

**102+214 CM-2844-CWP-2024, RA-CW-163-2020,
CM-19004-CWP-2023 and CM-8766-CWP-2020 in
CWP-494-2015**

RUPESH KUMAR AND OTHERS

V/S

STATE OF HARYANA AND OTHERS

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Nilesh Bhardwaj, Advocate and
Mr. Abhishek Sobti, Advocate
for the applicant/respondents no.2 to 4

Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate for the
non-applicant/petitioners

CM-2844-CWP-2024

Application is allowed.

Notification No.22/133/2013-1GSIII dated 04.05.2018 issued by
the Government of Haryana is taken on record as Annexure A-3, subject to all
just exceptions.

RA-CW-163-2020

This application has been filed by the applicants/respondents
no.2 to 4/University seeking review and appropriate modification of the order
dated 05.02.2020, which was statedly passed due to a wrong/unauthorised
statement made by the University counsel before this Court. The order reads
as under:

[1] Learned counsel for respondent Nos.2 to
4/University states that in view of instructions dated 04.05.2018
issued by the Government of Haryana providing for grant of
accelerated promotion to reserved category employees on the
basis of roster point, the promotion granted to the petitioners

was right (rightly) granted and therefore, the threatened action impugned in the writ petition would not be acted upon.

[2] The same satisfies learned Sr. counsel for the petitioners.

[3] In view of the position as noted above, the writ petition is disposed of as not calling for any further orders at this stage.

2. The petition was filed with a prayer to issue a writ of *certiorari* quashing the order dated 06.12.2013, Annexure P-5, whereby the petitioners were reverted from the posts of Assistant to that of Clerk without issuing any show cause notice or affording any opportunity of hearing. It has been claimed by the petitioners that they were promoted to the sanctioned posts of Assistants, vide office orders dated 23.07.2012, on the basis of their seniority, without granting benefit of accelerated seniority/promotion. The respondents, on the contrary, took the stand that the petitioners were promoted by way of accelerated promotion on account of being Scheduled Caste (SC) category employees, by superseding senior general category employees. The instructions, based upon which these provisional promotions had been given, were quashed by this Court vide judgment, dated 14.11.2014, rendered in CWP-25512-2012 titled *Rajbir Singh v. State of Haryana and others*. Accordingly, the promotions were withdrawn in terms thereof and the petitioners were reverted. There is nothing illegal or irregular about it as they had no right to be promoted.

3. In this background, learned senior counsel for the applicants/University has contended that there was no occasion for the earlier

counsel representing the University's to make the statement before this Court that the promotion was rightly granted to the petitioners. The statement is contrary to the University's stand before this Court, also no explicit or implicit instructions were given to the counsel to make such a statement. It has adversely affected the University administration. Therefore, the order, dated 05.02.2020, deserves to be reviewed and recalled for decision of the case on merits.

4. *Per contra* learned senior counsel for the non-applicants/petitioners contends that the review application itself is not maintainable, since it has not been filed by the counsel who represented the University and made the statement before this Court. In support of the contentions, he has relied upon the law laid down by the Supreme Court in *T.N. Electricity Board and another v. N. Raju Reddiar and another*, 1997 (9) SCC 736. He has further contended that the application is also not maintainable because, vide office order dated 08.11.2023, the order sought to be reviewed has been implemented and the impugned order of reversion passed against the petitioners, dated 06.12.2013, has been withdrawn. Therefore, even if the application is allowed, this Court will not be in a position to adjudicate the matter as the impugned order stands already withdrawn.

5. Arguments raised by the learned senior counsel for the parties have been considered.

6. The petition was disposed of by this Court, vide order dated 05.02.2020, without adjudicating the issues on merits. The concession made

by the counsel representing the applicants/University that promotions were rightly granted to the petitioners, led to the petition being disposed of without calling for any further orders. It is also apparent on record that the concession was contrary to the pleaded case of the University and could not have been given without specific instructions. The statement does not refer to any instructions issued in that regard, nor is there any material on record indicating that the same were ever issued. The University, on its part, has a filed a duly sworn affidavit by its Registrar that no explicit or implicit instructions were issued to the counsel for making the statement in the petitioners' favour on 05.02.2020. It is a settled proposition of law in terms of judgment rendered by the Supreme Court in *Himalayan Cooperative Group Housing Society v. Balwan Singh*, 2015 (7) SCC 373, that an Advocate is not authorised to make any concession or compromise without specific instructions of his/her client; neither the Court nor the client is bound by a statement or admission which the lawyer was not authorised to make. Relevant paragraph of the judgment reads as under:

32. Generally, admissions of fact made by a counsel is binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the Court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper

step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.

33. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

"an advocate, in the discharge of his duty knows but one person in the world and that person is his client."

Accordingly, the University cannot be held bound by the statement made by its counsel before this Court on 05.02.2020, since it has been disputed by the University and there is nothing on record to indicate its explicit or implicit authorisation.

7. Although the review application on behalf of the University has not been filed by the counsel who gave the concession by making a statement before the Court on 05.02.2020, it cannot be lost sight of that the applicant before this Court is an institution, a State University. It has sought review of the order which is not a decision on merits, but was passed only upon the concession unauthorisedly given by the earlier counsel at variance with the

pleaded case in the written statement. In this situation, the University cannot be non-suited only because the application has not been filed by the same counsel who gave the concession. It is not in dispute that the earlier counsel was one of the panel counsel for the University in this Court. Besides, the judgment relied upon by learned senior counsel for the non-applicants/petitioners in *N. Raju Reddiar* case (*supra*) is based on distinct facts. In that case after the special leave petition was disposed of by the Supreme Court, a petition for review was filed by engaging a new counsel, which was dismissed by the Court. Yet another application styled as “application for clarification” was filed through a third counsel on the plea that the order passed by the Court was ambiguous. In these circumstances, it was observed that the review petition should not be an attempt for re-hearing the matter again on merits, and the practice of filing such review petitions as a routine by changing the counsel, that too without obtaining consent of the Advocate-on-record, was deprecated. The situation in the case at hand is entirely different, as neither the case has been decided on merits, nor has any objection regarding not obtaining prior consent of the earlier counsel been taken. Therefore, the objection to maintainability of the petition cannot be entertained.

8. The second objection taken by learned senior counsel for the non-applicants/petitioners is also not sustainable, since the office order, dated 08.11.2023, withdrawing the impugned order of reversion has been passed subject to final outcome of the instant review petition. It has been submitted by learned senior counsel for the University that the University was constrained to pass the order because the non-applicants had filed a contempt

petition before this Court, COCP No.1090 of 2020 titled *Rupesh Kumar and ors. v. Alok Nigam, IAS and another*, seeking compliance of the order, dated 05.02.2020, sought to be reviewed. Therefore, the office order dated 08.11.2023, which is subject to final outcome of the instant review application, cannot be a ground to render the application not maintainable. It is the order which depends upon the outcome of application, and not *vice versa*.

9. For the reasons recorded above, this review application is allowed, and the order, dated 05.02.2020, is hereby recalled restoring the petition to its original number and status.

10. Registry is directed to list the petition for further hearing after notifying the parties.

**(TRIBHUVAN DAHIYA)
JUDGE**

21.02.2024
Payal