delhi since the year 1993, and conscious of the circumstances which had led to the Petitioner and many others fleeing the Valley, the State Government had provided for a mechanism whereunder their salaries and emoluments were being disbursed through the Resident Commissioner, Jammu and Kashmir House, New Delhi.*

22. *Furthermore, the court has been informed that while still continuing to reside in Delhi along with his family, the petitioner has finally superannuated on 28.4.2013 and in all this duration, he was continuing to draw his salary from the Office of the Director Health Services, through the Office of the Resident Commissioner, Jammu & Kashmir House, New Delhi.*

23. *Given the averments made in the writ petition with regard to the cause of action, clause (2) of Article 226 of the Constitution of India, would come to the petitioner's aid and resultantly, the question of territorial jurisdiction has to be decided in his favour.*

The respondents cannot legitimately contend that the present petition ought to be rejected as not being maintainable in this Court or that the petitioner ought to have approached the High Court in the State of Jammu & Kashmir for appropriate relief.

24. *In this context, an equally important principle is that of 'forum conveniens' which must be taken note of while examining the issue of cause of action. A Full Bench of this Court in the case of Sterling Agro Industries Ltd. v. Union of India reported as AIR 2011 Delhi 174 had interpreted the said concept in the following words :-*

"31. The concept of forum convenience fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots and Alloys Ltd. v. Union of India (AIR 2004 SC 2321), Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. (2006) 3 SCC 658 and Ambica Industries v. Commissioner of Central Excise (2007) 6 SCC 769 about the applicability of the doctrine of forum convenience while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum convenience in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum convenience. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum convenience and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum convenience. We are unable to subscribe to the said view."
(emphasis added)

25. *The Court is therefore of the opinion that the High Court is vested with territorial jurisdiction to entertain the present petition and the objection with regard to the maintainability of the writ petition, as raised by the counsel for the respondents, has to be turned down.*

26. *Even otherwise, where the petitioner had to leave his home State under very unusual circumstances so as to shift with bag and baggage for relocating himself with his family members to another part of the country, it would be a gross violation of his fundamental rights to deny him access to justice merely on the ground of lack of*

territorial jurisdiction.

27. The view of this Court finds resonance in the decisions of the Supreme Court in the cases of M.H. Hoskot v. State of Maharashtra, reported as AIR 1978 SC 1548 and Suk Das v. Union Territory of Arunachal Pradesh, reported as AIR 1986 SC 991, wherein it was declared that the right of access to justice is integral to the fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India.”

13. In view of the aforesaid judgment and considering the fact that Petitioners are similarly placed, the objection to the territorial jurisdiction of this Court is unsustainable and is rejected.

14. Coming to the merits, this Court finds that the Petitioners in the present writ petitions are identically placed with the Petitioners in the aforesaid judgment wherein the same issue was under consideration viz. grant of actual monetary benefits under the time-bound promotions scheme from the date of promotion and claim to parity with Dr. Bhat was also asserted by the Petitioners. After a detailed examination of the respective stands adopted by the parties to the *lis*, Court held as under:-

“28. As for the merits of the case, a perusal of the order dated 9.7.2010 passed in favour of Dr. Vinod Kumar Bhat granting him the Second and the Third Time-bound Promotions w.e.f. 1.4.1994 and 1.4.1999 respectively, reveals that without any justification, a different yardstick has been applied by the respondent to the petitioner for the very same relief while issuing the impugned order dated 18.7.2011, whereunder he was granted the notional pay-scale of Rs. 4100-5300/- (pre-revised) w.e.f. 1.4.2003, but was not given the monetary benefits thereunder and w.e.f. 1.4.2011, when the said pay-scale was granted to him “monetarily”. In other words, only the amount payable w.e.f. 1.4.2011 was ordered to be released in favour of the petitioner while depriving him of the monetary benefit of the upgraded pay scale for a period of eight years reckoned from 01.04.2003. No rationale has been offered for dividing the Third Time-bound Promotion granted to the petitioner in two parts at the time of issuing the impugned order; nor is there any justification for doing so when a similarly placed Assistant Surgeon employed with the respondent, namely, Dr. Vinod Kumar Bhat was granted real time benefits of the Time-bound Promotions.

29. The plea of the learned counsel for the respondents that Rule 2.43 of the J&K Financial Code Volume-I prohibits re-opening of old cases and the present case ought to be treated as an old case is

taken note of only to be rejected. The present matter cannot be treated as a “re-opening of an old case” for the simple reason that the respondents did not issue the impugned order by re-opening the petitioner's case. In fact, the impugned order came to be passed for the first time and it was not on the basis of any representations made by the petitioner for enhancement of his pay scale by grant of any upgradation. Having unilaterally taken a decision to pass an order dated 18.7.2011, the respondents cannot be permitted to discriminate against the petitioner by declining to grant him the monetary benefits payable w.e.f. 1.4.2003, the date from which he was granted the Third Time-bound Promotion. The petitioner, who is an Assistant Surgeon (Migrant), is similarly placed as Dr. Vinod Kumar Bhat, Assistant Surgeon (Migrant) and he ought to have been treated on the same footing for grant of similar relief as was granted to his colleague.

30. *In view of the aforesaid findings, this Court is of the opinion that the impugned order dated 18.7.2011 granting the Third Time-bound Promotion to the petitioner ought to be modified by deleting the words, “notionally” and “monetarily” therefrom. Accordingly, the present petition is allowed and the respondents are directed to amend the order dated 18.7.2011, by granting the Third Time-bound Promotion in the pay-scale of Rs. 4100-5300/- (pre-revised) in favour of the petitioner w.e.f. 1.4.2003. It is further directed that the entire monetary benefits payable to the petitioner under the Third Time-bound Promotion shall be payable from the date of his entitlement and the arrears shall be released in favour of the petitioner within three months from today, failing which the said amount shall carry simple interest payable by the respondents @9% per annum, till realization. The petitioners in the two connected petitions shall also be entitled to similar relief as granted to the petitioner in W.P.(C) 1104/2013.”*

15. Respondents are unable to point out any distinction between the case of the Petitioners in the abovementioned petitions and the present case. Once the legal issue stands decided that in case of time-bound promotions grant of monetary benefits cannot be deferred to a later date by dividing the grant into two stages and admittedly the judgment has attained finality, this Court finds no impediment in the way of the Petitioner from getting the same reliefs. Much was argued by the counsel for the Respondents that financial sanctions cannot be given retrospectively in view of Rule 17.13 (1) of the Financial Code. In my view, this contention merits rejection for two-fold reasons. First and foremost, the issue of grant of actual monetary benefits from the date

of grant of time-bound promotions is no longer *res integra* and stands decided, as aforementioned. Secondly, the question involved in the present case is not of retrospective grant of financial sanctions but of grant of actual benefits on time-bound promotions. The expression 'time-bound promotion', itself connotes that when an employee completes a certain number of stipulated years stipulated in a particular scheme, he becomes entitled to an upgradation/promotion, subject to any other condition that may be required to be fulfilled. Therefore, once the time-bound promotion is granted at the end of the completion of the stipulated number of years, the employee becomes entitled to promotion and needless to state, grant of promotion would entail grant of monetary benefits as a natural and legal consequence. It is inconceivable in service jurisprudence that an employee is granted promotion but is denied the financial benefits or the benefits are deferred since the financial upgradation is really the award/fruit of his labour and merit, which the employer recognises and promotes him. In this case, even assuming that the sanction came at a subsequent date, this cannot by itself be a justifiable reason of depriving the Petitioner of the actual benefits from the date he was granted the time-bound promotions. After the formal sanction was granted Respondents should have calculated the enhanced salary and emoluments on higher pay scales and released the arrears, instead of reckoning the monetary benefits taking the sanction date as a benchmark, an action wholly impermissible in law and unwarranted.

16. In view of the aforesaid findings, the impugned orders granting second and third time-bound promotions to the Petitioner from 16.03.2017 instead of 01.04.1995 and 01.04.2000 respectively, are required to be modified to a limited extent by deleting the words 'notional' and 'monetary' and holding that the Petitioner shall be entitled to all monetary effects ensuing from the two time-bound

promotions from the respective dates from which the promotions have been actually granted. It is further directed that Respondents shall re-fix the salary and emoluments of the Petitioner, if required, and calculate the arrears due from the dates of second and third time-bound promotions and disburse the arrears within three months from today. Failure to release the arrears within the time granted by the Court will entail granting simple interest @ 9% p.a. from the dates the amount fell due till actual payment. These directions are being passed in respect of all Petitioners in the aforementioned six petitions.

17. Writ petitions are allowed with litigation cost of Rs.10,000/- in favour of each of the Petitioners in all the six petitions.

JYOTI SINGH, J

MAY 08, 2023/kks/shivam

