



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil)No(s). _____ of 2024
(Diary No. 43488 of 2023))

GOVERNMENT OF WEST BENGAL & ORS.APPELLANT(S)

VERSUS

DR. AMAL SATPATHI & ORS.RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Delay condoned.
2. Leave granted.
3. The present appeal has been filed by the Government of West Bengal¹ and its components, challenging the judgment dated 1st February, 2023² passed by the High Court at Calcutta, in WPST No. 157 of 2019. The High Court *vide* impugned judgment upheld the order of the West Bengal Administrative Tribunal³, which directed that respondent No. 1, Dr. Amal Satpathi, though not

¹ Hereinafter being referred to as “appellant No. 1”.

² Hereinafter being referred to as “Impugned judgment”.

³ Hereinafter being referred to as “Tribunal”.

entitled to retrospective promotion after his superannuation, should be awarded notional financial benefits for the promotional post of Chief Scientific Officer as of his retirement date i.e., 31st December, 2016. The appellants are aggrieved by this direction, contending that no financial benefits, even on a notional basis, are admissible to respondent No. 1 who never assumed charge of the promotional post.

Brief Facts: -

4. Respondent No.1, Dr. Amal Satpathi, was promoted to the post of Principal Scientific Officer on an officiating basis on 24th March, 2008. On 6th January, 2016, following an amendment to the relevant Recruitment Rules, respondent No.1 became eligible for promotion to the post of Chief Scientific Officer. The Department⁴ initiated the promotional process by approaching the Public Service Commission⁵ on 13th April, 2016. The PSC, *vide* its minutes dated 29th December, 2016, recommended the name of respondent No.1 for the promotion to the said post. However, the Department received the final approval for his promotion on 4th January, 2017, but by that time, respondent No.1 had already superannuated on 31st December, 2016. Respondent No.1 made

⁴ Science and Technology Department

⁵ In short, 'PSC'

a representation to the Department to give effect to his promotion.

The matter was then referred to the Finance Department, Government of West Bengal. The reply of the Finance Department is extracted below: -

“In terms of rule 54(1)(a) of W.B.S.R. Part-I, a Govt. employee shall not draw pay higher than that of his permanent post unless the officiating appointment involves the assumption of duties and responsibilities of greater importance.

In the instant case Dr. Amal Satpathi could not join to the promotional post within his service tenure. He retired on superannuation on 31.12.2016. As a result officiation to the higher post with greater responsibilities and importance does not arise.

As such appointment on promotion after retirement with retrospective effect can not be awarded for Gr.-'A' posts.

We are, therefore, of the same opinion stated by F.A., dated 16.2.2017.”

5. Aggrieved by the denial of the benefits flowing from promotion, respondent No. 1 approached the Tribunal by filing O.A. No. 555 of 2017. The Tribunal *vide* order dated 26th June, 2019 observed that, as per Rule 54(1)(a) of the West Bengal Service Rules, Part-I of 1971⁶, promotion cannot be granted retrospectively after the retirement of a Government employee. However, the Tribunal acknowledged that respondent No. 1 had been duly recommended for promotion before his superannuation, which

⁶ Hereinafter, being referred to as 'West Bengal Service Rules'

was only delayed due to procedural obstructions beyond his control. Therefore, while actual promotion was not acceded to, the Tribunal directed that respondent No.1 should be granted notional financial benefits of the promotional post with effect from 31st December, 2016, to ensure pensionary benefits commensurate with the promotional post.

6. The appellants challenged this order before the High Court in WPST No. 157 of 2019. The High Court, *vide* judgment dated 1st February, 2023 dismissed the writ petition, concurring with the Tribunal that retrospective promotion was impermissible but noting that notional financial benefits were justified given that no fault can be attributed to respondent No. 1. Aggrieved, the State has preferred this appeal by special leave.

Submissions on behalf of the appellants: -

7. Learned counsel for the appellants submitted that the High Court erred by awarding pensionary benefits of the promotional post to respondent No. 1 while rejecting his plea for notional promotion. This direction is in teeth of Rule 54(1)(a) of the West Bengal Service Rules, which provides that a Government employee cannot draw a higher pay without assuming duties of greater responsibility.

8. He further submitted that service jurisprudence does not recognize retrospective promotion without a specific enabling provision, therefore, notional promotion cannot be granted retrospectively unless there exists a specific rule or exceptional circumstances. In the present case, Rule 54(1)(a) of the West Bengal Service Rules, precludes retrospective promotion.

9. Learned counsel further submitted that the final approval for the Chief Scientific Officer position was granted on 4th January, 2017, after the respondent's superannuation on 31st December, 2016, thus, the promotion could not be effected during his service tenure and therefore, in the absence of any specific rule permitting retrospective promotion, the effective date of promotion should be the date on which it is granted, not the date of the vacancy.

10. He also submitted that respondent No.1 has no legally enforceable right to receive a higher pay scale without having assumed the post, and referred to the State's Promotion Policy (Notification No. 4982-F, 17.06.2005), which mandates that promotions are effective only upon the assumption of charge.

11. In support of these contentions, learned counsel for the appellants relied upon the case of ***Union of India v. N.C. Murali***⁷,

⁷ (2017) 13 SCC 575

to contend that without a specific rule entitling employees to promotion from the date of vacancy, the right to promotion arises only when it is actually effected. He also relied upon ***Sunaina Sharma v. State of Jammu & Kashmir***⁸, wherein this Court held that promotion cannot be retrospectively granted from a date before the employee was in the cadre, as it would violate Articles 14 and 16 of the Constitution of India. He thus implored the Court to set aside the impugned judgment and accept the appeal.

Submissions on behalf of respondent No. 1: -

12. *E-converso*, learned counsel for respondent No.1 submitted that respondent No.1 had been serving as Principal Scientific Officer since 24th March, 2008, and could have been promoted to Chief Scientific Officer as early as in the year 2013, had the Department submitted a timely proposal to fill up the vacancy. It was submitted that the Department failed to timely provide the confidential reports and other details of respondent No.1 to the PSC by 13th April, 2016, as required under the Rules. This inaction, for reasons best known to the officials concerned, led to a significant delay in the promotion process and thus, respondent

⁸ (2018) 11 SCC 413

No.1 was deprived of this rightful claim to the fruits of promotion from the date of occurrence of vacancy as per his entitlement.

13. It was further submitted that, had the Department officials acted with promptitude and diligence, respondent No.1 would have in all probability received the promotion long before his retirement. The delay in processing the respondent's documents and service record, which were forwarded by the PSC on 29th December, 2016 i.e. only two days before his superannuation on 31st December, 2016, deprived him of the opportunity to serve in a higher post and to benefit from the associated financial benefits of the promotional post of Chief Scientific Officer which would include a higher pension.

14. It was further submitted that the laches on the part of the Department in moving the PSC after the Gazette notification on 6th January, 2016, and the submission of incomplete documents on 13th April, 2016, reflects a lackadaisical approach by the officials that led to the denial of the promotion to respondent No.1. He thus, contended that the impugned judgments which provided equitable relief to respondent No.1 do not warrant interference.

Discussion and Conclusion: -

15. The primary question that arises for our consideration in the present appeal is whether respondent No.1, who was recommended for the promotion before his retirement but did not receive actual promotion to the higher post due to administrative delays, is entitled to notional financial benefits of the promotional post after his retirement?

16. We have perused the pleadings and the records and have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties.

17. The relevant provision i.e., Rule 54(1)(a) of the West Bengal Service Rules, is extracted hereinbelow for the sake of ready reference:

“Pay on Officiating Appointment- 54(I)(a): Subject to the provisions of Chapter VII, a Government employee who is appointed to officiate in a post **shall not draw pay higher than* “his substantive pay” in respect of a permanent post, other than a tenure post, unless the officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post, on which he holds a lien, or would hold a lien had it not been suspended:**

Provided that the Governor may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions of this rule and subject to such conditions as the Governor may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and may thereupon be granted the same pay as they would have received if still in the ordinary line.”

(emphasis supplied)

18. Upon a bare perusal of Rule 54(1)(a) of the West Bengal Service Rules, it is clear that promotion cannot be retrospectively granted after retirement, as it requires the actual assumption of duties and responsibilities of the promotional post. In the present case, since respondent No. 1 superannuated before the final approval of his promotion, he could not have formally assume the charge of the promotional post of Chief Scientific Officer. Therefore, although respondent No. 1 was recommended for promotion, Rule 54(1)(a) of the West Bengal Service Rules precludes him from getting the financial benefits of the promotional post without having taken on the responsibilities of the said post i.e. Chief Scientific Officer.

19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of ***Bihar State Electricity***

Board and Others v. Dharamdeo Das⁹, wherein it was observed as follows:

“18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in *Ajay Kumar Shukla v. Arvind Rai*¹⁰ where, citing earlier precedents in *Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty*¹¹ and *Ajit Singh v. State of Punjab*¹², a three-Judge Bench observed thus:

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 *Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty* in para 4 of the report which is reproduced below:

‘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 relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of 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 v. State of Punjab*, 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:

⁹ 2024 SCC OnLine SC 1768

¹⁰ (2022) 12 SCC 579

¹¹ (1991) 2 SCC 295

¹² (1999) 7 SCC 209

‘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:

‘there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State’.

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).

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27. In our opinion, the above view expressed in *Ashok Kumar Gupta* [***Ashok Kumar Gupta v. State of U.P.***]¹³, and followed in *Jagdish Lal* [***Jagdish Lal v. State of Haryana***]¹⁴, and other cases, if it is intended to lay down that the right

¹³ (1997) 5 SCC 201

¹⁴ (1997) 6 SCC 538

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 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.], right from 1950.’

.....

“20. In ***State of Bihar v. Akhourri Sachindra Nath***¹⁵, it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in ***Keshav Chandra Joshi v. Union of India***¹⁶, where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in ***Uttaranchal Forest Rangers’ Assn. (Direct Recruit) v. State of U.P.***¹⁷, in the following words:

‘37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in *Keshav Chandra Joshi v. Union of India* held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any

¹⁵ 1991 Supp (1) SCC 334

¹⁶ 1992 Supp (1) SCC 272

¹⁷ (2006) 10 SCC 346

seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime.”

(emphasis supplied)

20. In the instant case, it is evident that while respondent No. 1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision.

21. While we recognize respondent No.1’s right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.

22. As a result of the above discussion, the judgment dated 1st February, 2023 passed by the High Court of Calcutta and the judgment dated 26th June, 2019 passed by the Tribunal are unsustainable in the eyes of law and are hereby reversed and set aside.

23. The appeal is allowed accordingly. No order as to costs.

24. Pending application(s), if any, shall stand disposed of.

.....**J.**
(PAMIDIGHANTAM SRI NARASIMHA)

.....**J.**
(SANDEEP MEHTA)

New Delhi;
November 27, 2024.