



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

% **Date of order: 24th July, 2023**

+ **W.P.(C) 8641/2018**

DARSHAN SINGH Petitioner

Through: Mr.____, Advocate
(appearance not given)

versus

**THE CHAIRMAN CUM MANAGING DIRECTOR, UNITED
INDIA INSURANCE CO. LTD. AND ORS.** Respondents

Through: Mr.Abhinav Dubey, Advocate
(through VC)
Mr.Som Raj Chaudhury, Advocate for
R-3 and 4

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM Application No. _____/2023 (To be numbered)

The instant application has been filed by the petitioner *vide* Diary no. 838763/2019 on 25th September 2019. However, the same has never been listed for this Court and therefore, not numbered by the Registry. The Registry is directed to number the instant application.



The instant application has been filed by the petitioner seeking additional documents to be taken on record since the said documents could not be filed with the rejoinder filed by the petitioner.

For the reasons stated in the application, the application is allowed and the documents are taken on record.

The application accordingly, stands disposed of.

W.P.(C) 8641/2018

1. The petitioner has filed the petition seeking the following prayer:

“(a) To direct the respondent to release pay fixation benefits with arrears on account of promotion to Scale III with effect from 14.07.2010 and not on notional pay fixation.

(b) To direct the respondent to promote the petitioner to the Scale IV and release pay fixation benefits with arrears on promotion from Scale III to Scale IV with effect from PE 2014-2015

(c) To direct the respondent to, pay compensation in the sum of Rs 2 crores on account of delayed payments, on account of forceful disposal of his residential property worth Rs.1 Crore which was purchased with the help of a housing loan and his lifetime savings and which was sold at a throw-away price of Rs. 42 Lacs for subsistence of the petitioner as he was put under great financial difficulty due to dismissal from service.

(d) To direct the respondent to pay to the petitioner a sum of Rs 1 crores as damages for the mental agony and loss of social prestige suffered by the petitioner as he was implicated in a false case by the senior officers of the respondent company as clearly brought out by



the judgment of the Hon'ble High Court of Punjab and Haryana.

(e) To direct the respondent to initiate investigation into the role of respondent no. 3 and 4 who hatched criminal conspiracy in implicating the petitioner in a false case.

(f) For cost of litigation and interest and

(g) To pass any other /further order as the Hon'ble Court deems fit and proper.”

2. It is submitted that the petitioner joined the respondents no.1 and 2, United India Insurance Company Limited, in June 1980, as an Assistant in Class-III post at Bathinda. The petitioner was subsequently, appointed as Branch Manager in Scale II at Sonipat in September 2003. The respondents no. 3 and 4 are the former employees of the respondent company.

3. It is submitted that during the tenure of the petitioner as Branch Manager in the respondent's Company, an allegation was levelled against him by the respondents no. 3 and 4 in connivance with the person who complained against the petitioner. It was alleged in the said complaint that the petitioner on 23rd September, 2004, accepted Rs 15,000/- from the Complainant, with an intention to get the Insurance claim of the Complainant passed by the Regional Office, Chandigarh. Therefore, the petitioner committed offences under Section 7 and 13(1)(d) of the Prevention of Corruption Act, 1988.

4. It is submitted that the criminal proceedings under Section 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 initiated against the petitioner and a corruption case bearing no. 8/2004 was filed against the



petitioner. *Vide* order, dated 9th September, 2009, passed by the learned Special Judge, CBI Court, Chandigarh, the petitioner was convicted under section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

5. It is submitted that challenging the said Judgment and order dated 9th September, 2009, passed by the Learned Special Judge, CBI Court, Chandigarh, in Corruption Case No. 8/2004, the petitioner filed a Criminal Appeal before the Punjab and Haryana High Court.

6. It is submitted that the Punjab and Haryana High Court vide order dated 6th October 2015 set aside the judgment of the Court below and acquitted the petitioner, holding the charges as baseless.

7. It is submitted that the petitioner remained suspended during the course of the trial i.e. from 23rd September, 2004 to 31st December, 2005, following which he was terminated on 13th March, 2010 in consequence of his conviction by the Court below.

8. It is submitted that after his acquittal by the High Court of Punjab and Haryana, the petitioner moved a representation to the respondent requesting his reinstatement in service with all consequential benefits which was acceded to by the respondent company on 28th October, 2015 .

9. It is submitted that upon the reinstatement of the petitioner, the respondent the period from 23rd September, 2004 to 2nd November, 2015, i.e., the suspension period, as the “period spent on duty” which makes him entitled to all the consequential benefits inclusive of all promotional benefits and monetary benefits arising therefrom. The management gave the petitioner a promotion only at the intervention of the Chairman of the



Parliamentary Committee for the welfare of SCs/STs to the cadre of Deputy Manager (Scale III) vide its office order dated 2nd May 2016, effective from 14th July 2010.

10. It is submitted that on 21st December 2016, the petitioner sent a detailed representation to the National Commission for Scheduled Castes on the ground that the respondent though provided notional promotion to the petitioner to the cadre of Deputy Manager had been denied the arrears of difference in pay fixation and applicable increments.

11. It is submitted that the Deputy General Manager, sent a letter to the petitioner dated 23rd December, 2016 stating therein that the petitioner did not meet the minimum requirements of promotion from Scale III to Scale IV on the ground of lack of merit during the year 2015-2016 and as such, he was not entitled to further promotion and other benefits.

12. It is further submitted that the respondent in response to the representation of the petitioner dated 23rd December, 2016, *vide* its letter dated 2nd January, 2017 stated that the petitioner's case was considered as a "special case" by the management, the petitioner was granted promotion to Scale III with effect from 14th July, 2010 by following the promotion policy by sealed cover procedure. It is submitted that the petitioner though extended the benefits of seniority with effect from 14th July, 2010, yet he was denied the arrears of notional fixation of pay from the date of promotion to the date of joining.

13. It is submitted that on 1st March, 2017, the petitioner being a person belonging to Scheduled Caste, submitted a representation to the National



Commission for Scheduled Caste, complaining about the anti-SC/ST conduct of the respondent nos. 3 and 4, and sought justice and fair play, and the Commission, on 1st March, 2017, wrote to the Minister of State For Finance and Corporate Affairs, Govt. of India, seeking his intervention in the matter.

14. It is also submitted that the respondent replied to the representation dated 1st March 2017 *vide* its letter dated 25th May, 2017, stating that following the acquittal, the petitioner was reinstated in service and was extended promotion to Scale III with effect from 14th July, 2010 and that he has also been extended the benefits of seniority with effect from 14th July, 2010 and notional fixation from his date of selection to the date of joining.

15. It is submitted that the petitioner, through his advocate, sent a representation to the respondents on 23rd April, 2018, seeking the grant of all the consequential benefits including arrears of pay and allowances, etc. from September, 2004 to October, 2015 by treating the said period as continued service along with the grant of damages and compensation for false implication and connivance at the instance of the officials of the respondent company against the petitioner.

16. In view of the foregoing submissions, the petition may be allowed and this Court may grant the reliefs as sought by the petitioner.

17. *Per Contra*, the learned counsel for the respondent no. 1 and 2 vehemently opposed the contentions made by the petitioner and submitted that the petitioner neither worked nor attended the office for a period of more than 10 years and has already received salary for the said period i.e. an



amount of approx. Rs.75.00 Lakhs from the respondent Company along with a promotion from Scale II to Scale III.

18. It is further submitted that as per the principle of “no work no pay”, the petitioner is not entitled to any enhanced salary for the said period since the petitioner did not work. However, on the basis of the promotion policy of the respondent Company, the petitioner is granted notional promotion w.e.f. 14th July 2010 to Scale-III.

19. It is submitted that the petitioner in the present petition has been granted notional promotion to Scale III on the ground that the petitioner case is a “special case”, therefore, despite the fact that the petitioner was not working, he was granted notional promotion. It was also granted so that petitioner’s further promotional avenues are not curtailed.

20. It is further submitted that on the basis of the fact that the petitioner was granted notional promotion, the petitioner, in terms of the Promotion Policy of the respondent, appeared for examination during Promotion Exercise 2016-17, which is mandatorily held for promotion to next position i.e., Scale-IV which is a managerial post.

21. It is contended that the petitioner failed in the said exam and, thus, could not be promoted to Scale- IV. He applied again for promotion during the Promotion Exercise 2017-18 for promotion to the cadre of Scale-IV but did not attend the examination, and hence could not be promoted.

22. It is further submitted that the petitioner was dismissed from the service on the basis of the criminal charges framed by the Special CBI Court and there was no malafide intentions of the respondent no. 1 and 2 in this



regard. Moreover, upon the acquittal of the petitioner by the High Court of Punjab and Haryana, the petitioner was reinstated to his position along with granting him notional promotion from Scale II to Scale III along with an amount of Rs 75 lakhs.

23. Learned Counsel for the respondent no. 1 and 2 submitted that the petition is devoid of merits and is liable to be dismissed.

24. Learned counsel for the respondent no. 3 and 4 have vehemently denied all averments made by the petitioner and submitted that no case is made out against him as per the facts of the instant petition.

25. It is submitted that in the present case, the petitioner seeks a direction from the Court for initiation of criminal proceedings against the respondents no. 3 and 4 on the alleged involvement of said respondents in hatching a criminal conspiracy against the petitioner and implicating him in a false case.

26. It is further submitted that the respondents no. 3 and 4 were working in the same respondent company as petitioner but did not participate in any such criminal conspiracy against the petitioner. The criminal proceedings were on the basis of the complaint filed by the complainant, pursuant to which an action was taken against the petitioner by the authorities concerned.

27. It is submitted that there was no role attributable to the respondents no. 3 and 4 in the insurance claim which was sanctioned by the petitioner of the complainant. It was the petitioner who sanctioned the insurance claim and hence, the respondents no. 3 and 4 played no role in the same.



28. It is further contended that the allegations by the petitioner against the respondent no. 3 are misplaced. The allegations which have been made by the petitioner against the respondent no. 3 by the petitioner is to malign his reputation and coerce the respondents no. 1 and 2 to agree to his demands.

29. Learned Counsel for the respondents no. 3 and 4 submitted that the petition is devoid of merits and is liable to be dismissed.

30. Learned Counsel for the petitioner in rejoinder to the submissions of respondents no. 1 and 2 submitted that the contention of the respondent Company that the petitioner is not entitled to any enhanced salary in the promoted cadre for the period from 14th July, 2010 to 2015 because the promotion granted to the Petitioner to Scale-III w.e.f. 14th July 2010 was only “notional promotion” is misplaced.

31. It is contended that the stand taken by the respondent is against the law laid down by the Hon’ble Supreme Court in ***Union of India v. K.V. Jankiraman (1991) 4 SCC 109*** wherein it was categorically held that:

“25. We are not much impressed by the contention advanced on behalf of the authorities. The normal rule of "No work no pay" is not applicable to cases such as 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.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning



thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he n deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interest. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve the said last sentence in the first sub-paragraph 3 of the said Memorandum, viz .."

But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum: "However, whether the officer concerned will be entitled to any arrears of pay for the period notional promotion preceding the date of actual promotion, and if so to what extent, will be decided be the concerned authority by taking into consideration all the facts and circumstances of the disciplinary



proceedings/criminal prosecution. Where the Authorities denies arrears of Salary or part of it, it will record its reasons for doing so ”

32. It is submitted on behalf of the petitioner, in light of the aforementioned judgment, that the rule of "no work no pay" would not be applicable when an employee is completely exonerated, not found blameworthy and is not visited with any penalty even of censure. He has to be given the benefit of the salary of the higher post along with the other consequential benefits from the date on which he would have normally been promoted.

33. It is submitted that the denial of salary for the period w.e.f. 14th July, 2010 till the date on which the petitioner has joined at promoted cadre (Scale- III) i.e on 02nd May 2016, is without any justification. Therefore, such denial of the salary without any basis tantamount to punishing the petitioner for the wrongs he has not even committed.

34. It is contended that since the payment of the arrears due to the petitioner along with other benefits has been delayed by 13 years, the petitioner is entitled to receive pay fixation arrears alongwith interest thereon for the said 13 years.

35. In view of the foregoing submissions, the petition may be allowed and this Court may grant the reliefs as sought by the petitioner against respondents no. 1 and 2.

36. Learned counsel for the petitioner in rejoinder to the submissions of respondents no. 3 and 4 submitted that they were holding senior positions in



the respondent Company and that they misused their positions to implicate the petitioner in a false case in furtherance of a deep-rooted conspiracy based on caste lines since the petitioner belonged to Scheduled Caste. It is further prayed that this Court may direct the registration of a case against the respondents no. 3 and 4 under SC/ST Act due to their prejudice against the petitioner.

37. It is further submitted that the petitioner is entitled to the damages of a sum of Rs. 1 crore on account of wrongful conviction, malicious prosecution, mental agony, stigma, mental torture and harassment in light of the judgment pronounced by the Hon'ble Supreme Court in the case of ***Dr. Mehmood Nayyar Azam V. State of Chhattisgarh and Ors.*** (Civil Appeal No. 5703 of 2012) dated 3rd August 2012 and ***S. Nambi Narayanan V. Siby Mathewes & Ors.*** (Civil Appeal no. 6637-6638 of 2018) dated 14th September 2018.

38. In view of the foregoing submissions, the petitioner submits that the petition may be allowed and this Court may grant the reliefs sought against respondents no. 3 and 4.

39. Heard and perused the contents of the writ petition, counter affidavit of the parties as well as the rejoinder on the record along with the documents placed on record.

40. This Court deems it appropriate to form the following issues;

i. Whether the respondent is entitled to pay fixation benefits with arrears on account of promotion to Scale III with effect from 14th July 2010



ii. *Whether direction may be passed by this Court respondent is to promote the petitioner to Scale IV and if promoted to Scale IV, the direction to release pay fixation benefits with arrears on promotion from Scale III to Scale IV with effect from PE 2014-15*

iii. *Whether this Court can direct the respondent to initiate an investigation into the role of respondent no. 3 and 4 who hatched a criminal conspiracy in implicating the petitioner in a false case*

41. Based on the arguments and the material on record this Court will adjudicate upon the above- mentioned issues. This Court will now deal with the issue no. 1 -*Whether the respondent is entitled to pay fixation benefits with arrears on account of promotion to Scale III with effect from 14th July 2010.*

42. Notional Promotion refers to the promotion in which a government employee is involved in a particular exigencies due to which he is unable to work. Thus such kind of promotions are done on compassionate grounds with an intent to not hinder any future prospects of such employee. The employee cannot claim such promotion as a matter of right. The discretion to give notional promotion or not vests exclusively with the employer, who can take a decision on the same in accordance with the policies/ rules governing the employment of such employee as well as other circumventing circumstances.

43. Moreover, the decision to give notional promotion has to be examined



as per the scenario of the each case. There are no rigid rules as to when the notional promotion may be granted and when the notional promotion should not be granted. Therefore, in such cases the notional promotion is granted on basis of the factual scenario of the case.

44. Another important aspect is the date from when the benefits of such notional promotion benefit is to be rendered to the employee who has been promoted notionally i.e., from the date of notional promotion or from the date he joins on such promoted post. The employee who is notionally promoted cannot claim as a right benefits of the promoted post from the date he was granted the notional promotion. It is based upon the discretion vested in the employer. Such discretion has to be exercised by taking into account the peculiar facts of the case.

45. The employer usually takes into account the principle of “no work no pay” i.e., since the employee has not worked on the promoted position, he is not entitled for the benefits which accrues from it. If the reason for the employee not being able to work is not attributable to employer organization, they may grant the employee benefits of the promoted post from the date such employee joined the position.

46. Only in exceptional cases, if there is a default on the part of the employer organization that the employee could work at his position in the employee organization, they may grant benefits of the notional promotion from the date of such notional promotion. In other cases, the principles of “no work no pay” is followed.

47. The above said principle that in the cases of notional promotion on



“no work no pay” is applicable and the employee granted such promotion is entitled to benefits of the promoted post from the date of joining of such position has been enunciated by the Courts in catena of judgments which have been reiterated as follows.

48. Recently, the Hon’ble Supreme Court in the judgment of **Gowramma C. v. Hindustan Aeronautical Ltd., (2022) 11 SCC 794** held as follows:

“10. It is true that no work no pay is a principle which is apposite in circumstances where the employee does not work but it is not an absolute principle, which does not admit of exceptions. In this regard we may notice that in one of the judgments relied upon by the respondents, namely, State of Kerala v. E.K. Bhaskaran Pillai [State of Kerala v. E.K. Bhaskaran Pillai, (2007) 6 SCC 524 : (2007) 2 SCC (L&S) 487] which, in fact, dealt with issue as to monetary benefits when retrospective promotion is given, this Court held : (SCC p. 527, para 4)

“4. ... So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50% of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were



appointed, in that case the Court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

(emphasis supplied)

11. In the decision in P.V.K. Distillery Ltd. v. Mahendra Ram [P.V.K. Distillery Ltd. v. Mahendra Ram, (2009) 5 SCC 705 : (2009) 2 SCC (L&S) 134] again relied upon by the respondent, the matter arose out of an award by the Labour Court where exercise of power under Section 11-A of the Industrial Disputes Act was made. This is also a case where incidentally the Court noted that the appellant employer remained closed for years together and it was declared as a sick unit. In this regard, a fact which weighed with the Court is found reflected in the following statement : (SCC p. 710, para 18)

“18. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.”



(emphasis supplied)

12. In regard to interference in such matters i.e. cases relating to back wages, we find similar approach adopted in other decisions which no doubt the respondent lays store by (see in this regard HUDA v. Om Pal [HUDA v. Om Pal, (2007) 5 SCC 742 : (2007) 2 SCC (L&S) 255]). Though the decision in Canara Bank v. Damodhar Govind Idoorkar [Canara Bank v. Damodhar Govind Idoorkar, (2009) 4 SCC 323 : (2009) 1 SCC (L&S) 832] again relied upon by the respondent did involve the service of the employee being terminated as he had secured employment in the reserved category using a false caste certificate and the Court modified direction of the High Court which ordered full back wages by substituting the order by reducing it to 50%, we do not find that any principle has been laid down which could be treated as constituting it as a precedent. The decision in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] involved the High Court setting aside the award of back wages on the ground that the appellant had not proved the factum of non-employment. The Court inter alia laid down as follows : (Deepali Gundu Surwase case [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] , SCC pp. 357-58, para 38)

“38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied



back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works v. Employees [Hindustan Tin Works v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .”

13. *The most important question is whether the employee is at fault in any manner. If the employee is not at all at fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee. In such circumstances, no doubt, the question relating to alternative employment that the employee may have resorted to, becomes relevant. There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. As we have already noticed, this is a case where apart from the charge of the employee having produced false caste certificate, there is no other charge. Therefore, we would think that interests of justice, in the facts of this case, would be subserved, if we enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. The appeals are partly allowed. The impugned judgments will stand modified and the respondents shall calculate the amount which would be equivalent to 75% of the back wages and disburse the amount remaining to be paid under this judgment within a period of six weeks from today to the additional appellants.*



49. The Hon'ble Supreme Court in the judgment of *Union of India v. B.M. Jha*, (2007) 11 SCC 632 held as follows:

5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom. However, this Court in State of Haryana v. O.P. Gupta [(1996) 7 SCC 533 : 1996 SCC (L&S) 633 : (1996) 33 ATC 324] and followed in A.K. Soumini v. State Bank of Travancore [(2003) 7 SCC 238 : 2003 SCC (L&S) 1041 : JT (2003) 8 SC 35] has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay". The learned Division Bench in the impugned judgment has placed reliance on State of A.P. v. K.V.L. Narasimha Rao [(1999) 4 SCC 181 : 1999 SCC (L&S) 841 : JT (1999) 3 SC 205] . In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17-5-2000 passed by the Division Bench of the High Court as also the order dated 11-1-2000 passed by the Central Administrative Tribunal, Principal Bench.

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18. In any event the principle of normal rule of "no work no pay" depends upon the facts and circumstances of each case and is not a rule of thumb. The said principle is not akin to a mathematical theorem which has to end as "hence proved" and as there is no straitjacket formula applicable thereto. Reliance is placed



upon Gowramma C. v. Hindustan Aeronautical Ltd. [Gowramma C. v. Hindustan Aeronautical Ltd., 2022 SCC OnLine SC 310] wherein it is held as under :

“9. It is true that no work no pay is a principle which is apposite in circumstances where the employee does not work but it is not an absolute principle, which does not admit of exceptions. In this regard we may notice that in one of the judgments relied upon by the respondents, namely, State of Kerala v. E.K. Bhaskaran Pillai [State of Kerala v. E.K. Bhaskaran Pillai, (2007) 6 SCC 524 : (2007) 2 SCC (L&S) 487] which, in fact, dealt with issue as to monetary benefits when retrospective promotion is given, this Court held :

‘... So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change



in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also’.”

19. Reliance is further placed upon *Ashoka Kumar Thakur v. Union of India* [Ashoka Kumar Thakur v. Union of India, (2011) 12 SCC 793 : (2012) 1 SCC (L&S) 444] wherein it is held as under :

“3. Whether an order can be treated as a precedent would depend upon the fact situation. In fact, we have stated that though the normal rule of ‘no work no pay’ could have, in law, been applied, in view of the special features of the case, we had directed payment.”

20. The acts of the petitioner are not relating to any delay whereas the acts of the respondents are relating to a continuing wrong causing continuous loss, harm and injury to the petitioner since inception. Further, as the issue involved before us had primarily been settled vide order dated 30-7-2014 in the first round of litigation, we deem it appropriate to grant the reliefs sought by the petitioner in the present writ petition, more so as the said reliefs are neither affecting any third parties nor are raking open any dead issues. The petitioner is further entitled to the reliefs sought as there is no fault on the part of the petitioner in the present case and the delay, if any, in his appointment solely rests upon the shoulders of the respondents. The petitioner cannot be made to suffer for no wrong attributable to him, as such, cannot be denied extension of his rightful dues/benefits flowing from his seniority and promotion by the respondents.

21. Thus, we allow the present writ petition and direct the respondents to treat the petitioner as having being promoted to the rank of Assistant Commandant from the date his batchmates were appointed i.e. from 1-3-2003 and accordingly notionally fix his pay after granting the increments which have been granted to his



juniors and further to grant him senior timescale promotion with effect from the same date of his batchmates when they were granted the said benefit and grant the same relief as has been granted to similarly situated persons as the petitioner. We further direct that the respondents, shall take appropriate steps to calculate and release the amount due with simple interest @ 6% per annum from the actual date it became due i.e. 1-3-2003 to the petitioner, within a period of four weeks from today to comply with the aforesaid directions.

22. Under the facts and circumstances of the present case before us, we clarify that the petitioner will not be entitled to grant of back wages as he was not performing any duty of any senior post and had not in fact been granted promotion. In view thereof the order dated 16-4-2019, whereby the petitioner's representation dated 18-7-2018 for entitlement of back wages or notional fixation of pay in the rank of Assistant Commandant was rejected stands quashed in part as the petitioner is not held to the grant of back wages.

50. Moreover, the Delhi High Court in the judgment of ***Union of India v. G. D Goel*** 2008 SCC OnLine Del 1792 held as follows:

“10. The first case which needs mention in the chronology of the judgments, we are taking stock of, is the decision of the Supreme Court in Paluru Ramkrishnaiah v. Union of India - (1989) 2 SCC 541. The Court in this case held that in case the promotion granted with retrospective effect, back wages for the period for which the person actually did not work in the promotion post is not payable. This view was taken on the basis of the following factual background:- “16. It may also be noticed that even though the petitioners on their completion of two years' service as Supervisor 'A' were not promoted as Chargeman II in or about the year 1966 they chose to wait for about 17 years to file these writ petitions which were filed in 1983, and nearly 2 years even



after the decision dated February 2, 1981 in Civil Appeal No. 441 of 1981, which indicates that but for the decision in Civil Appeal No. 441 of 1981 they would perhaps not have thought of filing these writ petitions inasmuch as in the meantime they had not only been promoted in the normal course as Chargeman II but some of them had been promoted even to higher posts in the hierarchy.”

11. In Union of India v. K.V. Jankiraman (1991) 4 SCC 109, this issue came up for consideration namely whether the Government could deny the benefit of wages for the past period if he was granted promotion subsequently but from back date. Union of India had contended that a person cannot be allowed to draw benefits of a post the duties of which he had not discharged. This contention was negated as not applicable where an employee, who is willing to work, is kept away from work by the authorities for no fault of his. The Supreme Court observed as under:-

“24. It was further contended on their behalf that the normal rule is ‘no work no pay’. Hence a person cannot be allowed to 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 in applicable to such cases.” 12. Issue again came up for consideration before the Supreme Court in the case of State of A.P. v. K.V.L. Narasimha Rao - (1999) 4 SCC 181. In this case also the court held that back wages are normally to be allowed in case of retrospective promotion. However, in the said case, the Court denied the benefit to the employee noting down the peculiar facts of this case in the following terms:-

“5. In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. However, on the reorganization of States a large number of officers stood allotted from different States to the newly-formed State and their services had to be integrated on various principles and several agencies were involved in the same. The steps to be taken thereto were one of formulation of principles, publication of a provisional inter-State seniority list, inviting objections thereto, consideration of those objections in consultation with the Central Government and acting upon its directions to bring the seniority list in conformity with such directions. This entire exercise involved a good deal of time and gave rise to an extraordinary situation. It is in those circumstances that the rules contained in Fundamental Rule 26 or Rule 40 of the



Hyderabad Civil Services Regulations have been framed. As a matter of fact, rules of the erstwhile State regarding seniority are not applicable in the new State as the allottees are governed by the Act and seniority is finalized therein. Even so, we do not see that there is any impediment to frame new rules affecting conditions of service of such allottees but in conformity with the Act. Surely new rules cannot be brushed aside by saying that they are not applicable to cases coming under the Act. There is no contention either in the High Court or before us that they are framed in contravention of the Act. In this background, we fail to see as to why the rules are not applicable to the respondents as held by the High Court.”

13. Another judgment which needs to be mentioned is in the case of State of Haryana v. O.P. Gupta - (1996) 7 SCC 533. The controversy involved in the said case was whether the employees were entitled to arrears of salary for the period for which they had admittedly not worked, but had been given notional promotion from the deemed date. The matter related to a seniority dispute where fresh seniority list was directed to be prepared in accordance with rules ignoring any inconsistent administrative instructions. The Supreme Court held that entitlement of the employees to work arose only when they were promoted in accordance with rules and the preparation of seniority list was a condition precedent for the exercise. The employees could not be posted in the promotional post till the exercise was carried out and thus, their plea that they were willing to work had no legal foundation. The Court, thus, did not give



these employees benefit of arrears of salary for the period they had not worked. The case of K.V. Jankiraman (supra) was discussed and distinguished. We may, for our purpose, take note of the following observations in the said judgment:-

“5. Shri Gupta, learned counsel appearing for the State, contended that the State was prepared to comply with the direction issued by the High Court in the first instance for the preparation of the seniority list but the rival candidates who claimed inter se seniority over the others approached the Division Bench and also this Court for relief; since, ultimately, this Court has decided that seniority has to be prepared strictly in accordance with Rule 9 of the Rules, on receipt thereof, the Government has complied with the conditions of the preparation of the seniority list. Accordingly, they have been given the promotion with the deemed dates, though there was no specific direction in that behalf. Others who had joined the service have not claimed, except the respondents, but some of them were not even parties to the earlier writ proceedings or to the appeal in this Court and consequently, they are not entitled to the arrears. It is contended by Shri S.M. Hooda, learned counsel appearing for the respondents that the respondents were willing to work in the respective posts but they were not given the same. To avoid their entitlement, a seniority list was wrongly prepared denying them their entitlement to work in the promotional post; consequently, the respondents are entitled to the



arrears of salary and the High Court was right in granting the same.

12. We find from the aforesaid discussion that at times Supreme Court has granted the relief whereas on some other occasions, the arrears of salary for the period prior to the date of actual assumption of promotional post are denied. However, a closure scrutiny of the facts in each case would clearly reveal a discerning trend and there is no contradiction as far as principle of law laid down in various judgments is concerned.

13. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see State of Kerala v. E.K. Bhaskaran Pillai, (2007) 6 SCC 524 : JT (2007) 6 SC 83; Mohd. Ahmed v. Nizam Sugar Factory, (2004) 11 SCC 210; Nalini Kant Sinha v. State of Bihar, 1993 Supp (4) SCC 748. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.

14. In those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary



for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of the higher post for the relevant period, in such circumstances, would amount to hostile discrimination”

51. The Supreme Court in the landmark judgment of ***State of Haryana v. O.P. Gupta, (1996) 7 SCC 533*** held as follows:

6. Having regard to the above contentions, the question arises whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instructions issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and postings were made accordingly on 1-12-1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1-1-1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis.



7. *This Court in Paluru Ramkrishnaiah v. Union of India [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : (1989) 2 SCR 92] (SCR at p. 109 : SCC p. 556, para 19) considered the direction issued by the High Court and upheld 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 higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar, G.M., N. Rlys. v. Avinash Chandra Chadha [(1990) 3 SCC 472 : 1991 SCC (L&S) 62 : (1990) 14 ATC 732] (SCC p. 482, para 16).*

8. *It is true, as pointed out by Shri Hooda, that in Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322 : AIR 1991 SC 2010] this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto.”*

52. It is a well- settled law that the benefits which accrues upon the notional promotion including increase in the salary will be granted by the employer as per its discretion in respect of the particular facts of the case. If



the employee was not able to perform its duty due to default on the part of the employer, the employer may grant benefits which accrues from the notional promotion from the day of such promotion. However, in the cases where there is no default on the part of the employer, then the employer may on the basis of the principle of “no work, no pay” may grant such promotion from the date the employee joins back his position.

53. Therefore, the grant of notional promotion as well as the grant of benefits which accrues from such notional promotion depends on the facts of the case. There is no straightjacket formula as to when the notional promotion will be granted and in which cases the notional promotion cannot be granted.

54. In the instant petition, the petitioner was notionally promoted from 14th July 2010 as per sealed cover policy of the respondent company wherein irrespective of the fact that the petitioner did not work at a position, he is granted notional promotion. Thus, the petitioner was notionally promoted to Scale- III on the basis of respondent’s promotion policy in accordance with the promotional policy.

55. The petitioner in the instant petition is seeking the benefits which accrues to the position of Scale- III from the date he was granted notional promotion in accordance with the promotion policy of the respondent company. The respondent company has been granted benefits of notional promotion from the date the petitioner joined the said position as the respondent held that the petitioner is entitled for benefits from the date he joined back the position.



56. The respondent company has contended that the petitioner was out of service not due to any default committed on the part of the respondent. Since, the respondent company dismissed the petitioner from his service on the ground of conviction of the petitioner by the Special CBI Courts subsequently, on his acquittal, the petitioner was reinstated back into the services. Furthermore, petitioner has already been paid Rs 75 lakhs by the respondent company alongwith notional promotion to Scale- IV and the respondent has asserted that the petitioner is not entitled to anything more.

57. Hence, on the basis of the principle of "no work, no pay" respondent company held that the benefits of the promoted post accrues from the date the petitioner joined the promoted position i.e., Scale III.

58. In the present petition, while it is undeniable that the petitioner's inability to contribute during the suspension period was due to criminal charges faced by him. However, the reality remains that no productive work was carried out during that time. The petitioner was unable to actively fulfill his work responsibilities assigned to the position of Scale III.

59. The concept of remuneration is inherently linked to the notion of an employee's productive engagement, and the petitioner is unable to work resulted in a lack of tangible work contribution to the organization. Especially in the present case, where there is no default attributable to the respondent company for petitioner's inability to work at his designated post.

60. This Court is of the view that the principle of "no work, no pay" is a foundational tenet of employment relationships, designed to ensure that remuneration is commensurate with the work performed. The underlying



concept is that compensation is earned through active contributions to an organization's objectives.

61. Moreover, granting of work wages leads to further complexities from an organizational perspective since, it could establish a precedent that organizations might find challenging to manage consistently. Such a decision could lead to administrative difficulties, including adjustments to payroll records, benefits calculations, and tax implications. Additionally, other employees who were not subject to similar circumstances might perceive the differential treatment as unfair, potentially impacting workplace morale and cohesion.

62. In the context of the instant petition, if the Court directed the respondent to pay fixation benefits to petitioner on account of notional promotion from 14th July 2010 till the date the petitioner joined the service, during the period when no work has been done by the petitioner could create uncertainty and inconsistency in how organizations handle similar situations. Moreover, such fixation benefits if allowed, will amount to each employee knocking the door of the Court claiming the relief despite the fact, that they are not entitled to the same.

63. The petitioner was dismissed from his service subsequent to his conviction and after his acquittal, the respondent company has reinstated him back along with all the benefits and promotion which accrued to the post of the petitioner. There is no default or irregularity on the part of the respondent company that the petitioner was not able to perform his duty. The petitioner is entitled to fixation benefits of Scale III from the date of joining



the said position and can't be entitled to such fixation benefits from the date of notional promotion. Hence, the respondent company is not entitled to pay anything more.

64. Moreover, the petitioner has wrongly placed reliance on the judgment of *Union of India v. K.V. Jankiraman (Supra)*, the Hon'ble Supreme Court has held that that the issue of notional promotion along with benefits which accrue from such notional benefits has to decide on the basis of the facts of each case. The facts of the aforementioned judgment are different from the facts of the instant petition. Therefore, the aforementioned judgment is not applicable on the petitioner.

65. The petitioner's acquittal is a significant factor in his favor, the Court's decision must also take into account the broader implications for both the petitioner and the respondent. While the petitioner suffered the consequences of an unwarranted suspension, the Court is bound to balance his rights with the overarching principles that govern employment relationships and organizational management.

66. Therefore, I am of the view that arrears of fixation benefits of Scale – III cannot be granted to the petitioner in view of the principle of “no work no pay” cannot be granted from 14th July 2010. The petitioner is entitled to the pay scale of the promotional post only with effect from the date he joined the Scale – III post and not from the date of his notional promotion. Accordingly, issue no. i is decided.

67. Now adverting to the issue no. ii – *Whether direction may be passed by this Court respondent is to promote the petitioner to Scale IV and if*



promoted to Scale IV, the direction to release pay fixation benefits with arrears on promotion from Scale III to Scale IV with effect from PE 2014-15.

68. The petitioner has claimed relief that he should be promoted from the position of Scale III to Scale IV i.e. post of Manager. The petitioner has submitted the representation to the respondent company in this regard, to which, the respondent company has denied the promotion to Scale IV due to lack.

69. The respondent has contended in this regard that as per terms of the Promotion Policy of the respondent appeared for examination during Promotion Exercise 16-17 which is mandatorily held for promotion to next scale-IV, which is a managerial post. The petitioner failed in the said exam and, thus, could not have been promoted to Scale IV.

70. The petitioner again applied for the promotion during Promotion Exercise 2017- 18 for promotion to Cadre of Scale –IV but did not appear for the exam, hence could not be promoted to the cadre of Scale- IV.

71. The Court under Article 226 of the Constitution of India has unrestrained power to issue reliefs to the petitioner before it, given the petitioner has a legal right to the relief claimed by it. However, if the petitioner does not have any legal right for the relief which has been claimed by him/her, this Court should not wrongly exercise its power under Article 226 of the Constitution of India by granting such reliefs claimed by the petitioner.

72. The Hon'ble Supreme Court has discussed the restraint to be



exercised by this Court under Article 226 in the judgment of ***Sarvepalli Ramaiah v. District Collector, Chittoor, (2019) 4 SCC 500*** :

“41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.”

73. The Hon’ble Supreme Court has reiterated the principle that the High Courts under Article 226 of the Constitution of India should only interfere with decisions of the authorities if there is an irrationality or illegality on the face of it. In case there is no such irrationality or illegality, then Courts should not interfere as the same would amount to surpassing the jurisdiction under Article 226 of the Constitution of India.

74. In the present facts, the petitioner will be eligible for the position of Scale- IV by passing the exam conducted by the respondent company. The petitioner has appeared once in the exam and failed while on the other instance, the petitioner has not even appeared in the exam.

75. This Court is of the view that in this regard the Court cannot override the Promotion Policy of the respondent company and grant any relief to the petitioner. There is a particular procedure which has been enumerated by the respondent company for promotion to Scale- IV. Moreover, there is no legal right in the favour of the petitioner to be promoted to Scale – IV since, the petitioner has to pass the said exam.



76. In such a situation if the Court, passes a direction for the promotion of the petitioner to Scale- IV, such direction would amount to misuse of its power under Article 226 of the Constitution of India since, there is no legal right which has arisen in the instant petition in favour of the petitioner regarding his promotion from Scale III to Scale- IV. The Court must exercise its jurisdiction under Article 226 very cautiously and must only act when there is a legal right of the petitioner which has been violated.

77. Such a direction will be prejudice to the other employees of the respondent company, who were not promoted to the position of Scale- IV since they were unable to pass the exam. The petitioner merely by filing the writ petition cannot transcend the procedure followed by the respondent company for its promotion.

78. Therefore, this Court is of the view that no direction can be passed to the respondent company to promote the petitioner from the position of Scale- III to Scale IV since, the petitioner is required to pass the exam for the said promotion. However, the petitioner has not been able to pass the said examination. Accordingly, issue no. ii is decided.

79. Now adverting to the next issue iii- *Whether this Court can direct the respondent to initiate an investigation into the role of respondent no. 3 and 4 who hatched a criminal conspiracy in implicating the petitioner in a false case.*

80. Under Article 226 of the Constitution of India, acts exercising civil jurisdiction and does not exercise any criminal jurisdiction. The power under Article 226 of the Constitution of India is designed to be promoted as a



beneficial weapon for the person who is aggrieved due to violation of his/her legal rights. The directions of initiation of criminal proceedings only in exceptional cases especially when the authorities are not acting/taking action cognizance of the event under Article 226 of the Constitution of India. Since the petitioner before the Court may allege *malafidely* that his rights have been aggrieved and if the Court directs initiation of criminal proceedings against the parties who have violated the right of the petitioner can cause distress to the other party against whom initiation of criminal proceedings may be ordered.

81. This principle has been further enunciated by in the catena of judgments which have been discussed hereinbelow. The Hon'ble Supreme Court while dealing the ***Kapil Agarwal and Ors. Vs Sanjay Agarwal Ors., 2021 5 SCC 524***

“6.1. As observed and held by this Court in catena of decisions, inherent jurisdiction Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon Accused, in exercise of inherent powers, such proceedings can be quashed.

6.2. As held by this Court in the case of Parbatbhai Aahir v. State of Gujarat MANU/SC/1241/2017 : (2017) 9 SCC 641, Section 482 Code of Criminal Procedure is prefaced with an overriding provision.



The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers Under Article 226 of the Constitution.”

82. In light of the aforementioned judgment, it is a well-settled law that the Court under Article 226 cannot entertain matters pertaining to matters of criminal proceedings. The Court further should not interfere in the criminal proceedings which are pending in the Criminal Courts.

83. This Court is of the view that the writ of mandamus/ direction which are issued by this Court in exercise of its power under Article 226 is a weapon vested by the Constitution of India in the High Courts of this country, should be utilized by the Courts in case the citizens are aggrieved by a breach in the performance of a public duty by any authority, which violates their fundamental or any statutory rights. Court serves the purpose of ensuring that the State remains accountable to its citizens and protects citizens against the excess in the use of power by the state. However, there are certain limitations and conditions to its application. The directions should be issued only in exceptional cases.

84. In the present facts, a direction by this Court to initiate proceedings against respondents no. 3 and 4 cannot be passed by this Court. The petitioner may approach the authorities concerned for the same. The facts of the present case do not fall within the exceptional circumstances, which merit the interference of this Court under Article 226 of the Constitution of



India. Accordingly, issue no. iii is decided by this Court.

85. In view of the aforementioned discussion and judgments cited, the writ petition under Article 226 of the Constitution of India would not be maintainable against respondents in view of the above said discussion for the following reasons:

- a) The petitioner has already been granted notional promotion and he is entitled to fixation benefits of such notional promotion from the date of his joining the office based on the principle of “no work no pay”
 - b) The petitioner is not entitled to be promoted to the position of Scale IV since he did not pass the requisite exam to be promoted to Scale IV. Hence, the petitioner is not eligible for said promotion.
 - c) This Court cannot initiate criminal proceedings against respondent no. 3 and 4 since, there are no exceptional circumstances made out in this case which warrant interference of this Court for issuing such a direction.
86. It is also observed that the respondent company has rightly considered the representation of the petitioner and duly granted him all the reliefs which the petitioner is entitled to.
87. Accordingly, the issue framed has been decided.
88. This Court upholds the objection taken up by the respondents on the various aspects of the writ petition.
89. This Court discerns no material to establish the proposition put forth by the petitioner. The petitioner has not able to make out it for grant of reliefs as prayed by the petitioner.



90. Accordingly, the petition is accordingly dismissed along with pending applications, if any.

91. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 24, 2023
SV/DB

Click here to check corrigendum, if any