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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.2955 OF 2024(F)

Mrs. Anita Yuvraj Naik
Age 59,
Section Officer, Goa Legislature
Secretariat,
Assembly Complex, Porvorim Goa,
Resident of House No. 646/1,
Kadamba Depot Road,
Bardez Goa.

...Petitioner

Versus

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. Goa Legislature Secretariat
Through its Secretary,
Assembly Complex,
Alto Porvorim, Porvorim-Goa.

3. Namrata Ulman,
Secretary, Legislature Goa Legislature
Secretariat Assembly Complex,
Alto Porvorim, Porvorim-Goa.

Respondents

Mr S.D. Lotlikar, Senior Advocate with Mr Terence Sequeira,
Advocate for the Petitioner.

Ms Maria Correia, Additional Government Advocate for
Respondent No.1.

Mr Shubham Priolkar, Additional Government Advocate for
Respondent No.2.

CORAM:

**BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

Reserved on : 1st JULY 2025
Pronounced on: 7th JULY 2025

JUDGMENT: (*Per Nivedita P. Mehta, J.*)

1. Heard Mr S.D. Lotlikar, learned Senior Advocate along with Mr T. Sequeira for the petitioner, Ms Maria Correia, learned Additional Government Advocate for respondent No.1 and Mr Shubham Priolkar, learned Additional Government Advocate for respondent no.2.

2. Rule. The rule is made returnable forthwith with the consent of and at the request of the learned counsel appearing for the parties.

3. By the present petition, the petitioner has sought a writ of mandamus against the respondent no.2 to promote the petitioner to the post of Section Officer from the retrospective date when the vacancies arose on the death of one Ganpat Palni, that is, with effect from 10.12.2016, with all consequential benefits such as back wages, arrears and other retirement benefits. The petitioner has further sought direction to restrain the respondents from taking any action in furtherance of the Memorandum dated 23.08.2024 and the show cause notice dated 24.10.2024.

4. The matter was listed for hearing on 8.01.2025. This court, after hearing the parties, passed the following order:

“1. So far as prayer clauses (B) and (C) are concerned, learned counsel for the Petitioner submitted that with a view to resolve the issue, petitioner is willing to tender an apology.

2. Mr. Priolkar, learned Additional Government Advocate on instructions submitted that if such an apology is tendered, the same shall be accepted and memorandums dated 23.08.24 and 24.10.2024 and the show cause notice dated 24.10.2024, mentioned in prayer clauses (B), (C) and (D) will be withdrawn. However, learned counsel for the petitioner wishes to press for prayer clause (A). Prima facie, we are not inclined to accept the submission of the learned counsel for the petitioner. Learned counsel for the Petitioner, therefore, seeks some time to take instructions. However, we make it clear that in the event the Petitioner wishes to pursue the challenge to prayer clause (A), we will hear the Petitioner and decide prayer clause (A) on merits.”

5. In the aforesaid background, the matter is taken up for hearing only on the ground of entitlement of the petitioner for promotion to the post of Section officer from the retrospective date when the vacancy arose, that is w.e.f.10.12.2016 with all consequential benefits.

6. The brief facts of the case are that the petitioner was appointed to the post of Lower Division Clerk in the year 1989. Thereafter, she was promoted to the post of Assistant. The petitioner, having completed more than 3 years in the post of Junior Assistant, was eligible for promotion to the post of Assistant. There were 6 vacancies to be filled as on 1.04.2002. The Departmental Promotion Committee (herein after referred to as ‘DPC’) met on 02.04.2002 for filling up of the said 6 posts. In total, 12 candidates were included in the zone of consideration, wherein the petitioner was ranked at Sr. No. 6. The DPC gave overall grading for the last 5 years, where the petitioner had 3 ‘Very Good’, 1 ‘Good’ and 1 ‘Average’ grading. Still, the DPC excluded the name of the petitioner and recommended the name of one Smt. Farida

Muzawar (ranked 9th in the zone of consideration), who had only 1 'Very Good' and 4 'Good' grading. In doing so, the DPC superseded and displaced 3 candidates, i.e., the Petitioner, Sushasini Mapari and Raghunath Raut, without giving any justification whatsoever for excluding the Petitioner and the other two candidates. Consequently, Smt. Farida Muzawar and others were promoted to the post of Assistant on 08.04.2002.

7. Aggrieved by the exclusion, the petitioner preferred Writ Petition No.122 of 2003 before this Court. During the pendency of the said petition, 2 more vacancies in the post of 'Assistant' arose in the year 2005. Again, a DPC meeting was held on 27.02.2005 to fill up the said 2 vacancies. Despite the petitioner holding the rank at Sr. No.1 in the seniority in the post of Junior Assistant, one Smt. Seema Kakodkar and Smt. Nancy Remedious were recommended.

8. Subsequently, in the year 2007, there were 5 further vacancies of Assistants. The petitioner, along with 4 others, was recommended for the post of Assistant by the DPC held on 12.09.2007 and accordingly, the petitioner assumed the promotional post on 18.09.2007. However, the DPC meeting was reviewed by a Review DPC held on 05.07.2011, which recommended the promotion of Shri Ramchandra Palekar against the reserved vacancy of ST, in place of the candidate at sr. No. 5 i.e., Kum. Kunda Kerkar.

9. As such, the Petitioner was promoted to the post of Assistant during the pendency of Writ Petition No.122 of 2003, on the

recommendation by the DPC, which met on 12.09.2007. When the said Writ Petition came up for hearing on 25.01.2011, this Court partly allowed the petition by directing respondent no. 2 to convene a Review DPC in order to determine the seniority. The Reconstituted DPC (Review) thereafter met on 30.09.2011 and reviewed the earlier DPC meeting, which was held on 02.04.2002. The Review DPC found that the petitioner, on the basis of seniority, was eligible for consideration to the sixth post in the first instance. It was further held that the petitioner's performance for the years 1996-97, 1977-98 and 1998-99 was rated 'very good'; for 1999-00 as 'good' and 'average' for the year 2000-01. The Committee was of the view that the petitioner's three consecutive 'very good' ratings along with one 'good' rating should have nullified the 'average' rating for the year 2000-01, and thus, the 'average' rating should have been ignored in view of her overall past performances. After assessing the ACRs of Smt. Farida Muzawar, the Review DPC, opined that the petitioner ought to have been placed above Smt. Farida Muzawar and, accordingly, recommended the petitioner's promotion to the post of Assistant retrospectively w.e.f. 02.04.2002, while reverting Smt. Farida Muzawar, who was promoted ahead of the petitioner, to the post of Junior Assistant. In light of the recommendations of retrospective promotion, there arose a need to consequently review the DPCs held in the year 2005 and 2007, where the petitioner and others had been considered. Hence, the Review DPC also reviewed the DPC held on 27.01.2005, and recommended Smt. Farida Muzawar and Smt. Seema Kakodkar for promotion to the post

of Assistant, while also recommending the revision of Smt. Nancy Remedious back to the post of Junior Assistant.

10. The Petitioner was promoted to the post of Senior Assistant on 28.10.2011. There was no objection or protest raised regarding the said promotion. Further, a tentative seniority list was circulated vide circular dated 16.04.2018. As no objections were raised against the tentative seniority list, the Secretariat subsequently issued a final Seniority List of Senior Assistants at the Goa Legislature Secretariat, which was circulated vide Circular dated 15.06.2018.

11. The next post for promotion was that of Section Officer. As per the Recruitment Rules published in the Official Gazette on 01.08.2013, a person holding the post of Senior Assistant in the Goa Legislature Secretariat with a minimum of 3 years of regular service in the grade is eligible for promotion to the post of Section Officer. The petitioner contends that the ratio between promotion and direct recruitment was 60% (promotion): 40% (direct recruitment). In total, there are 10 posts of Section Officer, out of which 6 are reserved for promotion and 4 are reserved for direct recruitment.

12. On 09.12.2016, one Ganpat Palni, who was working as a Section Officer, expired, and as such, one post of Section Officer fell vacant. The post held by Ganpat Palni was from the promotional category. Even though the post had fallen vacant, respondent no.2 failed to take steps to fill the said vacancy. As there was no sign of filling the said vacant post arising due to the demise of Ganpat Palni, the

Petitioner was constrained to make a representation vide her letter dated 01.03.2018. As there was no reply from respondent no.2 to the letter dated 01.03.2018, the petitioner again, on 29.03.2018, inquired as to the action initiated in respect of her representation.

13. The respondent no.2, vide Memorandum dated 27.04.2018, replied stating that the two existing posts would be filled under the prevalent Recruitment Rules. The petitioner again made a representation vide her letter dated 24.10.2018 to the respondent no.2, stating therein that if the vacancies are not filled, there is a possibility of the said post lapsing and therefore requested that the said post should be filled at the earliest by conducting a DPC meeting.

14. The respondent no.2, vide order dated 23.10.2020, was pleased to appoint the petitioner to the post of Section Officer. The appointment order stated that the petitioner was appointed against the vacancy caused due to the demise of Shri Ganpat Palni, who had expired on 09.12.2016. The petitioner thereafter made a representation to respondent no.2, requesting that her promotion be granted from the date when the clear vacancy of the post of Section Officer arose on 09.12.2016. However, there was no reply to the representation made by the petitioner.

15. The respondent no.2, issued a Corrigendum dated 28.04.2021 to the appointment order of the petitioner dated 23.10.2020, stating therein that the petitioner's promotion was made against the vacancy of the Section Officer caused due to the retirement of Smt. Perpetina

D'Souza, Section Officer on superannuation. This was done to frustrate the petitioner's claim for promotion with a retrospective effect.

16. Due to the various representations made by the petitioner, respondent no.2 stopped allocating work to the petitioner. The petitioner was made to sit in a room and was humiliated. Consequently, the petitioner approached the Goa Human Rights Commission by filing her complaint dated 30.05.2024.

17. The Commission was pleased to issue notice to respondent no.2. The respondent no.2 appeared and filed a reply.

18. On 19.08.2024, the Corrigendum dated 28.04.2021 was deemed to be withdrawn with effect from 28.04.2021. On 23.08.2024, respondent no.2 issued a Memorandum stating that the petitioner has secured promotion by misinterpretation of the order of this Court passed in Writ Petition no.122 of 2003. Along with the Memorandum dated 23.08.2024, a document dated 23.08.2024, which appears to be a report of the respondent no.3, Secretary of the respondent no.2, was also annexed. In the said report, it was alleged that the petitioner's husband, who held the second-highest position in the hierarchy of respondent no.2, influenced the DPC.

19. The petitioner replied to the Memorandum dated 23.08.2024 on 09.09.2024, stating that there is no basis for the allegations levelled against her. Subsequently, the petitioner made an application to withdraw the proceedings before the Human Rights Commission.

20. Respondent no.3 issued a Memorandum dated 24.10.2024 stating that the petitioner had dragged respondent no.2 before the Goa Human Rights Commission, thereby bringing respondent no.2 into dispute and interfering with its smooth functioning. It was further stated that respondent no.2 was exercising jurisdiction and powers under Article 194 of the Constitution of India, as the petitioner had committed grave breach of privilege and contempt of respondent no.2 by filing a complaint before the Human Rights Commission, which according to respondent no.3, was an offshoot of the Executive Branch of the State of Goa.

21. Respondent no.3, by the said show cause notice, called upon the petitioner to explain why the penalty as provided under the relevant provisions of the CCS (CCA Rules) 1965 should not be imposed for purportedly bringing the Authorities of the House into Contempt and disrepute.

22. The petitioner replied to the show cause notice dated 24.10.2024, stating that she would be constrained to approach the High Court if the said Show Cause Notice was not withdrawn within 10 days.

23. Aggrieved by the belated promotion to the post of Section Officer as well as by the impugned Memorandum dated 23.08.2024, Memorandum dated 24.10.2024 and the impugned Show Cause Notice dated 24.10.2024, the petitioner preferred the present Writ Petition.

24. Mr S.D. Lotlikar, the learned Senior Counsel appearing for the petitioner, made the following submissions:

22.1 Despite there being a clear vacancy, respondent no.2 failed to hold a DPC to fill the vacancy caused by the death of Ganpat Palni on 09.12.2016. Respondent no.2 in its Memorandum dated 27.04.2018, had clearly stated that there are two vacancies available, and that they will be filled according to the quotas prescribed under the prevalent Recruitment Rules. However, respondent no.2 did not take any steps to fill up the post, and after almost two years, filled up one post by promoting the petitioner. As such, by the Memorandum dated 27.04.2018, respondent no.2 sought to delay the holding of DPC with ulterior motives, by giving the impression that it intended to fill the post by direct recruitment.

22.2 There is no justification whatsoever for the delay in filling up the said post of Section Officer, which remained vacant for almost 4 years. The said conduct is smacked with a malicious intention only to prevent the petitioner from attaining the post of Section Officer.

22.3 The Petitioner has a legitimate right to be considered for promotion to the post of Section Officer on the death of Ganpat Palni.

22.4 The learned Senior Counsel, during his arguments, has categorically submitted that he does not intend to harp on the allegations of malafides. His sole contention is confined to seeking the promotion granted to the petitioner on 23.10.2020 to the post of Section Officer be made effective retrospectively from the date the

vacancy arose due to the death of Ganpat Palni, that is, w.e.f. 10.12.2016, along with all the consequential benefits like back wages, arrears, pensionary and other retirement benefits.

22.5 There is no whisper about the steps taken by the Respondent no.2 from 2016 (date of vacancy) to 2018 (date of purported advertisement for direct recruitment). The reply fails to mention the steps taken after the advertisement for direct recruitment was issued. Moreover, the petitioner, by her representation, had requested to fill the post of Section Officer. The entire affidavit does not disclose the reasons for the delay in filling the post of promotion. The respondent no. 2 failed to state what the administrative reasons were for the delay in filling the post. It is false and incorrect to state that the Board in 2016 felt the need to appoint persons having a law degree to the post of Section Officer through direct recruitment. The vacant post of Mr. Ganpat Palni lapsed on 09.12.2016, could not have been filled up unless the same had to be revived, is baseless and an afterthought to deny the petitioner's promotion from 2016. The ratio prescribed in the Recruitment Rule, i.e, 6 by promotion and 4 by direct recruitment has been maintained has never been maintained.

22.5 As the respondents failed to constitute the DPC within a reasonable time in the year 2016 after the vacancy of the post of Section Officer arose due to the death of Ganpat Palni, it has caused grave prejudice to the petitioner. Furthermore, the respondents have offered no justification whatsoever for not convening the DPC at the time when the actual vacancy arose.

25. The learned Senior Counsel appearing for the petitioner, in support of his contentions, has placed reliance on the following cases :

- i) *Nirmal Chandra Bhattacharjee and Ors. V/s. Union of India & Ors.*¹,
- ii) *Union of India and Ors. V/s. K.L. Taneja and Ors.*²,
- iii) *Union of India & Ors. V/s. N.R. Banerjee & Ors.*³,
- iv) *P.N. Premchandran V/s. State of Kerala & Ors.*⁴,
- v) *Union of India & Ors. V/s. Hemraj Singh Chauhan and Ors.*⁵,
- vi) *Major General H.M. Singh, VSM V/s. Union of India and Anr.*⁶

26. Per contra, the learned Additional Government Advocates appearing for respondent nos.1 and 2, while opposing the submissions made by the learned Senior Counsel appearing for the petitioner, have advanced the following arguments:

24.1 The DPC could not be convened at the time when the post of Section Officer felt vacant due to administrative reasons which were beyond the control of respondent no.2. It is further submitted that as per the Recruitment Rules applicable to the post of Section Officer in the Goa Legislature Secretariat, the sanctioned strength of the post is 10, with a quota prescribed of 60:40, i.e. 6 posts to be filled by promotion and 4 by direct recruitment. As of this date, the Secretariat has filled only one post through direct recruitment.

¹ 1991 Supp (2) SCC 363

² WP(C) 8102/2012 dated 12.04.2013/2013 DHC 1859 - DB

³ Civil Appeals Nos.16986-87 of 1996 dated 16.12.1996

⁴ (2004) 1 SCC 245

⁵ AIR 2010 SC 1682

⁶ (2014) 3 SCC 670

24.2 The Goa Legislature Secretariat primarily deals with legislation and other matters related thereto. The then members of the Board were of the view that it would be appropriate to appoint persons possessing a law degree to the post of Section Officer. This decision was taken to meet the needs of the Goa Legislature Secretariat and keeping in mind future promotional posts.

24.3 Consequently, the seniority list dated 20.07.2016 of incumbents holding the post of Senior Assistant, which is a feeder grade to the post of Section Officer, reveals that the majority of these incumbents possessed only SSC and HSSC qualifications. The members of the Board in 2016 felt it necessary to appoint persons holding a law degree to the post of Section Officer through direct recruitment. In pursuance of this objective, an advertisement dated 09.11.2018 was published in the newspapers inviting applications for direct recruitment to the said post.

24.4 Concerning the petitioner's representation dated 01.03.2018, the petitioner was duly informed vide letter dated 27.04.2018 that the sanctioned strength of posts of Section Officers in the Goa Legislature Secretariat is 10, with the ratio of the quota prescribed for filling up the post of Section Officer being 60:40, i.e. 6 posts to be filled by promotion and 4 by direct recruitment. As of today, the Secretary has only filled 1 post through direct recruitment.

24.5 The Office Memorandum dated 07.03.2008 states that all the posts that remain vacant for a period of 2 years or more are deemed to have lapsed. Any appointment to such lapsed posts can be made only

after the posts are duly revived after following the due procedure, which includes obtaining the necessary permission from the Cabinet, the Chief Minister and the Finance Minister.

24.6 The post of Section Officer, which fell vacant upon the death of Mr Ganpat Palni on 09.12.2016, stood lapsed on 08.12.2018. The said post could not have been filled unless the same was revived after following due procedure. The petitioner was thereafter promoted to the revived post of Section Officer on 23.10.2020, only after completing the necessary formalities for the revival of the said post. Hence, the contention of the petitioner that the promotional order should be made effective to the post of Section Officer retrospectively from 10.12.2016 is contrary to law as well as the recommendation of the DPC.

27. In support of their submission, the learned Additional Government Advocates have relied on the following cases:

- i) *Union of India and Anr. V/s. Manpreet Singh Poonam and Ors.*⁷
- ii) *Government of West Bengal & Ors. V/s. Dr Amal Satpathi & Ors.*⁸,
- iii) *Madhulika Sharma V/s. Govt of NCT of Delhi & Anr.*⁹.

28. We have heard the learned counsel appearing for the respective parties.

⁷ (2022) 6 SCC 105

⁸ 2024 INSC 906

⁹ 2017 SCC Online Del 8137

29. It is not in dispute that the vacancy to the post of Section Officer arose in 2016. However, no DPC was convened at that time to fill the post. The petitioner was promoted to the said vacant post of Section Officer on 23.10.2020 after following due procedure for the revival of the said post. The appointment order mentions the in pursuance of Rule 4 (2) of the Goa Legislature Secretariat (Recruitment and Conditions of Services) Rules, 1988 the Governor in consultation with the “Board” is pleased to promote the petitioner to the post of Section Officer, Group “B” (Gazetted) in the Pay Matrix Level 7, w.e.f. 23rd October 2020, on a regular basis. The normal rule of law is that nobody can be promoted with retrospective effect except when there exist facts that necessitate it, or there is a rule which permits it. Due to administrative reasons, the DPC was not convened. The promotion to the post should take effect from the date the promotion is granted, and not from the date the post falls vacant. The Hon’ble Supreme Court takes this view in the case of *Union of India and others Vs. K.K. Vadera and Ors.*¹⁰, which read thus:

“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 be effective from the date of the creation of additional posts,

¹⁰ 1989 Supp (2) SCC 625

then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of candidates for promotion....”

30. In *Baij Nath Sharma Vs. Hon’ble Rajasthan High Court at Jodhpur and Anr.*¹¹ The Hon’ble Apex Court, relying upon the law declared in *K.K.Vadera’s* case, held that a member of the Rajasthan Judicial Service could not be promoted from the date when the vacancy accrued in the Rajasthan Higher Judicial Service against which vacancy he was ultimately promoted.

31. In the case of the *Union of India and Anr. V/s. Manpreet Singh Poonam and Ors.*¹², the Hon’ble Apex Court held that mere existence of a vacancy per se will not create a right in favour of the employee for retrospective promotion. The vacancies in promotional posts are specifically provided under rules which also mandate clearance through a selection process.

32. This view has been reiterated in the recent judgment of the Hon’ble Supreme Court in *Government of West Bengal & Ors. V/s. Dr Amal Satpathi & Ors.*¹³. It would be relevant to reproduce paragraph 19 of the said judgment, which reads as under:

“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

¹¹ 1998 (7) SCC 44

¹² (2022) 6 SCC 105

¹³ 2024 INSC 906

a recent decision of this Court in the case of **Bihar State Electricity Board and Others V/s. Dharamdeo Das**¹⁴, 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/s. Arvind Rai**¹⁵ where, citing earlier precedents in **Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty**¹⁶ and **Ajit Singh V/s. State of Punjab**¹⁷, 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/s. 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

¹⁴ 2024 SCC OnLine SC 1768

¹⁵ (2022) 12 SCC 579

¹⁶ (1991) 2 SCC 295

¹⁷ (1999) 7 SCC 209

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:

'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 v. State of U.P.*¹⁸, and followed in *Jagdish Lal v. State of Haryana*¹⁹, and other cases, 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 fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before *Ashok Kumar Gupta v. State of U.P.*, right from 1950.’

“20. In *State of Bihar v. Akhouri Sachindra Nath*²⁰, 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*²¹,

¹⁸ (1997) 5 SCC 201

¹⁹ (1997) 6 SCC 538

²⁰ 1991 Supp (1) SCC 334

²¹ 1992 Supp (1) SCC 272

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/s. State of U.P.**²², 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 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)

33. The petitioner cannot claim a vested right to promotion. The petitioner was granted promotion when the DPC was convened and

²² (2006) 10 SCC 346

was promoted to the post of Section Officer in 2020. Thus, a promotion cannot be granted before the convening of the DPC, which considers the question of promotion.

34. The judgments relied upon by the petitioners do not apply to the facts of the present case, rendering them inapplicable in support of the petitioners' case as discussed hereunder:

35. The Hon'ble Supreme Court in *P.N. Premachandran* (supra) held that those who have been acting in a higher post for a long time, although temporarily, but were qualified at the time when they were so promoted and found to be eligible by the Department Promotion Committee at a late date, should be promoted with retrospective effect.

36. *Hemraj Singh Chouhan and Ors.* (supra), invoked its power under Article 142 of the Constitution of India, subject to the only rider that in normal cases the provision of Rule 4(2) of the Said Cadre Rules cannot be construed retrospectively.

37. In *N.R. Banerjee & Ors.* (supra), it was held by the Apex Court that inclusion of a name in the panel does not create any right to be appointed, and the government is free not to fill up the vacancy.

38. Similarly, in the judgment of *Major General H.M.Singh* (supra), the question for consideration was whether a person on extension can claim promotion qua the vacancy, which had arisen prior to his retirement? In the aforementioned case it was held that if an officer attains the age of retirement without there being a vacancy for his consideration to a higher rank, even though he is eligible for the

same, such an officer, who is granted extension in service, cannot claim consideration for promotion against a vacancy, which has become available during the period of his extension in service.

39. In the case of *Nirmal Bhattacharjee* (supra), the consideration was altogether on the facts of the aforesaid case, which dealt with the restructuring of a significant percentage of Class D employees (65%) who were moved to Class D, which affected the promotional eligibility of the appellants. The legal principle applied in the said case is inapplicable in the present matter.

40. In *K.L.Taneja* (supra), the Court clarified that issues related to seniority and further promotion rights should be determined based on the specific language of the service rules. The overall legal stance was that service jurisprudence does not generally recognize retrospective promotion unless explicitly permitted by rules or justified by exceptional circumstances such as malafide delays. Administrative lapses without mala fide do not warrant retrospective promotion.

41. It is pertinent to note that, in terms of the Recruitment Rules, the strength of posts of Section Officers at the Goa Legislature Secretariat is 10, and the quota prescribed for filling up the post of Section Officer is 60:40, that is, 6 posts by promotion and 4 by direct recruitment. However, the DPC could not be convened at the time when this post of Section Officer fell vacant due to administrative reasons. The Office Memorandum dated 07.03.2008 stated that posts that remain vacant for 2 years or more are deemed to have lapsed.

When the DPC was convened, the petitioner was rightly considered for the promotion to the post of Section Officer.

42. Considering the facts and circumstances of the case, the decisions of the Hon'ble Supreme Court and High Court cited supra, and since there are no materials to establish that the respondents have wantonly delayed the petitioner's promotion, there is no taint of malice for the delay, this Court is of the firm view that the petitioner has not satisfied the criteria for grant of promotion with retrospective effect from the date on which the post of Section Officer fell vacant i.e., 09.12.2016. Consequently, the grant of other retirement benefits also fails. The contention of the learned Senior Counsel that there is no justification for the ground of delay on account of administrative reasons at the hands of the respondent department, is liable to be rejected on the following grounds:

- i) Promotion is not a fundamental right of a person or a vested right,
- ii) The petitioner was granted promotion on 23.10.2020 after the DPC was convened; therefore, the claim that the petitioner should be given promotion with retrospective effect from 10.12.2016, when the vacancy accrued, is not in accordance with the law laid down by the Hon'ble Apex Court;

iii) The petitioner has failed to demonstrate that, due to malafide or illegality on the part of the respondents, the DPC was intentionally not convened.

43. In view of the above, the Writ Petition stands dismissed. No Costs. Rule stands discharged.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.