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W.A.No.56 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

W.A.No.56 of 2021
and
C.M.P.No.530 of 2021

Pondicherry Institute of Post-Matric
Technical Education (PIPMATE),
rep. by its Member Secretary,
PIPMATE Building,
Lawspet, Puducherry-605 008.

... Appellant

Vs.

A.Chandirasegaran

... Respondent

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the Order dated 18.09.2018 made in W.P.No.7991 of 2013 and allow this Writ Appeal.

For Appellant : Mr.T.M.Naveen

For Respondent : Mr.S.Srinivasa Murthy for
M/s.Row and Reddy.



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J U D G E M E N T

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(Judgement of the Court was delivered by S.M.Subramaniam J.)

The writ order dated 18.09.2018 in Writ Petition No.7991 of 2013 is under challenge in the present intra court appeal. Point for consideration would be whether retrospective promotion, as claimed by the respondent, is sustainable or not.

2. Mr.S.Srinivasa Murthy, learned counsel appearing on behalf of the respondent would submit that the respondent was the sole eligible candidate for promotion to the post of Head of the Department (hereinafter referred as HOD) for CT and I.T. Department. Though the post of HOD was vacant since 2007, his name was not considered for regular promotion to the post of HOD. However, he was permitted to act as in-charge HOD from the year 2008 onwards.

3. The respondent filed a writ petition in W.P.No.27689 of 2010, to promote him to the post of HOD by filling up the vacant post. The learned Single Judge of this Court passed final order on 12.04.2011, directed the authorities to constitute Departmental Promotion Committee and consider the cases of the candidates for regular promotion. Subsequently, the



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Departmental Promotion Committee was constituted and the respondent was promoted on regular basis to the post of HOD in proceeding dated 01.07.2011.

4. Since the respondent was posted as in-charge HOD from the year 2008, he has chosen to file subsequent writ petition on the ground that he is entitled to get all benefits including the retrospective regular promotion from the date on which he was posted as in-charge HOD. The said writ petition was allowed by the Writ Court, which resulted in filing of the present writ appeal by the Pondicherry Institute of Post-Metric Technical Education.

5. The learned counsel for the appellant would oppose by stating that the respondent was not even appointed on ad hoc basis. He was permitted to function as charge of HOD and therefore, the retrospective promotion granted by the learned Single Judge is not in accordance with the established principles. In support of the said contentions, the learned counsel for the appellant would rely on the recent judgement of the Hon'ble Supreme Court of India, in the case of *Union of India & another vs. Manpreet Singh Poonam & others*¹, and relevant paragraphs are

¹ 2022 (6)SCC 105



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extracted hereunder.

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“14. The High Court also fell in error in taking note of the delay in considering the case of the respondents to the promotional post of JAG-I. No officer has a vested right to a promotional post, which is restricted to that of consideration according to law. The law on this aspect is settled by this Court in Ajay Kumar Shukla v. Arvind Rai [Ajay Kumar Shukla v. Arvind Rai, (2022) 12 SCC 579 : 2021 SCC OnLine SC 1195] : (SCC paras 41-42)

“41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty [Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295 : 1991 SCC (L&S) 472] in para 4 of the Report which is reproduced below : (SCC p. 299)

‘4. ... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules. From this perspective in our view the conclusion [Pravat Kiran Mohanty v. State of Orissa, 1984 SCC



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OnLine Ori 268] of the High Court that the gradation list prepared by the corporation is in violation of the right of the respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'

42. A Constitution Bench in Ajit Singh (II) v. State of Punjab [Ajit Singh (II) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] , laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27 : (SCC pp. 227-28)

'Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that

"[t]here shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".



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It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right.

“Promotion” based on equal opportunity and “seniority” attached to such promotion are facets of fundamental right under Article 16(1)

27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and followed in Jagdish Lal [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] , if it is intended to lay down that the right guaranteed to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a



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fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] right from 1950.’ ”

...

18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules.

...

20. This Court in Union of India v. K.K. Vadera [Union of India v. K.K. Vadera, 1989 Supp (2) SCC 625 : 1990 SCC (L&S) 127] has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that : (SCC p. 627, para 5)



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“5. ... We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

21. Similarly, this Court in Ganga Vishan Gujrati v. State of Rajasthan [Ganga Vishan Gujrati v. State of Rajasthan, (2019) 16 SCC 28 : (2021) 1 SCC (L&S) 403] has held that : (SCC pp. 52-53, para 45)

“45. A consistent line of precedent of this Court



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follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] . The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath [State of Bihar v. Akhouri Sachindra Nath, 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070] and State of Uttaranchal v. Dinesh Kumar Sharma [State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] . In Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , this Court revisited the precedents on the subject and observed : (Pawan Pratap Singh case [Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295 : 1991 SCC (L&S) 472] , SCC pp. 281-



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82, para 45)

'45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to



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the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.'

This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao [P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693 : (2014) 1 SCC (L&S) 690] .”

6. Mr.K.Srinivasa Murthy would rely on the judgement of the Hon'ble Supreme Court in the case of ***P.N.Premachandran Vs. State of Kerala & others***². However, in the said case, the Hon'ble Supreme Court considered the individual facts since the candidate therein was promoted on ad hoc basis. Thus, the said case has no application with reference to the facts on hand.

² 2004 (1) SCC 245



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7. Promotion per se cannot be claimed as an absolute right. All promotions are to be granted strictly in accordance with the rules in force. Consideration for promotion is a fundamental right of an employees but not the promotion. Decision, to fill up the post on regular basis, is to be taken by the Administration. It is the prerogative of the administration to take such a decision. Mere posting of a senior most employee as an in-charge would not confer any right on him to claim regular promotion with retrospective effect. Such claims are untenable since a post cannot be claimed as a right but consideration for a post alone can be claimed as a right.

8. In the present case, admittedly the respondent was allowed to function as in-charge HOD from the year 2008 onwards. Regular promotion was granted to him in the year 2011 after duly constituting the Departmental Promotion Committee. Thus, the retrospective promotion granted by the Writ Court is running counter to the principles to be adopted for grant of promotion to the public servants.

9. The learned counsel for the appellant would submit that certain



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monetary benefit admissible were already granted to the respondent from the date on which he is eligible for HOD as per the rules. Since the principles regarding promotion were not considered by the Writ Court, we are inclined to interfere.

10. Accordingly, the writ order dated 18.09.2018 and W.P.No.7991 of 2018 is set aside and the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

18.07.2024

Index : Yes/No
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Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

To

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S.M.SUBRAMANIAM, J.

and

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