



2025:DHC:589-DB



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

Date of decision: 31.01.2025

+ W.P.(C) 10352/2022, CM APPL. 29813/2022-Interim relief, CM APPL. 71176/2024-Early hearing by petitioner.

S.K. SRIVASTAVA & ORS.

.....Petitioners

Through: Mr. R. K. Kapoor and Ms. Shweta Kapoor, Advs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Nitinjya Chaudhry, Sr. Panel Counsel and Mr. Rahul Mourya, Adv. for UOI with Mr. Punkaj Kr. Singh, Sec. Officer.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 29.08.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi ('learned Tribunal') in O.A. No.3910/2014. Vide the impugned order, the learned Tribunal has dismissed the Original Application ('O.A.') filed by the petitioners wherein they had prayed that the benefits of Flexible Complementing Scheme ('FCS') granting them *in situ* promotion in their



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respective grades be extended to them from the date of their eligibility.

2. The petitioners, who all are Scientists, have been serving in the respondent no.1 organization on posts ranging from Scientist Grade 'B' to Scientist Grade 'G' and were from time to time, granted the benefit of the FCS. It is the common case of the parties that the said benefit was extended to the petitioners from time to time on the recommendations of the Assessment Boards.

3. As this benefit of FCS was granted to the petitioners after an inordinate delay and not from the due date, they approached the learned Tribunal by way of an O.A. The learned Tribunal, however, rejected their claim by holding that promotion could never be granted with retrospective effect.

4. Being aggrieved, the petitioners have approached this Court by way of the present writ petition. In support of the petition, learned counsel for the petitioners submits that, the learned Tribunal has dismissed the O.A. without appreciating the effect of the decision dated 02.05.2011 of the Apex Court in ***Union of India vs. S.K. Murti*, [2011 SCC OnLine SC 1655]**, wherein the Apex Court allowed a similar claim for grant of ante-dated benefits under the FCS from the due date to Scientists in the Botanical Survey of India.

5. Further, he contends that this decision in ***S.K. Murti (supra)*** has been followed by the Apex Court in its decision dated 25.08.2021, titled ***Union of India & Ors. vs. Vinay Kumar*, [Civil Appeal No.6359/2016 and other connected matters]**.

6. Consequently, on the strength of the two aforesaid judgments, he contends that the impugned order is liable to be set aside and therefore prays



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that the O.A. be allowed.

7. *Per contra*, Mr. Nitinjya Chaudhary, learned counsel for respondents opposes the petition and submits that the delay in constitution of the Assessment Boards as also submission of their recommendations for grant of FCS was not deliberate but only due to administrative exigencies. This, he contends was due to the fact that many experts from all over the country were required to assemble at one place to assess the large number of candidates and make necessary recommendations. He, therefore, prays that the writ petition be dismissed.

8. Having considered the submissions of learned counsel for the parties and perused the record, we find that, in the light of the aforesaid two decisions relied upon by the petitioners, the respondents are not in a position to deny that identical reliefs for grant of ante-dated benefits under FCS have been granted to other similarly placed Scientists in other organizations.

9. It would, therefore, be apposite to note the relevant extract of the decision in **S.K Murti** (*supra*), wherein the Apex Court held as under:-

“5. In our view, reasons assigned by the High Court for directing the petitioners to promote the respondent with effect from the date of acquiring the eligibility are legally correct and the impugned order does not suffer from any legal error warranting Interference under Article 136 of the Constitution.

6. It is not in dispute that vacancies existed when the Departmental Review Committee considered the case of the respondent and other similarly situated persons for promotion. It is also not in dispute that in terms of paragraph 51.25 of the Vth Pay Commission Recommendations, the Departmental Review Committee/ Assessment Board was required to meet every six months, i.e. in January and July and the promotions were to be made effective from the date of eligibility. Therefore, it is not possible to find any flaw in the direction given by the High Court.



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7. *The special leave petition is accordingly dismissed.”*

10. We may also refer to the following extract from the subsequent decision of the Apex Court in ***Vinay Kumar*** (*supra*):-

“13. The decision presently under challenge was based on the earlier decision rendered by the High Court in S. K. Murti which was affirmed by this Court. The view taken by the High Court that the interest of the concerned Scientists could not be put to prejudice as a result of delay in constituting the Assessment Committee in time, was affirmed by this Court.”

11. We also find that while the respondents do not deny that the petitioners were eligible for grant of *in situ* promotion under the FCS from the date of their eligibility, their only justification for delay in granting the said relief to the petitioners is that there was delay in receiving the recommendations from the Assessment Board due to administrative reasons. This plea in our view, needs to be noted, only to be rejected. Once the Scheme, i.e. FCS itself envisages that the Assessment Board must meet in every six months, it was for the respondents to ensure that Assessment Boards are constituted in time. They can, therefore, not be permitted to take shelter under the plea of administrative exigencies.

12. In our considered opinion, once the case of the petitioners is identical to that of similarly situated persons who were granted reliefs in ***S.K Murti*** (*supra*) and ***Vinay Kumar*** (*supra*), the respondents are estopped from raising such issues. In short, according to us, the ratio laid down by the Apex Court in both ***S.K Murti*** (*supra*) and ***Vinay Kumar*** (*supra*), are squarely applicable to the facts of the present case as well and the petitioners are



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clearly entitled to the reliefs sought by them before the learned Tribunal.

13. We, therefore, find no merit in the respondents' opposition to the writ petition which is entitled to succeed. The impugned order being unsustainable is, accordingly, set aside and the writ petition is allowed by directing that the petitioners would be entitled to the reliefs sought for in the O.A.

14. The respondents are granted four months' time to extend the requisite benefits of the FCS to the petitioners from the date of their eligibility as set out in the tabulation by way of Annexure-P12 to the present writ petition.

15. We further direct that, in case, the benefits in terms of this order are not extended to the petitioners on or before 31.05.2025, the amount payable thereafter will carry interest @ 9% w.e.f. 01.06.2025.

16. The present writ petition, along with the pending applications, stands disposed of.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

JANUARY 31, 2025
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