From the Desk of Editor

A CALL FOR REFORMATION: POWER DYNAMICS IN DISCIPLINARY INQUIRIES

The concern at hand is of paramount significance and revolves around the multifaceted role that the management undertakes as the disciplinary authority. In this capacity, the management not only functions as the prosecutor but also assumes the role of the judge, simultaneously wielding administrative and judicial powers. Furthermore, the management holds extensive powers to conduct audits, inspections, and investigations at their discretion, thereby endowing them with absolute authority to swiftly and effectively address instances of misconduct.

However, the fundamental question that continues to perplex us is whether these extensive powers and capabilities have, in reality, empowered the management to pinpoint wrongdoers and foster discipline, cleanliness, and integrity within the realm of banking services. Despite being equipped with these impressive administrative and quasi-judicial capabilities, we must introspect on whether we are indeed accomplishing the desired outcomes in terms of eradicating misconduct and corruption while promoting ethical behavior.

The core issue at hand pertains to the inclination of certain officials to wield power without assuming a commensurate level of responsibility. In some cases, we notice an absence of well-defined objectives, a deficiency in motivation, a lack of a clear mission, an intense pursuit of targets, and, most disconcertingly, a dearth of genuine intent. While we actively strive to combat corruption at lower

levels, it becomes evident that the prevalence of corruption often aligns with the extent of power exercised, particularly among senior officials.

Additionally, senior executives, who frequently interact with prominent clients from the trade and industry sectors, may become more vulnerable to the allure and temptations associated with their positions of authority. These interactions provide opportunities for corruption, as the trade and industry sectors, often the origins of corrupt practices, seek to exert influence and entice not only senior executives but also bureaucrats. The accumulation of unassessed income and undisclosed wealth in this process further fuels corrupt practices.

We hold a steadfast belief that the conduct of departmental inquiries must be grounded in unwavering good faith, bona fides, and unassailable objectivity on the part of the management. It is imperative that the principles of a quasi-judicial approach and the extension of natural justice to delinquent officers are rigorously upheld, free from any bias or favoritism, regardless of one's position within the organization. We further stress the importance of judicious and prudent exercise of power that aligns seamlessly with the corporate objectives, rather than resorting to arbitrary or reckless actions.

Nevertheless, when these standards and safeguards are absent, the potential for power to devolve into misuse and abuse becomes palpable. This blurring of lines between public interests and private interests serves as a fertile ground for the proliferation of corruption. It compels us to confront critical questions about the attributes or indicators of supervision that precipitate the misapplication or abuse of authority.

In the context of banking institutions, regional and zonal managers wield significant authority when it comes to selecting officers for charge sheets. Audit findings often play a crucial role in identifying these individuals. However, a concerning lack of accountability persists

among privileged staff working in administrative or head offices, effectively shielding them from the scrutiny they rightfully deserve. It is imperative that we urgently institute a framework to assess whether proximity to influential superiors should influence decisions of this magnitude, thereby curbing the potential for abuse or misuse of authority to victimize junior officers.

These distortions in the enforcement of disciplinary measures, coupled with persistent inaction, only encapsulate one facet of the problem. It is equally essential to address the darker side, characterized by the misuse of arbitrary powers to victimize junior & middle-management officers through vindictive disciplinary actions. This deception and fraud in the conduct of inquiries serve as instruments to settle personal scores and target individuals who may not enjoy favor with higher-ranking individuals.

In our deliberations, we frequently emphasize the principles of ***"good faith"*** and ***"bonafides."*** Unfortunately, we find that the specter of ***"malafide"*** (indicating bad faith), ***"malice"*** (motivated by a desire to harm), victimization (personal vendettas against disfavored individuals), favoritism, and nepotism often cast a shadow over the conduct of inquiries. Equally critical is the issue of a noticeable deficiency in skill and efficiency when it comes to conducting these inquiries. Corruption and greed rarely coexist with proficiency and excellence. The flawed human mindset, frequently tainted by greed, becomes a breeding ground for detrimental practices. Corruption and inefficiency are, in many ways, two sides of the same coin. In the realm of departmental inquiries, it is imperative not only to harbor good intentions but also to possess the expertise and knowledge necessary for the effective administration of justice.

In the dynamic world of banking, where financial risks are ever-present, the role of bank officers assumes paramount importance. It is crucial to acknowledge the distinctive nature of their profession, which frequently requires them to tread the fine line between bona fide and malafide decisions. The inherent risks associated with their job profiles are substantial, necessitating a thorough investigation process that meticulously considers these intricacies.

It's imperative to recognize that the decisions made by bank officers bear significant consequences, not only for the financial institutions they represent but also for the broader economy. In light of this, we must underscore the utmost importance of upholding ethical standards, ensuring transparency, and maintaining objectivity in handling disciplinary cases involving bank officers.

A Bonafide Complaint from a Bank Officer's Perspective:

☛ A legitimate complaint against a bank officer should be expressed in specific and unambiguous terms without any exception. The financial intricacies involved necessitate clarity in allegations.

☛ Given the sensitive nature of financial decisions, it is vital for the complainant to disclose their identity. Anonymous or pseudonymous complaints can hinder rather than facilitate a fair investigation.

☛ In the world of banking, where complex transactions and financial strategies are common, an open and transparent complaint process is not just desirable but essential. It ensures that all parties comprehend the precise nature of the allegations and can respond effectively.

An Objective Investigation Tailored for Bank Officers:

☛ Bank officers make critical financial decisions daily. Therefore, any investigation involving them must be conducted with an exceptional degree of care and objectivity.

☛ Investigative processes should scrutinize all relevant transactions meticulously. This entails examining the financial events chronologically and comparing them against established banking procedures and regulatory norms.

☛ Bank officers' roles must undergo rigorous examination, with a keen focus on identifying deviations from established norms.

Importantly, these deviations should be assessed for their potential adverse financial impacts.

☛ In investigations involving bank officers, the perspective of risk management should be central. Risks associated with financial decisions should be considered and evaluated.

☛ Engaging bank officers who are facing allegations is critical. Their understanding of the financial complexities involved is invaluable, and their defense should be incorporated into the investigation report.

☛ The investigation report should zero in on material lapses of a serious nature, excluding minor, routine irregularities. Wherever possible, it should be backed by concrete documentary evidence for each allegation. If oral evidence is necessary, it should also be collected and documented.

It is crucial to acknowledge that disciplinary actions and investigations within the banking sector serve a dual purpose. They not only protect the interests of the financial institution but also contribute to the stability of the broader financial system in an impartial manner. In this context, providing bank officers with opportunities to rectify minor irregularities is far more than a procedural formality; it is a vital risk management strategy.

Ethics, transparency, and objectivity stand as the bedrock of disciplinary procedures involving bank officers. Given the unique risks and intricacies inherent to their profession, it becomes imperative to tailor investigations to address these specifics. Striking a delicate balance between acknowledging the challenges bank officers face and ensuring accountability is of utmost importance. By steadfastly adhering to these principles, we can not only uphold the integrity of the banking sector but also safeguard the interests of all stakeholders within the financial system. The time has come to infuse every step of our disciplinary procedures with a profound understanding of the pivotal role bank officers play in our financial world.

2023-III-LLJ-481 (SC)
LNINDORD 2023 SC 32
IN THE SUPREME COURT OF INDIA
Coram:
Hon'ble Mr. Justice S.Ravindra Bhat and
Hon'ble Mr. Justice Dipankar Datta
C.A.No (S) 529 of 2023 with C.A.No (S) 530 of 2023
4th July, 2023

Reserve Bank of India and Others
.....Appellants

Versus

A.K.Nair and Others ....Respondents

Per: Justice DIPANKAR DATTA

Reservation for Promotion-Rights of Person with Disability-Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, Section 2 (i) and Chapter VI Section 33 clauses (i) to (iii) –Respondent no.1-person with disability who sought for relaxation denied promotion-Petition filed by Respondent no.1 allowed by High Court-Whether, High Court justified in holding that Appellant had to apply reservation in promotion for persons with disabilities in respect of Group 'A' and Group 'B' posts-Held, mere absence of express mandate requiring reservation in promotion for persons with disabilities could not be construed as not obliging to keep reserved vacancies on promotional posts under Chapter VI clauses (i) to (iii) of section 33 of Act 1995-Because employee suffering from disability defined in section 2 (i) of Act, 1995 not to be denied promotion-Persons with disabilities not to be denied protection of rights in public employment –Duty of Court was not legislate but to interpret the law-Respondent no.1 had statutorily conferred right to claim reservation in promotional appointment under Act 1995-High Court did not mandatorily direct grant of promotion-Appellants directed to grant promotion to Respondent no.1-Appeals disposed of.

Per: Justice S.RAVINDRA BHAT

Reservation in Promotions-Public Service-Persons with Disabilities

(Equal Opportunity, Protection of Rights and Full Participation) Act, 1995-Constitution of India, 1950, Article 16 (4-A) –Whether reservations in promotions for any class of citizens other than those covered by Article 16 (4-A) of Constitution, permissible-Held, persons with disabilities need to be accommodated in public service-Reasonable accommodation ought not to open gates for demands by those benefitting for reservation in promotional vacancies in public service.

O R D E R

In view of the conclusions recorded by Hon'ble Mr. Justice DIPANKAR DATTA (concurred to by Hon'ble Mr. Justice S.R. BHAT) the appeal is disposed of in terms of the following directions:

"We direct RBI to grant notional promotion to Mr. Nair on the post of Assistant Manager Grade – 'A', to be effective from the date of presentation of the writ petition before the High Court, i.e., 27th September, 2006 and actual promotion from 15th September, 2014, i.e., the last date for compliance of the order of the High Court. This exercise must be completed within a period of 2 (two) months from date. The monetary benefits accruing to Mr. Nair with effect from 15th September, 2014 shall be computed and released by 4 (four) months from date.

Since Mr. Nair has a couple of years for his retirement on superannuation, it is needless to observe that in computing his retiral benefits due regard shall be given to his promotion, as directed above, with effect from 27th September, 2006.

The appeals stand disposed of on the above terms. Parties shall bear their own costs."

JUDGMENT

S. RAVINDRA BHAT, J.

I have had the benefit of reading the detailed and elaborate reasoning of my learned brother judge, DIPANKAR DATTA, J. While I concur with the conclusions and relief granted to the appellant, I wish to record a few observations, by way of abundant caution, on the larger question of reservations in promotions for any class of citizens other than those covered by Article 16(4- A) of the Constitution.

I. HISTORY OF RESERVATIONS IN PROMOTIONS

2. The question of reservations in promotions has a chequered history. In General Manager, S. Rly. v. Rangachari, (1961) 2 MLJ 71 : LNIND 1961 SC 220 : AIR 1962 SC 36 : (1962) 2 SCR 586, a constitution bench in a 3:2 decision held that reservations in promotions were permissible. They were not merely restricted to initial appointments, but also selected posts subsequently. This was a decision rendered during the era when this court's understanding of Articles 15(4) and 16(4) was that such provisions were exceptions to the rule under Articles 15(1) and 16(1). However, this interpretation underwent a change, The dissenting opinion of SUBBA RAO, J. in T.Devadasan v. Union of India, (1964) 4 SCR 680 was affirmed in State of Kerala v. N.M.Thomas, 1976-I-LLJ-376 : LNIND 1975 SC 355 : (1976) 2 SCC 310 ; AIR 1976 SC 490, as elucidated in State of Kerala v N.M. Thomas (supra), wherein K.K. MATHEW, J. opined:

> "If equality of opportunity guaranteed under Article 16 (1) means effective material equality, then Article 16 (4) is not an exception to Article 16 (1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation".

In Indra Sawhney v Union of India, 1992 Supp (3) SCC 217, a nine-judge constitution bench, equipped with this interpretation, revisited the question of reservations in promotions.Question No. 7 was unambiguously cast: "Whether Article 16 permits reservations being provided in the matter of promotions?" Eight out of nine justices considered the issue, and held that the view expressed in General Manager, S. Rly. V. Rangachari (supra) was erroneous, and that reservations in promotions were impermissible under Article 16.

3. ***The observations made by different judges in their opinions are extracted below***:

a. Per KANIA, VENKATACHALAIAH and BP JEEVAN REDDY, JJ:

> "828. We see no justification to multiply 'the risk', which would be the consequence of holding that reservation can be provided even in the matter of promotion. While it is certainly just to say that a handicap should be given to backward class of citizens at the stage of initial appointment, it would be a serious and unacceptable inroad

into the rule of equality of opportunity to say that such a handicap should be provided at every stage of promotion throughout their career. That would mean creation of a permanent separate category apart from the mainstream — a vertical division of the administrative apparatus. The members of reserved categories need not have to compete with others but only among themselves. There would be no will to work, compete and excel among them. Whether they work or not, they tend to think, their promotion is assured. This in turn is bound to generate a feeling of despondence and 'heart-burning' among open competition members. All this is bound to affect the efficiency of administration. Putting the members of backward classes on a fast-track would necessarily result in leap-frogging and the deleterious effects of "leap-frogging" need no illustration at our hands. At the initial stage of recruitment reservation can be made in favour of backward class of citizens but once they enter the service, efficiency of administration demands that these members too compete with others and earn promotion like all others; no further distinction can be made thereafter with reference to their "birthmark", as one of the learned Judges of this Court has said in another connection. They are expected to operate on equal footing with others. Crutches cannot be provided throughout one's career. That would not be in the interest of efficiency of administration nor in the larger interest of the nation. It is wrong to think that by holding so, we are confining the backward class of citizens to the lowest cadres. It is well-known that direct recruitment takes place at several higher levels of administration and not merely at the level of Class IV and Class III. Direct recruitment is provided even at the level of All India Services. Direct recruitment is provided at the level of District Judges, to give an example nearer home. It may also be noted that during the debates in the Constituent Assembly, none referred to reservation in promotions; it does not appear to have been within their contemplation.

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831. We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in Thomas [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] and the concessions namely carrying forward of vacancies and provisions for in-service coaching/training

in Karamchari Sangh [(1981) 1 SCC 246, 289 : 1981 SCC (L&S) 50 : (1981) 2 SCR 185, 234] are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs — consistent with the efficiency of administration and the nature of duties attaching to the office concerned — in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded hereinabove."

b. PANDIAN, J:

"240. In Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881] a three-Judge Bench of this Court to which I was a party has taken a view that once candidates even from reserved communities are allocated and appointed to a Service based on their ranks and performance and brought under the one and same stream of category, then they too have to be treated on par with all other selected candidates and there cannot be any question of preferential treatment at that stage on the ground that they belong to reserved community though they may be entitled for all other statutory benefits such as the relaxation of age, the reservation etc. Reservation referred to in that context is referable to the reservation at the initial stage or the entry point as could be gathered from that judgment."

c. THOMMEN, J:

"307. The initial appointments may be made at various levels or grades of the hierarchy in the service. There is no warrant in Article 16(4) to conclude from the expression 'reservation of appointments or posts' that reservation extends not merely to the initial appointment, but to every stage of promotion. Once appointed in a service, any further discrimination in matters relating to conditions of service, such as salary, increments, promotions, retirement benefits, etc. is constitutionally impermissible, it being the very negation of equality, fairness and justice.

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309. In whichever post that a member of a backward class is appointed, reservation provisions are attracted at the stage of his initial appointment and not subsequently. Further promotions must be governed by common rules applicable to all employees of the respective grades. Reasoning to the contrary in decisions, such as General Manager, S. Rly. v. Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] ; State of Punjab v. Hiralal [(1970) 3 SCC 567 : (1971) 3 SCR 267] ; Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India [(1981) 1 SCC 246, 289 : 1981 SCC (L&S) 50 : (1981) 2 SCR 185, 234] is not warranted by the language of the Constitution."

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d. KULDIP SINGH, J

"376. The reservation permissible under Article 16(4) can only be "in favour of any backward class of citizens" and not for individuals. Article 16(1) guarantees a right to an individual citizen whereas Article 16(4) permits protective discrimination in favour of a class. It is, therefore, mandatory that the opportunity to compete for the reserve posts has to be given to a class and not to the individuals. When direct recruitment to a service is made the 'backward class' as a whole is given an opportunity to be considered for the reserve posts. Every member of the said class has a right to compete. But that is not true of the process of promotion. The backward class as a collectivity is nowhere in the picture; only the individuals, who have already entered the service against reserve posts, are considered. In the higher echelons of State services — cadre strength being small — there may be very few or even a single 'backward class' candidate to be considered for promotion to the reserve post. An individual citizen's right guaranteed under Article 16(1) can only be curtailed by providing reservations for a 'backward class' and not for backward individuals. The promotional posts are not offered to the backward class. Only the individuals are benefited. The object, context and the plain language of Article 16(4) make it clear that the job reservation can be done only in the direct recruitment and not when the higher posts are filled by way of promotion."

e. PB SAWANT, J

"540. However, if it becomes necessary to answer the question, it will have to be held that the reservations both under Articles 16(1) and 16(4) should be confined only to initial appointments. Except in the decision in Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] there was no other occasion for this Court to deliberate upon this question. In that decision, the Constitution Bench by a majority of three took the view that the reservations under Article 16(4) would also extend to the promotions on the ground that Articles 16(1) and 16(2) are intended to give effect to Articles 14 and 15(1). Hence Article 16(1) should be construed in a broad and general, and not pedantic and technical way. So construed, "matters relating to employment" cannot mean merely matters prior to the act of appointment nor can 'appointment to any office' mean merely the initial appointment but must also include all matters relating to the employment, that are either incidental to such employment or form part of its terms and conditions, and also include promotion to a selection post. The Court further observed that: (SCR headnote p. 587)

"Although Article 16(4), which in substance is an exception to Articles 16(1) and 16(2) and should, therefore, be strictly construed, the court cannot in construing it overlook the extreme solicitude shown by the Constitution for the advancement of socially and educationally backward classes of citizens. The scope of Article 16(4), though not as extensive as that of Article 16(1) and (2), — and some of the matters relating to employment such as salary, increment, gratuity, pension and the age of superannuation, must fall outside its non-obstante clause, there can be no doubt that it must include appointments and posts in the services. To put a narrower construction on the word 'posts' would be to defeat the object and the underlying policy. Article 16(4), therefore, authorises the State to provide for the reservation of appointments as well as selection posts."

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543. It has been pointed out earlier that the reservations of the backward classes under Article 16(4) have to be made consistently with the maintenance of the efficiency of administration. It is foolhardy to ignore the consequences to the administration when

juniors supersede seniors although the seniors are as much or even more competent than the juniors. When reservations are kept in promotion, the inevitable consequence is the phenomenon of juniors, however low in the seniority list, stealing a march over their seniors to the seniority list, stealing a march over their seniors to the promotional post. When further reservations are kept at every promotional level, the juniors not only steal march over their seniors in the same grade but also over their superiors at more than one higher level. This has been witnessed and is being witnessed frequently wherever reservations are kept in promotions. It is naive to expect that in such circumstances those who are superseded, (and they are many) can work with equanimity and with the same devotion to and interest in work as they did before. Men are not saints. The inevitable result, in all fields of administration, of this phenomenon is the natural resentment, heartburning, frustration, lack of interest in work and indifference to the duties, disrespect to the superiors, dishonour of the authority and an atmosphere of constant bickerings and hostility in the administration. When, further, the erstwhile subordinate becomes the present superior, the vitiation of the atmosphere has only to be imagined. This has admittedly a deleterious effect on the entire administration.

544. It is not only the efficiency of those who are thus superseded which deteriorates on account of such promotions, but those superseding have also no incentive to put in their best in work. Since they know that in any case they would be promoted in their reserved quota, they have no motivation to work hard. Being assured of the promotion from the beginning, their attitude towards their duties and their colleagues and superiors is also coloured by this complex. On that account also the efficiency of administration is jeopardised.

545. With respect, neither the majority nor the minority in the Constitution Bench has noticed this aspect of the reservations in promotions. The later decisions which followed Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] were also not called upon to and hence have not considered this vital aspect. The efficiency to which the majority has referred is with respect to the qualifications of those who would be promoted in the reserved quota."

f. SAHAI, J

"622. But, inadequacy of representation is creative of jurisdiction only. It is not measure of backwardness. That is why less rigorous test or lesser marks and competition amongst the class of unequals

at the point of entry has been approved both by this Court and American courts. But a student admitted to a medical or engineering college is further not granted relaxation in passing the examinations. In fact this has been explained as a valid basis in American decisions furnishing justification for racial admissions on lower percentage. Rationale appears to be that everyone irrespective of the source of entry being subjected to same test neither efficiency is effected nor the equality is disturbed. After entry in service the class is one, that of employees. If the social scar of backwardness is carried even thereafter, the entire object of equalisation stands frustrated. No further classification amongst employees would be justified as is not done amongst students.

623. Constitutional, legal or moral basis for protective discrimination is redressing identifiable backward class for historical injustice. That is they are today, what they would not have been but for the victimisation. Remedying this and to balance the unfair advantage gained by others is the constitutional responsibility. But once the advantaged and disadvantaged, the so-called forward and backward, enter into the same stream then the past injustice stands removed. And the length of service, the seniority in cadre of one group, to be specific the forward group, is not as a result of any historical injustice or undue advantage earned by his forefather or discrimination against the backward class, but because of the years of service that are put by an employee, in his individual capacity. This entitlement cannot be curtailed by bringing in again the concept of victimisation.

624. Equality either as propagated by theorists or as applied by courts seeks to remove inequality by "parity of treatment under parity of condition" [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] . But once in "order to treat some persons equally, we must treat them differently" [57 L Ed 2d 750 : 438 US 265 (1978)] has been done and advantaged and disadvantaged are made equal and are brought in one class or group then any further benefit extended for promotion on the inequality existing prior to be brought in the group would be treating equals unequally. It would not be eradicating the effects of past discrimination but perpetuating it.

625. Constitutional sanction is to reserve for backward class of persons. That is class or group interest has been preferred over individual. But promotion from a class or group of employees is not promoting a group or class but an individual. It is one against other.

No forward class versus backward class or majority against minority. It would, thus, be contrary to the Constitution. Brother Kuldip Singh, for good and sound reasons has rightly opined, that, Rangachari [(1962) 2 SCR 586 : AIR 1962 SC 36] cannot be held to be laying down good law."

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627. Is it possible to reserve under Article 16(1)? Detailed reasons have been given earlier, against any reservation under cover of doctrine of reasonable classification. Eradication of poverty which "is not to be exalted or praised, but is an evil thing which must be fought and stamped out" [Jawaharlal Nehru, quoted from Dorothy, Norman (Ed.) Nehru] is one of the ideals set out in the Preamble of the Constitution as it postulates to achieve economic justice and exhorts the State under Article 38(2) to "minimise the inequality of income". All the same, can the State for this purpose reserve posts for the economically backwards in service. Right to equal protection of laws or equality before law in 'benefits, and burdens' by operation of law, equally amongst equals and unequally amongst unequals is firmly rooted in the concept of equality developed by courts in this country and in America. But any reservation or affirmative action on economic criteria or wealth discrimination cannot be upheld under doctrine of reasonable classification. Reservation for backward class seeks to achieve the social purpose of sharing in services which had been monopolised by few of the forward classes. To bridge the gap, thus created, the affirmative actions have been upheld as the social and educational difference between the two classes furnished reasonable basis for classification. Same cannot be said for rich and poor. Indigence cannot be a rational basis for classification for public employment."

4. It is thus discernible that in Indra Sawhney v Union of India (supra), this court ruled that reservations under Article 16 for backward classes of citizens were limited only to initial appointments, and did not extend to promotions. The rationale for such a conclusion was that reservations in promotions would have a deleterious effect on the efficiency of services: firstly, they would stifle the spirit to work amongst the reserved candidates, and would amount to creation of a permanent separate category. Secondly, such reservations would generate a feeling of despondence and heartburn among general category candidates. Thirdly, reservations in promotions would violate the rule of equality.

5. To negate the declaration of the court in Indra Sawhney v.Union of India (supra), Parliament introduced an amendment to Article 16 of the Constitution, by inserting clause (4-A) by the 77th Constitutional Amendment Act of 1995. Clause (4-A) reads as follows:

"Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

Additionally, the Statement of Objects and Reasons for the 77th Constitutional Amendment Act, 1995, reads as follows:

"The Scheduled Castes and the Scheduled Tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16th November, 1992 in the case of Indra Sawhney v. Union of India, however, observed that reservation of appointments or posts under Article 16(4) is confined to initial appointment and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since their representation in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interests of the Scheduled Castes and the Scheduled Tribes, the government has decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this it is necessary to amend Article 16 of the Constitution by inserting a new clause (4-A) in the said article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes."

Thus, reservations in promotions were extended to members of the Scheduled Castes and Scheduled Tribes alone.

II. HISTORY OF RESERVATIONS FOR PERSONS WITH DISABILITIES

6. In Union of India v. National Federation of the Blind, LNIND 2013

SC 909 : (2013) 10 SCC 772. See also generally-the relationship between Section 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, elucidated in Govt. of India v. Ravi Prakash Gupta, (2010) 7 MLJ 726 : LNIND 2010 SC 567 : (2010) 7 SCC 626, this court had reiterated the distinction between 'vertical' reservations for backward classes of citizens as delineated in Indra Sawhney V. Union of India (supra) and 'horizontal' reservations for persons with disabilities under Section 33 of the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("1995 Act"), as follows:

"42. A perusal of Indra Sawhney 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477 would reveal that the ceiling of 50% reservation applies only to reservation in favour of Other Backward Classes under Article 16(4) of the Constitution of India whereas the reservation in favour of persons with disabilities is horizontal, which is under Article 16(1) of the Constitution. In fact, this Court in the said pronouncement has used the example of 3% reservation in favour of persons with disabilities while dealing with the rule of 50% ceiling. Para 812 of the judgment clearly brings out that after selection and appointment of candidates under reservation for persons with disabilities they will be placed in the respective rosters of reserved category or open category respectively on the basis of the category to which they belong and, thus, the reservation for persons with disabilities per se has nothing to do with the ceiling of 50%. Para 812 is reproduced as follows : (SCC pp. 735-36)

"812. … all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and' horizontal reservations'. The reservations in favour of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations—what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he

belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains—and should remain—the same.""

This judgment did not discuss reservations in 'promotions', but confined its pronouncement to initial appointments only.

7. Rajeev Kumar Gupta v. Union of India LNIND 2016 SC 272 : (2016) 13 SCC 153 : AIR 2016 SC 3228 authoritatively dealt with the question of reservations in promotions for persons with disabilities. The two- judge bench decision, authored by CHELAMESHWAR, J., differentiated the application of Indra Sawhney v. Union of India (supra) as follows:

"21. The principle laid down in [Indra Sawhney Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] is applicable only when the State seeks to give preferential treatment in the matter of employment under the State to certain classes of citizens identified to be a backward class. Article 16(4) does not disable the State from providing differential treatment (reservations) to other classes of citizens under Article 16(1) [As per Indra Sawhney case, 1992 Supp (3) SCC 217, Article 16(4) is a subset of Article 16(1).] if they otherwise deserve such treatment. However, for creating such preferential treatment under law, consistent with the mandate of Article 16(1), the State cannot choose any one of the factors such as caste, religion, etc. mentioned in Article 16(1) as the basis. The basis for providing reservation for PWD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] has clearly and normatively no application to PWD.(emphasis supplied)

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24. A combined reading of Sections 32 and 33 of the 1995 Act

explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post."

8. A reference was then made to a larger bench to resolve the issue with respect to interpretation of reservations in promotions as settled by Indra Sawhney v. Union of India (supra) and Rajeev Kumar Gupta v. Union of India (supra). Thus, in Siddaraju v. State of Karnataka, (2020) 19 SCC 572, a three-judge bench decision rendered by NARIMAN, J. held:

"12. After hearing the learned counsel appearing on behalf of all the parties including the learned Additional Solicitor General, we are of the view that the judgment of this Court cannot be faulted when it stated that Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 215 : 1992 SCC (L&S) Supp 482] dealt with a different problem and, therefore, cannot be followed."

9. Thereafter, in State of Kerala v. Leesamma Joseph (2021) 5 MLJ 196 : LNIND 2021 SC 181 : (2021) 9 SCC 208, a two-judge bench judgment authored by Kaul, J. held in unequivocal terms that reservations in promotions could not be denied to persons with disabilities:

"18. On examination of the aforesaid plea we find that there is merit in what the learned Amicus Curiae contends and we are of the view that really this issue is no more res integra in view of the judgments of this Court in Union of India v. Ravi Prakash Gupta [Union of India v. Ravi Prakash Gupta, (2010) 7 SCC 626 : (2010) 2 SCC (L&S) 448] and Union of India v. National Federation of the Blind [Union of India v. National Federation of the Blind, (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257] opining that reservation has to be computed with reference to the total number of vacancies in

the cadre strength and no distinction can be made between the posts to be filled by direct recruitment and by promotion. Thus, total number of vacancies in the cadre strength would include the vacancies to be filled in by nomination as well as by promotion. In fact, this was the view adopted by the Bombay High Court discussed aforesaid in National Confederation for Development of Disabled v. Union of India [National Confederation for Development of Disabled v. Union of India, 2015 SCC OnLine Bom 5112] with the challenge raised to the same in a SLP being rejected in Union of India v. National Confederation for Development of Disabled [Union of India v. National Confederation for Development of Disabled, (2015) 13 SCC 643 : (2016) 1 SCC (L&S) 276] . We may note the observations in Rajeev Kumar Gupta v. Union of India [Rajeev Kumar Gupta v. Union of India, (2016) 13 SCC 153 : (2017) 2 SCC (L&S) 605] in para 24 to the effect : (Rajeev Kumar Gupta case [Rajeev Kumar Gupta v. Union of India, (2016) 13 SCC 153 : (2017) 2 SCC (L&S) 605] , SCC p. 162)

"24. … Once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment adopted by the State for filling up of the said post."
(emphasis supplied)
and a direction was issued to the Government to extend 3% reservation to PwD in all identified posts in Group A and Group B "irrespective of the mode of filling up of such posts".

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II. Whether reservation under Section 33 of the 1995 Act is dependent upon identification of posts as stipulated by Section 32?

21. On a plea of the learned Amicus Curiae, which we unhesitatingly accept, there can be little doubt that it was never the intention of the legislature that the provisions of Section 32 would be used as a tool to frustrate the benefits of reservation under Section 33. In fact, identification of posts for purposes of reservation had to take place immediately after the 1995 Act. A resistance to such reservation is obvious from the delaying tactics adopted by most of the Government authorities in truly implementing the intent. It thus shows that sometimes it is easier to bring a legislation into force but far more difficult to change the social mindset which would endeavour to find ways and means to defeat the intent of the Act enacted and

Section 32 was a classic example of the same. In Union of India v. Ravi Prakash Gupta [Union of India v. Ravi Prakash Gupta, (2010) 7 SCC 626 : (2010) 2 SCC (L&S) 448] also, this Court mandated the identification of posts for purposes of reservation. Thus, what is required is identification of posts in every establishment until exempted under proviso to Section 33. No doubt the identification of the posts was a prerequisite to appointment, but then the appointment cannot be frustrated by refusing to comply with the prerequisite. This view was affirmed by a larger Bench of three Judges in Union of India v. National Federation of the Blind [Union of India v. National Federation of the Blind, (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257]."

III. ANALYSIS

10. At the outset, it is imperative to observe that the 1995 Act did not contain a provision for reservations in 'promotions' for persons with disabilities appointees, unlike its successor enactment, the Rights of Persons with Disabilities Act, 2016 ("2016 Act"),which enabled the State to do the same. Section 33 of the 1995 Act only provided for 3% reservation for posts identified under Section 32, with 1% each for persons suffering from (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy. There is no mention of this extending to promotions. In the absence of such statutory power, its inclusion in the extant provisions by this court is not beyond doubt. It cannot be said that the manner in which such reservations have been granted in promotions – even if horizontally – as a matter of right, is not contrary to the express prohibition of the same by the nine judges in Indra Sawheny v. Union of India (supra) I therefore hold serious reservation in its interpretation otherwise.

11. While Indra Sawhney v. union of India (supra) no doubt pertained to vertical reservations for backward classes of citizens, this understanding of horizontal reservations infact seeded from this very judgment. It cannot be said that its operative portion on reservations in promotions is inapplicable to other classes of citizens on that front alone. Such an exercise of distinguishing its application misses the crux of its reasoning – that while provision of reservations in initial appointments furthers the mandate of substantive equality, its application to promotions militates against the same mandate. It was not the intention of Article 16 of the Constitution to compromise on administrative inefficiency by culling the spirit of competition-

after all, positions gained by promotions taper higher up. To earmark a certain portion to one class of citizens, and not others, who may have also gained initial appointments on the strength of such horizontality (such as women, retired / ex-servicemen, etc.) is not constitutionally protected – the only exception to reservations in promotions is SC / ST appointees, as provided under Article 16(4A).

12. Additionally, horizontal reservations, unlike their vertical counterparts, are not rigid, but have a fluidity to them, as observed in this court's pronouncement in Saurav Yadav v. State of Uttar Pradesh. LNIND 2020 SC 538 : (2021) 4 SCC 542. A candidate eligible for horizontal reservation is not confined to their vertical category. Migrations are permissible to allow the best candidates to emerge from this interlocking framework of reservations. However, such a mechanism is unworkable in promotions, where vertical and horizontal qualifiers are absent (barring those for SC/ST candidates). The (then) 3% reservation set aside for persons with disabilities candidates no longer remains horizontal, but is implemented vertically. While the 2016 Act enables the State to work out this mechanism, such is conspicuously absent in the 1995 Act.

13. This also leads to differential treatment of candidates belonging to the same backward class as recognized by Article 16(4) of the Constitution. An OBC candidate who is also a person with disabilities, will be given preference over a non-persons with disabilities OBC candidate in promotions, which is impermissible. Additionally, on a reading of T. Devadasan v. Union of India (supra) and State of Kerala v. N.M. Thomas (supra), it is relevant to note that while reservations for backward classes are to be carried forward, the 2016 Act permits carrying forward of horizontal reservations for persons with disabilities candidates for a maximum period of two years. However, the amendment to the Constitution recognizes that 'carry forward' vacancies can exceed the 50% limit in promotional vacancies. This amendment [inserting Article 16(4-B)] was upheld by this court in M. Nagaraj v Union of India. LNIND 2006 SC 857 : (2006) 8 SCC 212 : AIR 2007SC 71.

14. The laudable intent behind a provision such as Section 33 of the 1995 Act, and Section 34 of the 2016 Act, is undeniable. That persons with disabilities need to be accommodated, in public service, is a given. At the same time, this reasonable accommodation ought not to open gates for demands by those benefitting other kinds of

horizontal reservation, for reservation in promotional vacancies in public services. As stated at the outset, I concur with the relief proposed to the appellant, and accordingly agree with the directions contained in DATTA, J.'s judgment.

JUDGMENT

DIPANKAR DATTA, J.

THE CHALLENGE:

Reserve Bank of India (hereafter 'RBI', for short) and the Union of India (hereafter 'GoI' for short) are in appeal, by special leave, mounting challenge to the judgment and order dated 16th June, 2014 passed by the High Court of Judicature at Bombay on Writ Petition No.2753 of 2006 presented before it by the common first respondent (hereafter 'Mr. Nair', for short).

FACTS:

2. The facts leading to these appeals reflect the grim struggle of Mr. Nair, a person having 'Post-Polio Paralysis of Limbs' with 50% disability to secure promotion to the post of Assistant Manager in the RBI by claiming benefit envisaged by the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (hereafter 'the PwD Act, 1995') as well as various office memoranda issued from time to time by the Department of Personnel and Training (hereafter 'DoPT', for short) of the Ministry of Personnel, Public Grievances and Pensions, GoI, and circulars issued by the RBI.

3. Mr. Nair, joined the services of the RBI, on 27th September, 1990 as Coin/Note Examiner, Grade–II/Clerk on a vacancy reserved for a person with disability. In due course of time, Mr. Nair participated in the All India Merit Test for the Panel Year 2003, conducted sometime between 26th April and 3rd July, 2004 by the RBI, for securing his promotion to a Class–I post. The standards fixed for qualifying in the examination were the same for general candidates as well as persons with disabilities. Apart from fulfilling other conditions, Mr. Nair was required to obtain 95 (ninety-five) marks to qualify for promotion. Results were declared on 19th October, 2004. Having obtained 92 (ninety-two) marks, he fell short of the qualifying marks by only 3 (three) marks. Notwithstanding fulfillment of other eligibility criteria

for promotion, Mr. Nair was not considered for promotion owing to such shortfall. Since circulars issued by the GoI contemplated condonation of short fall to the extent of 5 (five) marks for SC/ST candidates, Mr. Nair submitted a representation dated 18th December, 2004 seeking grant of benefit of relaxation as available to him "on par with SC/ST category candidates" and also requested to include his name in the panel of selected candidates. By a reply dated 25th May, 2005, the RBI informed Mr. Nair that there is no provision for extending grace marks to persons with disabilities in promotional examinations. Immediately on the next day, Mr. Nair submitted a further representation and while inviting attention to circular dated 5th July, 2000 (extending reservation to physically handicapped persons in promotions up to S.O. Grade 'A' in the general side where not much of moving from the seat is involved) and the Master Circular dated 19th October, 2004 (hereafter 'Master Circular', for short) on the subject of 'Reservation in Recruitment and Promotions in Bank' for persons with disabilities, both issued by the RBI, sought remedial action. This was followed by a spate of representations which, however, proved abortive.

4. The pursuit to have the shortfall in marks condoned not having been favourably considered by the RBI, thereby resulting in his non-promotion to the post of Assistant Manager Grade - I, drove Mr. Nair to knock the doors of the High Court by instituting a writ petition seeking, inter alia, the following relief: -

> "a)This Hon'ble Court be pleased to call for the records of the case and after perusing the same be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ order or direction, directing Respondents to provide relaxation of conditions and/or providing grace marks to the candidate with disabilities for the purpose of placing the disabled candidates in the zone of consideration in All India Merit Test for the Panel Year 2003 in the Respondents' establishment and further be pleased to direct the Respondents to place the Petitioner in the panel of selected candidates for promotion in All India Merit Test for the Panel Year 2003 conducted by the Respondents in the year 2004 and be pleased to direct the Respondents to consider the candidature of the Petitioner for promotion to Grade A in the Physically Handicapped Employees category.
>
> b) The Respondents be ordered to implement the 3% Reservation

in promotion for the persons with disability in toto to all the posts identified by the Respondents under Circular Nos.49 and 18 dated 05.07.2000 and 19.10.2004 respectively."

5. The writ petition was contested by the RBI by filing a counter affidavit dated 8th February, 2008. Referring to Office Memorandum (hereafter 'OM', for short) dated 29th December, 2005 on the subject of "Reservation for the Persons with Disabilities" which consolidated all existing instructions in line with the PwD Act, 1995 and clarified certain issues including procedural matters, it was contended that for persons with disabilities 3 (three) per cent of vacancies in case of direct recruitment to Groups 'A', 'B', 'C' and 'D' have to be reserved; and (three) per cent of the vacancies in case of promotions, only to identified Groups 'C' and 'D' posts in which the element of direct recruitment, if any, does not exceed 75 (seventy-five) per cent, have to be reserved. Further, it was contended by referring to a clarification provided by the GoI, contained in OM dated 25th October, 2002, that "(T)here is no reservation for the persons with disabilities when promotions are made to Group 'A' and Group 'B' posts". Insofar as circular dated 5th July, 2000 of the RBI is concerned, it was pleaded that instructions contained therein were withheld and not given effect. Finally, reference was made to paragraph 22 of the OM dated 29th December, 2005 providing as follows:

"If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/ posts in question."

6. The Division Bench of the High Court was referred to its coordinate Bench decision in National Confederation for Development of Disabled v. Union of India and Others PIL 106 of 2010, where the prayer was for issuing a mandamus to the respondents to appoint disabled persons in terms of section 33 of the PwD Act, 1995 in Indian Administrative Service posts by promotion from the State Civil

Services or by selection from persons who hold gazetted posts in connection with the affairs of the State but are not members of the State Civil services, as per their entitlements, retrospectively from 1996 and to comply with the said provisions hereafter. The decision in Govt. of India and Another. v. Ravi Prakash Gupta and Another (2010) 7 SCC 626 was also referred, where this Court dealt with the question of reservation in the matter of appointment to All India Service and while confirming the decision under challenge held that reservation was applicable to posts in Groups 'A', 'B', 'C' and 'D'. Attention of the Division Bench was also invited to the decision in Union of India v. National Federation of the Blind (2013) 10 SCC 772 where this Court was of the view that "the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner, viz. computing 3% reservation on total number of vacancies in the cadre strength, which is the intention of the legislature". The Division Bench read the decision as laying down the law that reservation has to be computed with reference to total number of vacancies in the cadre strength and, therefore, no distinction can be made between the posts to be filled in by direct recruitment and by promotion. It was, accordingly, held that the "total number of vacancies in the cadre strength would include the vacancies to be filled in by nomination and vacancies to be filled in by promotion". Certain directions were issued by this Court in paragraph 55, which led to issuance of a further OM dated 3rd December, 2013 by the DoPT modifying paragraph 6 of OM dated 29th December, 2005.

7. On consideration of the said decision and the modification so made by the OM dated 3rd December, 2013, the High Court in National Confederation for Development of Disabled and Another v. Union of India and Others (supra) was of the view that the respondents would have to give benefits of reservation to persons with disabilities in the matter of promotion to posts in the Indian Administrative Service by applying OM dated 29th December, 2005 and the subsequent office memorandum consistent with the aforesaid decision of this Court, with effect from the date of issuance of OM dated 29th December, 2005.

8. Significantly, the decision in National Confederation for Development of Disabled and Another v. Union of India Others (supra) was the subject matter of challenge at the instance of the GoI in a special leave petition, which was dismissed on 12th September, 2014.

A review petition was thereafter filed by the GoI, which was also dismissed by an order dated 5th December, 2014, on merits. Another special leave petition that was carried by the GoI to this Court from the order dismissing the review petition stood dismissed on 27th February, 2015. Thus, insofar as the GoI is concerned, the judgment and order dated 4th December, 2013 in National Confederation for Development of Disabled and Another v. Union of India and Others (supra) attained finality.

9. Upon consideration of the pleadings of the parties, the PwD Act, 1995, OM dated 29th December, 2005 and OM dated 3rd December, 2013 issued by the DoPT as well as the decisions that were referred to it, the High Court in the impugned judgment and order held as follows: -

> "9. In view of the above discussion, we have no hesitation in holding that modification made by para 5 of the OM dated 3 December 2013 to para 14 of the OM dated 29 December 2005 will apply with effect from 29 December 2005 and therefore the respondent-Reserve Bank of India shall apply reservation for persons with disabilities on the basis of total number of vacancies appearing in direct recruitment quota as well as in promotion quota in Group 'A' and Group 'B' posts respectively with effect from 29 December 2005.

10. If on the basis of above direction, any vacancy is required to be filled in the cadre of Asst. Manager and/or other equivalent posts in Group 'A' or Group 'B' on or after 29 December 2005, the Reserve Bank of India shall apply reservation policy with effect from 29 December 2005 and if as a consequence therefore the petitioner's case is required to be considered for such promotion, respondents-Reserve Bank of India shall consider the petitioner's case for promotion.

11. It is clarified that this direction is only in the context of controversy about applicability of reservation policy to promotion and if there are other requirements under the relevant rules, this Court may not be treated to have expressed any opinion on the question of the petitioner satisfying such requirements.

12. The direction given herein above shall be carried out within a period of three months from today."

10. It appears that while allowing the writ petition of Mr. Nair, the Division Bench of the High Court followed the earlier view expressed by its coordinate Bench.

11. Mr. Nair had applied for a review of the judgment and order dated 16th June, 2014 on the ground that the High Court had erred in not clarifying the position on grace marks and in not addressing his claim of qualification/seniority from the date of eligibility. When the same was taken up for consideration on 31st October, 2014, the High Court was informed of issuance of notice by this Court on the petition for special leave to appeal filed by the RBI. In view thereof, without examining the merits of the review petition, the same was disposed of by the High Court with liberty to Mr. Nair to seek revival after disposal of the proceedings before this Court.

BROAD OVERVIEW OF THE LAW:

12. Much water has flown under the bridge since the impugned judgment dated 16th June, 2014 was rendered by the High Court. On the legislative front, the Parliament enacted the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the PwD Act, 2016') repealing the PwD Act, 1995. On the judicial side, pronouncements in Rajiv Kumar Gupta and Others. v. Union of India and Others.(2016) 13 SCC 153, Siddaraju v. State of Karnataka and Others (2020)19 SCC 572, and State of Kerala and Others. v. Leesamma Joseph (2021) 9 SCC 208 have seen the light of the day. The executive, in its turn, has complied with the directions contained in an order dated 28th September, 2021 of this Court arising out of Siddaraju v. State of Karnataka and Others (supra) resulting in issuance of OM dated 17th May, 2022 by the DoPT. These are undoubtedly developments subsequent to the impugned judgment; but since they could have a bearing on the merits of Mr. Nair's claim that he has unjustly been deprived of promotion to the post of Assistant Manager, the same cannot be kept out of our consideration. Indeed, after OM dated 17th May, 2022 was issued, the RBI has also issued a circular dated December 8, 2022 conveying its decision to reserve 16 (sixteen) vacancies for persons with disabilities out of 600 (six hundred) vacancies on the post of Assistant Manager Grade - 'A', to be filled up by a departmental examination scheduled on 10th December, 2022.

13. The law relating to grant of equal opportunities, protection of

rights, and full participation of persons with disabilities was codified by the PwD Act, 1995. Chapter VI of the PwD Act, 1995, titled 'EMPLOYMENT', containing sections 32 to 41, inter alia, mandated identification of posts which could be reserved for persons with disabilities for appointment, the extent of reservation and the procedure to be followed in the matter of recruitment. Significantly, Chapter VI did not contain any express provision mandating an 'employer' or an 'establishment' as defined in clauses (j) and (k) of section 2, respectively, to reserve any percentage of posts for promotion to persons with disabilities serving in the feeder cadre. However, Chapter VIII titled 'NON-DISCRIMINATION' in sub-section (2) of section 47 ordained that no promotion shall be denied to a person merely on the ground of his disability. Sections 44 to 47, under Chapter VIII, envisaged that persons with disabilities should not face any discrimination in any of the fields specified therein, with section 47 particularly dealing with non-discrimination in Government employment. It is true that sub-section (2) of section 47 does not contain any mandate requiring the employer or establishment to make reservation in promotional posts; on the contrary, it is a command to the employer or establishment that merely because an employee is suffering from a disability, as defined in section 2(i) of the PwD Act, 1995, he is not to be denied promotion.

14. However, it is noticed that even before the PwD Act, 1995 was enacted, OM dated 20th November, 1989 had been issued by the DoPT whereby, reservations promotions (i) within Group 'D', (ii) from Group 'D' to Group 'C' and (iii) within Group 'C' to the three categories of 'physically handicapped persons', viz. the visually handicapped, the hearing handicapped and the orthopedically handicapped, were permissible. It was, however, clarified that each of the three categories of physically handicapped persons would be allowed reservation at 1 (one) per cent each and that applicability of the reservation would be limited to promotions being made to those posts that are identified as being capable of being filled/held by the appropriate category of physically handicapped.

15. During the period intervening the advent of the PwD Act, 1995 and issuance of OM dated 29th December, 2005, the DoPT went on to issue Office Memoranda dated 18th February, 1997, 16th January, 1998 and 25th October, 2022. We need not consider the said office memoranda in any great detail except referring to the common thread running through them, i.e., the DoPT sought to carve out

the benefit of reservation in promotion for persons with disabilities even though whether there was an explicit legislative mandate to that effect was indeed a grey area for some. Notwithstanding the same, having regard to the objects that the PwD Act, 1995 intended to achieve by providing equal opportunity, protection of rights and full participation to the persons with disabilities and viewed in the light of difficulties and inconveniences faced by them, the initiative of the DoPT to provide for reservation in promotion for them on at least Group 'C' and Group 'D' posts was indeed a step in the right direction.

16. Be that as it may, mere absence of an express mandate in Chapter VI of the PwD Act, 1995 requiring reservation in promotion for persons with disabilities could not have been construed as not obliging the appropriate Government not to keep reserved vacancies on promotional posts for those answering clauses (i) to (iii) of section 33. Though the language used in section 33 could admit of a little bit of confusion, the crucial words there are "shall appoint in every establishment". Paraphrased, it implies that while the appropriate Government is making appointment in every establishment, it ought to reserve a minimum of 3 (three) per cent vacancies for persons or class of persons with disability, of which 1 (one) per cent each shall be reserved for those persons with disabilities of the nature mentioned in the clauses therein, i.e., (i) blindness or low vision, (ii) hearing impairment, and (iii) locomotor disability or cerebral palsy, and that appointments shall be made on the posts identified for each such disability as in the said clauses. The proviso which permits exemption is not relevant in the present case; hence, its effect is not considered. It is, therefore, the statutory duty enjoined by section 33 that there must be appointment of persons with disabilities in every establishment which ought not to be less than 3 (three) per cent but a minimum of 1 (one) percent of vacancies, available on identified posts for each disability, has to be reserved. The confusion, to our mind, might have stemmed from the narrow interpretation of the word "appoint", without realizing that "promotion" is also included within "appointment". The term "appointment" is quite broad and includes appointment by 'direct recruitment' as well as appointment by way of 'promotion'. Prior to Rajiv Kumar Gupta and Others v. Union of India and Others (supra), there was no authoritative pronouncement on the aspect of reservation in promotion. The interpretation of section 33 of the PwD Act, 1995 made by Rajiv Kumar Gupta and Others v. Union of India and Others (supra) finds

its resonance in Siddaraju v. State of Karnataka and Others (supra).

17. We have noticed that the PwD Act, 2016 expressly makes available benefits of reservation to promotional posts for persons with disabilities in that the first proviso to section 34 ordains that reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. Law within the meaning of Article 141 of the Constitution of India having been declared by Siddaraju v. State of Karnataka and Others (supra) and the GoI having implemented the order of this Court dated 28th September, 2021 noted above and issued OM dated 17th May, 2022, the same constitutes "instructions" as contemplated by the first proviso to section 34 of the PwD Act, 2016. Such instructions contemplate reservation in promotion to posts in Group – 'A' in the lowest grade.

18. When the provisions of the PwD Act, 1995 and the PwD Act, 2016 in relation to reservation in promotion for persons with disabilities are contrasted, it is clear as crystal that what was implicit in the former has been made explicit by the latter.

19. This is the broad overview of the position of law, as it stands today, in regard to reservation in promotion for persons with disabilities.

ARGUMENTS ON BEHALF OF THE RBI:

20. Appearing in support of the appeal presented by the RBI, Mr. Jaideep Gupta, learned senior counsel, contended that the High Court erred in making the directions it did. According to him, the circulars issued by the RBI restricted promotion of physically handicapped persons only to Group 'C' posts and within Group 'D' posts, and did not permit reservation in promotion in Group 'A' posts. That apart, OM dated 29th December, 2005 relied on by Mr. Nair did not extend any benefit of the nature claimed by Mr. Nair despite its modification by OM dated 3rd December, 2013. Thus, from whichever angle one looks at the circulars, resolving Mr. Nair's grievance by considering him fit for promotion from the date of issuance of OM dated 29th December, 2005, as directed by the High Court, was not called for. He also contended that after the GoI issued OM dated 17th May, 2022, the RBI has also issued the circular dated 8th December, 2022, whereby requisite vacancies in Group 'A' posts have also been reserved for promotion of persons with disabilities. This circular dated 8th

December, 2022 contemplates promotion of persons with disabilities upon qualifying in a departmental examination.

21. Though Mr. Gupta did not dispute that benefit of condonation of shortfall in marks was available for SC/ST candidates, he submitted that the concession could not have been extended to persons with disabilities like Mr. Nair in the absence of any policy decision for reserving vacancies in Group – 'A' posts for persons like him; hence, Mr. Nair could not have claimed any benefit flowing therefrom.

22. Referring to an "Additional Affidavit" dated 19th January, 2023 filed on behalf of the RBI, Mr. Gupta contended that vide circular dated 21st September, 2022, a departmental examination for promotion of Class III employees to the post of Assistant Manager Grade 'A' was scheduled on 10th December, 2022 and willingness therefor was invited by 30th September, 2022; however, Mr. Nair chose not to participate in such examination. Mr. Nair, it was contended, having not offered his candidature, the RBI was disabled to assess his performance for promotion. Mr. Gupta, thus, urged that Mr. Nair having let go the opportunity, cannot be heard to complain; however, if Mr. Nair wishes to participate in the promotional exercise, when conducted next, the RBI shall consider his candidature in terms of the extant provisions.

23. Mr. Gupta, thus, prayed that the appeal of the RBI could be disposed of recording his aforesaid statement.

ARGUMENTS ON BEHALF OF THE GoI:

24. Ms. Madhavi Divan, learned Additional Solicitor General appearing for the GoI, placed OM dated 17th May, 2022 and contended that pursuant to orders of this Court made from time to time and in particular after the order dated 28th September, 2021 (supra), instructions have been issued to make available reservation in promotion for persons with disabilities from posts in Group 'B' to the lowest rung in Group 'A', however, with the rider that reservation in promotion shall be applicable in the cadres in which the element of direct recruitment, if any, does not exceed 75%. She further submitted that since there was no specific post identified for promotional appointment in Group 'A' when Mr. Nair participated in the process and also that the shortfall in marks could be condoned only in respect of SC/ST candidates, coupled with the fact that Mr. Nair elected to

stay away from the recent promotional process, the directions made in the impugned judgment and order that paragraph 14 of OM dated 29th December, 2005, since modified by OM dated 8th December, 2013, should be applied with retrospective effect, do not call for being sustained. Accordingly, she too joined Mr. Gupta in urging that the appeal of the GoI be disposed of granting liberty to Mr. Nair to participate in the fresh process, whenever conducted.

25. In the midst of her argument, Ms. Divan was on the verge of expressing certain reservations about the law expounded by this Court in Siddaraju v. State of Karnataka and Others (supra). However, the decision having become final and the DoPT also having acted in terms thereof, we did not consider it appropriate to permit her advance any further argument in that regard.

ARGUMENTS ON BEHALF OF MR. NAIR:

26. Representing Mr. Nair, learned counsel Mr. K. Mohan invited our attention to the various circulars/office memoranda issued from time to time and the relevant decisions of this Court as well as the High Court in matters relating to reservation of certain vacancies on promotional posts for persons with disabilities. Relying thereon, he contended that Mr. Nair has been given a raw deal.

27. OM dated 18th February, 1997 and corrigendum dated 16th January, 1998 were placed by Mr. Mohan. According to him, a conjoint reading thereof would leave none in doubt that the existing policy of reservation for SCs/STs, including for the "physically handicapped" in promotion in all groups is applicable to all grades and services where the extent of direct recruitment does not exceed 75 (seventy-five) per cent; and that the "existing policy of reservation" would obviously include the provision for grace marks for SCs/STs.

28. Referring to the counter affidavit of Mr. Nair filed in connection with these appeals, Mr. Mohan invited our attention to a communication dated 18th October, 2006 issued by the Banking Division, Department of Economic Affairs, Ministry of Finance, GoI addressed to, inter alia, the Chief General Manager, RBI on the subject of "Concession and relaxation to persons with disabilities at par with SCs/STs irrespective of their vertical categories". It was shown that on a reference received from the Commissioner of Disabilities on the

subject, it had been decided to extend concession in examination fee and relaxation in minimum percentage of marks to persons with disabilities at par with SCs/STs with the nationalized banks. An order of this Court dated 19th March, 2002 in A.I. Confederation of the Blind v. Union of India and Another W.P.(C) No.115/1998 was also referred endorsing the stand of the GoI to bring parity amongst all the persons with disabilities irrespective of their vertical categories. A request was, accordingly, made to the addressees including the RBI to note the instructions for appropriate action.

29. Heavily relying thereon, Mr. Mohan argued that the refusal of the RBI to treat persons with disabilities at par with SC/ST category of candidates and to award grace marks as are made available to the latter, despite the existence of the circular dated 5th July, 2000, the Master Circular and the communication dated 18th October, 2006, amounts not only to deprivation of the rights of "Equal Opportunity, Protection and Full Participation" guaranteed by the provisions of the PwD Act, 1995 but also to invidious discrimination hit by Article 14 of the Constitution.

30. Inviting our pointed attention to the decision in State of Kerala v. Leesamma Joseph (supra), Mr. Mohan contended that this Court declined to interfere with the order of the Kerala High Court under challenge which reversed the decision of the Kerala Administrative Tribunal and upheld not only the respondent's claim for promotion, though the initial entry of the respondent was on compassionate ground and not on a post reserved for persons with disabilities, but did not disturb the financial benefits received by the respondent. He also contended that this Court even after not interfering with the impugned order examined the issue as to whether persons with disabilities could claim a right of promotion under the PwD Act, 1995, as such issue were likely to arise in other matters of similar nature, and answered it in the affirmative.

31. Mr. Mohan also invited our attention to an order dated 20th February, 2020 recorded on these appeals. Such order noticed the submission advanced by him on behalf of Mr. Nair that "the rights in favour of disabled persons flow directly from the provisions of the Act and the source of right is not the O.M. but the provisions of the Act themselves; and as such the O.M. in any case can not limit the applicability of the protection under the provisions of the Act". Mr. Mohan reiterated such submission before us and submitted that the

directions given by the High Court in the impugned judgment and order do not call for any interference.

PROCEEDINGS BEFORE THIS COURT:

32. Having heard the parties on 19th January, 2023, we had granted special leave to appeal and reserved judgment. In course of hearing, Mr. Gupta had sought for leave to file a "Further Affidavit", which we orally permitted. Such an affidavit having been tendered on 30th January, 2023, we permitted Mr. Mohan to look into its contents and on a prayer made on behalf of Mr. Nair, we even permitted filing of a reply by an order dated 31st January, 2023. Pursuant thereto, a "Common Affidavit-in-Reply" dated 7th February, 2023 has been filed by Mr. Nair and taken on record.

ADDITIONAL AFFIDAVITS OF THE RBI:

33. We have read the additional affidavits filed by the RBI and Mr. Nair after judgment on these appeals was reserved. The points that the RBI urged in the counter affidavit filed before the High Court have been reiterated, which we have noticed above. That apart, perusal of paragraphs 3-7 of the 'Additional Affidavit' dated 19th January, 2023 and 10-13 of the 'Further Affidavit' dated 30th January, 2023 of the RBI reveal reference to issuance of instructions on 'Reservation in promotion' under section 34 of the PwD Act, 2016 by the GoI in pursuance of the directions contained in the order dated 28th September, 2021 (supra) and further that the RBI has adopted the same for itself vide its circular dated 08th December, 2022; that considering the above instructions, in relation to the examinations conducted for Panel Year 2022 vide circular dated 8th December, 2022, 16 (sixteen) vacancies were reserved for persons with disabilities and though the last date for expression of willingness to participate in the same was 30th September, 2022, Mr. Nair did not participate; and also that the qualification for Asst. Manager Grade 'A' post has undergone changes and the Memorandum of Settlement (MoS) between the RBI and the Employee's Association has been implemented vide revised qualification criteria w.e.f. 2013.

QUESTIONS OF LAW RAISED BY THE APPELLANTS:

34. We have noticed that in the appeals, the RBI and the GoI have each raised 3 (three) questions of law which they claim are substantial

questions. In essence, the questions are common but obviously differently worded and not in the same sequence. To put the matter in the proper perspective, the appellants essentially have sought for answers in the negative to the following questions:

(i) Whether the modification made by paragraph 5 of the Office Memorandum dated 3rd December, 2013 to paragraph 14 of the Office Memorandum dated 29th December, 2005 is to be applied retrospectively with effect from 29th December, 2005?

(ii) Whether the High Court was justified in holding that the RBI has to apply reservation in promotion for persons with disabilities in respect of Group 'A' and Group 'B' posts?

And

(iii) Whether the High Court is justified in holding that the decision in National Confederation of Development of Disabled (supra) is applicable to the present case?

ANALYSIS AND DECISION:

35. Regard being had to the narrative of facts leading to presentation of these appeals, the rival contentions advanced at the Bar on behalf of the parties and in the light of exposition of law by this Court in the decisions referred to above in regard to rights of persons with disabilities in employment under the appropriate Government or in an establishment qua matters of promotion, we are of the considered opinion that the aforesaid 3 (three) questions have been rendered purely academic. We may briefly give our reasons therefor.

36. The decision in Rajeev Kumar Gupta and Others v. Union of India and Others (supra) considered the legality of the impugned Office Memoranda dated 18th February, 1997 and 29th December, 2005, issued by the DoPT, denying to employees of Prasar Bharati, having disabilities, of the statutory benefit of 3 (three) per cent reservation in identified posts falling in Groups 'A' and 'B'. Contention raised by the respondents based on the Constitution Bench decision in Indra Sawhney v. Union of India 1992 supp (3) SCC 217, that there cannot be reservation in promotions to identified posts of Groups 'A' and 'B', was overruled by observing that such ruling arose in the context of reservations in favour of backward classes of citizens

falling within the sweep of Article 16(4) of the Constitution. Ultimately, it was held in paragraphs 24 and 25 as follows:

"24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

37. The view expressed in Rajeev Kumar Gupta and Others v. Union of India and Others (supra) was doubted by a coordinate Bench of this Court. Opining that preferential treatment to persons with disabilities could cover reservation in appointment but not reservation in promotion, the said Bench in its order dated 3rd February, 2017 was of the view that the contention needs to be considered by a larger Bench.

38. Siddaraju v. State of Karnataka and Others (supra) is the larger Bench decision which has held that the decision in Rajeev Kumar Gupta and Others v. Union of India and Others (supra) cannot be faulted when it stated that Indra Sawhney v. Union of India (supra) dealt with a different problem and cannot be followed.

39. State of Kerala v. Leesamma Joseph (supra), which is the latest in the line of decisions on the same point, has reached similar conclusion albeit premised on a different reasoning.

40. There is, therefore, no dearth of authority for the proposition that the PwD Act, 1995 not only mandated reservation in appointment but also contemplated reservation in promotion.
41. Incidentally, we have also assigned our own reason as to why

any perception and understanding of section 33 of the PwD Act, 1995 not contemplating reservation in promotion is erroneous and fallacious.

42. Bearing in mind what has been laid down by this Court in the cited decisions and the view taken by us (supra), our specific answers to the 3 (three) questions urged by the appellants are these. OM dated 29th December, 2005 having been set aside in Rajeev Kumar Gupta and Others v. Union of India and Others (supra), the first question does not survive consideration as to whether modification of paragraph 14 of the same, brought about by OM dated 8th December, 2013, would apply retrospectively. Furthermore, Rajeev Kumar Gupta and Others v. Union of India and Others (supra) having directed the GoI to extend 3 (three) per cent reservation to the persons with disabilities in all identified posts in Group 'A' and Group 'B', irrespective of the mode of filling up of such posts (emphasis ours), and the larger Bench in Siddaraju v. State of Karnataka and Others (supra) having given its stamp of approval to such decision, the second question also stands squarely answered against the appellants. Finally, the question as to whether the High Court was right in relying upon National Confederation for Development of Disabled and Another v. Union of India and Others (supra) is no longer res integra having regard to the multiple decisions of this Court on the point affirming the position that reservation in employment contemplated in section 33 of the PwD Act, 1995 covers all posts identified for each of the 3 (three) kinds of disability mentioned therein and is not restricted to Group 'C' and Group 'D' posts. We share the view taken therein.

43. Having held thus and in the changed circumstances, we are tasked to decide two other questions, viz.:

(a) whether the RBI by failing to consider Mr. Nair for promotion, a right guaranteed by Article 16 of the Constitution, on application of relaxed standards committed an illegality?

and

(b) provided the answer to the aforesaid question is in the affirmative, to what extent relief can legitimately be extended to Mr. Nair?

44. Our answers to the aforesaid questions should be prefaced by a brief reference to the supreme law of the land. The resolve in the

Preamble to the Constitution and the provisions in Part IV thereof, are considered relevant. Our preambular promise is to secure 'social justice' to all. The Directive Principles of State Policy, though not enforceable, are declared in Article 37 to be "fundamental in the governance of the country" and the State has a duty to apply these principles in making laws. The immediately next article commands the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice ~ social, economic and political ~ shall inform all the institutions of the national life and endeavor to eliminate inequalities in status, facilities and opportunities. Article 41 requires the State, within the limits of its economic capacity and development, to make effective provision for securing the right to work, inter alia, in cases of disablement. In the society we live in, which is indeed classridden, 'social justice' should mean justice to the weaker and poorer section of the society, particularly when the people of the nation have resolved in the Preamble to secure 'equality of status and opportunity'. The underlying idea is that securing justice to the weaker and the poorer section could make them equal with the rest of the society. In a case where the weaker section is involved in a combat with the stronger section and the scales are even, to rise to the challenge for securing 'social justice', the Courts of law ought to lean in favour of the former so that justice is ensured. If persons with disabilities are denied the rights and privileges conferred by law of equal opportunities, protection of rights and full participation, inter alia, in the field of public employment, the disservice to such persons would inevitably be grave causing erosion of constitutional idealism and respect for human rights apart from extreme mental agony and pain of the deprived. Where such situations emerge, the courts should not remain mute and dumb. No court, far less this Court, should condone the breaches and violations by employers/establishments arising out of treading of the illegal path by them.

45. It is noted that the version of the RBI before the High Court was that there is no provision for reservation in promotional posts in Grade - 'A' for persons with disabilities; hence, benefit of promotion on a reserved vacancy could not be granted to Mr. Nair. This was indeed the ostensible reason for which the relaxed standards of assessment available for SC/ST candidates was not extended to persons with disabilities, a fortiori, to Mr. Nair. In other words, Mr. Nair's claim for promotion on a reserved vacancy for persons with disabilities, upon application of relaxed standards, could not have been considered in the absence of any identified Group 'A' post. That the appropriate Government must make available reservation in the matter of

appointment of persons with disabilities in identified posts of Group 'A' and Group 'B' had been conclusively and authoritatively decided by this Court in Govt. of India and Another v. Ravi Prakash Gupta and Another (supra) and National Confederation for Development of Disabled and Another v. Union of India and Others (supra) by the time the impugned judgment and order was rendered. That being the position, no valid contention could have been advanced that reservation for persons with disabilities is not available for appointment on Group – 'A' posts. What remained was whether reservation for persons with disabilities is available for promotional appointment on Group – 'A' posts. That issue has also been given a quietus by Rajiv Kumar Gupta and Others v. Union of India and Others (supra), Siddaraju v. State of Karnataka and Others (supra) and State of Kerala v. Leesamma Joseph (supra). The two big impediments in the path of Mr. Nair, thus, stand removed by reason of a pragmatic and reasonable interpretation of the PwD Act, 1995 by this Court.

46. It cannot, however, be gainsaid that when Mr. Nair had participated in the Panel Year 2003 examination, no decision had been rendered by this Court that reservation in promotion is permissible in respect of Group 'A' posts. It is equally true that this Court while interpreting sections 32 and 33 of the PwD Act, 1995 did not declare the law laid down by it to have prospective application. It is a principle, well-settled in law, that the interpretation of a provision of law relates back to the date of the law itself. This is essentially for the reason that the duty of the Court is not to legislate but to interpret the law. However, such principle is subject to the exception that this Court may, in a given case, declare that its interpretation would have effect prospectively. That is not the express intention of this Court in any of the decisions referred to above. This being the position in law, we have no doubt that Mr. Nair did have a statutorily conferred right all through to claim that reservation in promotional appointment in Group 'A' posts is ingrained in the PwD Act, 1995.

47. Thus held, the remaining impediment is with regard to condonation of shortfall of marks at par with the relaxed standards applicable to SC/ST candidates. We now proceed to examine whether the RBI was justified in not condoning the shortfall of 3 (three) marks pertaining to the 2003 examination taken by Mr. Nair to enable him secure promotion.

48. We have noted from the communication dated 18th October, 2006 issued by the Banking Division, Department of Economic Affairs, Ministry of Finance, GoI that the same surfaced as a followup step

to comply with this Court's order dated 19th March, 2002 in A.I. Confederation of the Blind v. Union of India and Another (supra). Even otherwise, to reach out to persons with disabilities and grant them the facilities and benefits that the PwD Act, 1995 envisaged, it was rather harsh to apply standards which are applicable to general candidates to Mr. Nair while he competed with such general candidates for securing his promotion. RBI, as a model employer, ought to have taken an informed decision in this regard commensurate with the aspirations of persons with disabilities.

49. We did not hear any serious argument from Mr. Gupta or Ms. Divan, and rightly so, that persons with disabilities are not entitled to be judged by the same relaxed standards that are applied to assess candidature of SC/ST candidates.

50. In such circumstances, the omission or failure of the RBI in condoning the shortfall in marks coupled with the neglect to identify a Group 'A' post suitable for reservation to accommodate Mr. Nair on promotion appears to us to be indefensible.

51. Question (a) is answered accordingly.

52. In considering question (b), concededly there was no authoritative pronouncement of this Court interpreting the PwD Act, 1995, making available reservation in promotional appointments for persons with disabilities in Group 'A' posts, when Mr. Nair took the examination for promotion to the post of Assistant Manager, Grade – I in 2004. The first time it came to be so declared was when the decision in Rajeev Kumar Gupta and Others v. Union of India and Others (supra) was pronounced. Should the RBI, in the circumstances, be directed to relax the standard of assessment and grant promotion to Mr. Nair with retrospective effect?

53. The answer to this question would necessitate looking back at the operative directions contained in the order under challenge. What the High Court said has been quoted above. It is noteworthy that the High Court did not mandatorily direct grant of promotion to Mr. Nair. The High Court's judgment, unintendedly, was confined to application of reservation policy. The High Court did not declare that Mr. Nair should also be entitled to condonation of shortfall in marks with reference to the Panel Examination 2003. Insofar as other qualifying requirements under the relevant rules are concerned, the High Court clarified that it may not be understood to have expressed any opinion on the question of Mr. Nair satisfying such requirements. Given such contours of the order, it was open to the RBI to consider

Mr. Nair for promotion and pass appropriate order either granting or denying him promotion in accordance with the prevailing exposition of law. Instead of complying with the order, the RBI carried the judgment and order to this Court on 12th September, 2014. GoI also followed suit. It was Mr. Nair who rushed to the High Court with a review petition within the period of limitation, whereupon his rights have been kept open noticing pendency of the petition for special leave of the RBI. Given such a situation, it seems that the RBI has on its own invited the uncomfortable position in which it finds itself now. The decisions of this Court rendered during the pendency of these appeals have to be considered and applied, notwithstanding the fact that the same were not available when the High Court decided Mr. Nair's writ petition finally. RBI might not have faced this conundrum had the order of the High Court been complied with on time.

54. In any event, should the RBI and GoI be worse off for approaching this Court, given the fact that after his participation in the 2003 examination Mr. Nair has elected to stay away from further examinations on the pretext of pendency of proceedings before the High Court as well as this Court, and suffer the impact of the decisions of this Court post the impugned judgment and order? Or, should the appeals be dismissed leaving it open to the RBI to comply with the order of the High Court? In our view, dismissal without any observation has the potential of generating further unnecessary litigation. At the same time, though Mr. Nair did not file any cross- appeal, he had applied for review and has been conferred the liberty to revive the review petition after disposal of proceedings by this Court.

55. Having regard to the materials on record before us and for answering question (b), it is considered appropriate to invoke Article 142 of the Constitution "for doing complete justice" in the cause.

56. We direct RBI to grant notional promotion to Mr. Nair on the post of Assistant Manager Grade – 'A', to be effective from the date of presentation of the writ petition before the High Court, i.e., 27th September, 2006 and actual promotion from 15th September, 2014, i.e., the last date for compliance of the order of the High Court. This exercise must be completed within a period of 2 (two) months from date. The monetary benefits accruing to Mr. Nair with effect from 15th September, 2014 shall be computed and released by 4 (four) months from date.

57. Since Mr. Nair has a couple of years for his retirement on superannuation, it is needless to observe that in computing his retiral

benefits due regard shall be given to his promotion, as directed above, with effect from 27th September, 2006.

58. The appeals stand disposed of on the above terms. Parties shall bear their own costs.■

Appeals disposed of.

[2023 (178) FLR 812]
(DELHI HIGH COURT)
SATISH CHANDRA SHARMA , C.J. and SANJEEV NARULA,J.
L.P.A No. 562 of 2023 and C.M.Nos. 36760 of 2023 and 36761 of 2023
July 21, 2023
Between
KARNVIR SINGH
and
DY.GENERAL MANAGER, STATE BANK OF INDIA

Industrial Disputes Act, 1947-Section 2(p) read with section 18(1)-Regularisation claimed-Appellant was appointed as Messenger-cum-water boy in 1983-Re-engaged in year 1989 and continued upto 31.11.1997-Industrial Tribunal rejected the claim of regularisation-Learned Single Judge dismissed the petition of employee-Hence instant appeal-Held workman was not appointed as per the procedure laid down in the Recruitment Rules-Person who had appointed him had no authority to appoint-Workman at no point of time had ever applied for regularization in terms of 'Sastry' Award (Bipartite Settlement)-On the basis of failure of the workmen to place relevant evidence the findings of learned Tribunal were based upon evidence and had been affirmed by learned Single Judge-No interference warranted-Appeal dismissed. [Paras 14 to 27]

JUDGMENT

SATISH CHANDRA SHARMA, C.J.- The instant LPA has been preferred by the Appellant, praying that the judgment dated 23.12.2022 passed by the Learned Single Judge in W.P.(C) No. 18065/2004 be set aside. The Appellant herein had filed the

underlying writ petition challenging the Award dated 19.07.2004 passed by the Presiding Officer, Central Government Industrial Tribunal (CGIT), New Delhi in I.D.No181/198.

2. The facts of the case reveal that the Appellant (writ petitioner)- as stated in the writ petition was recruited in the services of State Bank of India in the month of January, 1983 as a Messenger-cum-Water Boy at Nangli Sakrawati Branch of the State Bank of India and continued up to December, 1986. As per the statement of the Petitioner, he was re-engaged by the State Bank of India as a Messenger-cum-Water Boy in the same branch in the month of January, 1989 and continued to work up to 31.11.1997.

3. The Petitioner - while he was in service, raised an industrial dispute claiming regularisation and the conciliation proceedings resulted in failure. The Reference was forwarded to the Central Government Industrial Tribunal for adjudication and the same reads as under:

> "Whether the action of the management of State Bank of India in not regularizing the services of Shri Karanvir Singh, messenger-cum-water boy w.e.f. 1983 is just fair and legal. If not, what relief the concerned workman is entitled to?"

4. The Appellant workman filed a statement of claim and the Industrial Tribunal has passed a detailed and exhaustive Award dismissing the claim of the workman. Paragraphs 6 & 7 of the Award passed by the Industrial Tribunal read as under:

> "6. It is not disputed as the workman was recruited in January, 1983 at Nangli Sakrawati Branch of the management bank as Messenger-cum- Water Boy and worked there till December, 1986 as Water boy and thereafter his services were terminated and further that he was again re- appointed in the service of the bank in January, 1989 in the said branch of the bank and worked there till 30.11.97 when his services were terminated. However, the bank claims that his appointment was not regular and valid as he was not appointed as per procedure laid down as per recruitment rules or process and that the manager of the bank Branch had no authority to appoint him or further he was appointed without approval from the competent authority and the bank

has further claimed that he also failed to apply for permanent absorption/ regularization in view of Bipartite agreement arrived in January, 91 as such he is not entitled to the relief of regularization and reinstatement claimed in his petition. The perusal of the record shows that the workman was not employed or appointed to the post of water boy or messenger-cum-water boy through regular process nor he was given any appointment letter. However, he worked there as such for more than 240 days during the both periods from 1983-86 and 89 to 97. The respondent- bank has admitted that he worked there on temporary basis or on daily wages and in view of the Bipartite Settlement dated 27.10.88 and 9.1.91 entered into between the employees Union and respondent-bank. The workman was eligible to apply for regularization but he failed to do so. As such he is not entitled to the relief claimed. The workman in his statement of claim has averred that he applied for his absorption or regularization in view of the above said bipartite agreement but in his statement he did not depose so not any suggestion was put to the witness of the management MW1 that he so applied. MW1 Shri M.M. Sharma also stated in his evidence that he did not apply for absorption in the service or for regular appointment. Workman also failed to file copy of the application vide which he applied to the bank and he also failed to put/file copy of the application or he ever asked the Bank to produce the record to show that he had moved such an application. The burden to prove that he applied for regularization of his job was upon the workman. In my opinion he has failed to prove his claim that he so applied, in view of the above discussions the workman is not entitled to the reliefs claimed.

7. In view of the discussions made above I am of the opinion that the claimant applicant has failed to prove that he was appointed to the job of Messenger-cum-Water boy through a regular process or that he was entitled to be retained or regularized or that he moved an application for absorption and regularization in the job in view of the Bipartite Settlement entered into in January, 1991. Therefore, the workman is not entitled to the relief claimed. Hence the award is accordingly passed."

5. The aforesaid Award was passed after scrutinising the evidence on record and the Industrial Tribunal has arrived at a conclusion that the employee in question is not entitled to regularisation in light of the Bipartite Settlement dated 17.11.1987 (Sastry Award)

under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947.

6. The workman in question thereafter preferred a writ petition before this Court and the learned Single Judge has dismissed the said writ petition. The operative paragraphs of the order passed by the Learned Single Judge are contained in paragraphs 23 to 30, and the same read as under :

"23. In the present case, it is the case of the petitioner that his service was terminated w.e.f. 30.11.1997. However, the term of reference was confined to his regularization in service w.e.f. 1983. There is no reference qua his alleged illegal termination. No additional issue was framed by the learned Labour Court. The petitioner neither challenged the term of reference nor pressed for framing additional issues. Since the learned Labour Court conducted the enquiry limited to the term of reference, i.e., the issue of regularization, hence this Court is also restricting the examination limited to the term of reference, i.e., regularization of the petitioner as a Messenger-cum-Water Boy w.e.f. 1983.

24.The law regarding the regularisation of an employee is no more res integra. As per the settled proposition of law, the regularization can be done only as per the regularization policy declared by the Government, and nobody can claim the regularization as a matter of right de hors the regularization policy. The Hon'ble Supreme Court reiterated this position in State of Rajasthan and others v. Daya Lal and others/ which reads, inter alia, as follows:

"12.We may at the outset refer to the following well principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16

should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with

government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

25. In view of the legal position as discussed herein above, it is necessary to examine the facts of the present case. The respondent-Bank had entered into Settlement Agreements with its employee Unions and formulated Scheme for the regularisation of the temporary employees. The said Scheme was given wide publicity by duly publishing it in the daily newspapers. An employee is entitled for the regularisation only if he satisfies the regularisation policy of the Management. It was the categorical stand of the respondent that the petitioner never applied under the said Scheme for regularisation. However, it was the case of the petitioner that he applied for regularisation. The burden of proof was on the Petitioner to prove that he applied under the said regularisation Scheme. However, the Petitioner failed to place on record any document to show that he ever applied for the permanent absorption under the Scheme. The petitioner stepped into the Witness box as WW-1 and deposed that he submitted his application for regularisation through Nangli Sakravati Branch. However, no particulars of the said application, including the date of the application, was placed on record. MW-1 and MW-2 deposed categorically that the petitioner never applied under the Scheme. The Petitioner failed to cross-examine the Management Witnesses on these aspects. The petitioner failed to summon the relevant records from the respondent Bank. The process of regularisation happened in the year 1991. However, there is no representation/letter from the petitioner till his termination. There is nothing on record to show that the petitioner ever applied for the permanent absorption under the Scheme of the respondent-Management.

26.This Court examined the impugned Award in detail. The relevant portion of the impugned Award, reads, inter alia, as follows :

> "The respondent-bank has admitted that he worked there on temporary basis or on daily wages and in view of the Bipartite Settlement dated 27.10.88 and 9.1.91 entered into between the employees Union and respondent-bank. The workman was eligible to apply. For regularisation but he failed to do so. As such, he is not entitled to the relief claimed. The workman in his statement of claim has averred that he applied

for his absorption or regularization in view of the above said bipartite agreement but in his statement he did not depose so not any suggestion was put to the witness of the management MW-1 that he so applied. MW-1, Shri M.M. Sharma also stated in his evidence that he did not apply for absorption in the service or for regular appointment. Workman also failed to file copy of the application vide which he applied to the bank and he also failed to put/file copy of the application or he ever asked the Bank to produce the record to show that he had moved such an application. The burden to prove that he applied for regularization of his job was upon the workman. In my opinion he has failed to prove his claim that he so applied, in view of the above discussions the workman is not entitled to the reliefs claimed."

27. This Court finds no infirmity or perversity in the findings of the learned Labour Court. Learned Labour Court passed the impugned Award based on the evidence on record.

28. Both the parties raised issues relating to existence of employer/ employee relationship between the parties. In view of the fact that the petitioner never applied for the regularisation under the Scheme of the respondent's Bank, the petitioner is not entitled for regularisation. Hence this Court does not think it necessary to examine the other issues as the same was not part of the reference.

29. In the light of the detailed discussions herein above, this court holds that the impugned award does not suffer from any illegality or perversity. Learned Labour Court did not commit any error by confining its inquiry to the questions referred to it under Section 10(4) of I.D. Act. Regularisation is not a matter of right and therefore this Court cannot direct the respondent Bank to regularize the services of petitioner. This Court is not inclined to interfere with the impugned award while exercising the jurisdiction vested in it under Article 226 of the Constitution of India.

30.The present Writ Petition is dismissed in the aforesaid terms. No order as to costs."

7. The Award passed by the Tribunal and the order passed by the Learned Single Judge make it very clear that the services of the workman were put to an end w.e.f. 30.11.1997; the Reference was

confined to his regularisation w.e.f. 1983; and the Reference was not relating to termination. The workman at no point of time has challenged the terms of Reference nor a prayer was made before the Tribunal for framing additional issues, and in that backdrop, the Tribunal has answered the Reference against the workman holding that the workman is not entitled to regularisation as a Messenger-cum-Water Boy w.e.f. 1983.

8.The Award passed by the Tribunal on facts reveals that the workman was recruited in the year 1993 as a Messenger-cum-Water Boy and served the bank till 1986 and he was again re-appointed in the services of the bank in 1989 and worked till 30.11.1997. It has been established before the Tribunal that his appointment was not regular and he was not appointed as per the procedure laid down in the Recruitment Rules and the Manager of the bank had no authority to appoint him. He was appointed without approval from the Competent Authority and in light of the Bipartite Agreement arrived at in January, 1991, option was given to the employees to submit an application claiming regularisation. The evidence on record establishes that the workman did not submit any application for regularisation. He failed to file copy of the application and, in fact, he failed to prove that he did make a claim for regularisation at the relevant point of time. The Appellant workman stepped into the witness box as WW-1 and stated that he did submit an application, however, no particulars of the said application, including the date of the application were placed on record. MW-1 and MW-2 deposed categorically that the Appellant-workman never applied under the scheme for regularisation and the scheme provided for application for the purpose of regularisation.

9.The Appellant-workman also failed to summon the relevant record from the bank and the process of regularisation took place in 1991. Though the process of regularisation took place in 1991, the Appellant never took steps at the relevant point of time in the matter of regularisation nor submitted any representation to the employer. In the considered opinion of this Court, the findings of fact arrived at by the Tribunal does not warrant any interference.

10.Learned Counsel for the Appellant has placed heavy reliance upon a judgment delivered in the case of Oshiar Prasad v. Employers In Relation To Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkand. He has referred

to Paragraph 33 of the aforesaid judgment which reads as follows:

> "33.This takes us to the next question as to whether the appellants are entitled to claim the relief of payment of retrenchment compensation. Having given our anxious consideration to this issue, we are of the considered view that having regard to the peculiar facts of this case and the reasons, which we have set out hereinbelow, we are inclined to hold that the appellants are entitled to claim the retrenchment compensation from the Contractor /BCCL. "

11.It is true that the aforesaid case was a case of regularization and the employee was later on retrenched by the employer. In those circumstances, the Hon'ble Supreme Court held that the employee is entitled to claim the retrenchment compensation. The reason assigned by the Hon'ble Supreme Court for grant of retrenchment compensation is reflected in Paragraph 34 of the judgment which reads as follows:

> "34.It is for the reason that firstly, the respondent in their written statement filed before the Tribunal have offered to pay the retrenchment compensation to all such workers in accordance with the provisions of Section 25-F of the Act. Secondly, no documents were filed by the respondent to show that any such compensation was paid to the appellants or to any worker till date by the respondent and lastly, more than three decades have passed and yet the issues of absorption, and/or payment of compensation has not attained finality."

12. From a bare perusal of the aforesaid paragraph, it is evident that the organization in question in the aforesaid judgment has offered to pay compensation to workers and in those circumstances, an order was passed by the Hon'ble Supreme Court directing the Employer to grant retrenchment compensation to the Appellants therein.

13.Whereas, in the present case the pleading does not reveal that any such identically placed person was granted retrenchment compensation. Therefore, no relief can be granted based upon the aforesaid judgment relied upon by the Learned Counsel for the Appellant.

14. In the present case, a finding of fact has been arrived at by the Tribunal that the Appellant workman never submitted any

application claiming regularisation as Messenger-cum-Water Boy w.e.f. 1983. The finding of fact arrived at by the Tribunal has been affirmed by the learned Single Judge and it is a settled proposition of law that the High Courts cannot interfere with the findings of fact which the Tribunal is competent to decide. (See Sadhu Ram v. Delhi Transport Corporation).

15.The Hon'ble Supreme Court in paragraph 17 of the judgment in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, has held as under:

> "17.The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact- finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact- finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

16.The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

17.The Hon'ble Supreme Court has taken a similar view in Hari

Vishnu Kamath v. Ahmed Ishaque & ors., inter alia held as under :

> "21. ... On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ….The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

18.In Dharangadhara Chemical Works Ltd. v. State of Saurashtra, the Supreme Court, once again observed that where the Tribunal having jurisdiciton to decide a quesiton comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

19. In Management of Madurantakam Co-op. Sugar Mills Limited v. S. Viswanathan, the Apex Court, held that the Labour Courts/ Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is

when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

20.In a Constitution Bench judgment of the Supreme Court in Syed Yakoob v.K.S. Radhakrishnan & ors., the Apex Court has, inter alia, held as under :

> "7. The question about the limits of the jurisdiction of High Courts in issuing a Writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind

that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.)

8.It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manliest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on

the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

21.The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

22.The Hon'ble Supreme Court in State of Haryana v. Devi Dutt & ors., has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

23. In the present case, the Tribunal has arrived at a conclusion based upon the evidence adduced by the parties and the learned Single Judge has affirmed the findings of fact again after minutely scanning the entire evidence, and therefore, the question of interference by this Court does not arise.

24. The supervisory jurisdiction of the High Courts under Article 227 of the Constitution of India, was discussed by the Supreme Court in Mohd. Yunus v. Mohd. Mustaqim, whereby it was, inter alia, held as under :

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervi-

sory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

25. Furthermore, in Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala, the Supreme Court held as under :

> "13. The intention here is manifest. In any event this is a possible view that could be taken. This Court in Venkatlal G. Pittie v. Bright Bros. (P.) Ltd. and Beopar Sahayak (P) Ltd. v. Vishwa Nath,held that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning, and the High Court should not exercise jurisdiction under Article 227 of the Constitution. See in this connection the observations of this Court in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale. Where two views are possible and the trial court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be in error in interfering with the finding of the trial court or interfering under Article 227 of the Constitution over such decision."

26.In light of the aforesaid judgments, the Tribunal has arrived at a conclusion based on evidence that the workman was not appointed as per the procedure laid down in the Recruitment Rules and the person who appointed him had no authority to appoint him. The workman at no point of time applied for regularization in terms of the Sastry award (Bipartite settlement) and was not able to prove before the Tribunal that he has submitted any application at any point of time for regularization and therefore the finding of fact arrived at by the Tribunal are based upon evidence and has been affirmed by the learned Single Judge after minutely scanning the entire record. Hence this Court does not find any reason to interfere with the order passed by the learned Single Judge.

27. Accordingly the present appeal stands dismissed.■

Appeal Dismissed.

[2023 (178) FLR 132]
(PATNA HIGH COURT)
HARISH KUMAR, J.
Civil Writ Jurisdiction Case No. 1541 of 2021
January 18, 2023
Between
CHAIRMAN MADHYA BIHAR GRAMIN BANK
and
UNION OF INDIA and others

Payment of Gratuity Act 1972-Section 7(8)-Prevention of Corruption Act, 1988-Sections 7/13(2) and 13(1)(d)-Payment of gratuity-A direction issued by Controlling Authority to pay ? 10 lakhs-Hence present petition-Respondent No.3/claimant employee was apprehended in a trap case which resulted in his dismissal-Appeal was also dismissed-Employee claimed gratuity-Held there has been an alternative remedy of filing appeal-Petitioner granted liberty to file appeal-Petition disposed of. [Paras 7 and 8]

JUDGEMENT

HARISH KUMAR, J.- Heard Mr. M. N. Parwat, learned senior counsel duly assisted by Mr. Ved Prakash, learned counsel for the petitioner, Mr. Ajay Kumar Prasad, learned counsel for the respondent No.3 and Ms. Kanak Verma, learned counsel for the Union of India.

2. By invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner seeks quashing of the order dated 02.06.2020 as contained in Annexure-4, passed by learned Assistant Labour Commissioner(C) -cum- Controlling Authority under the Payment of Gratuity Act, 1972 (for short the 'Act of 1972') by which the respondent No.3 has been found entitled to get his gratuity amount of ₹ 10,00,000/- only without any amount of interest and further direction has been issued to the petitioner Bank to pay a total sum of ₹10,00,000/- within a period of 30 days from the date of receipt of order.

3. Learned senior counsel appearing on behalf of the petitioner gave a brief facts of the case stating that the private respondent No.3 had joined the service of the erstwhile Bhojpur Rohtas Gramin Bank

as Clerk-cum-Cashier on 09.06.1979 and thereafter, he was promoted to the post of Field Supervisor and later on designated as Officer Junior Management (Grade-I). He further submits that while the petitioner was working as Branch Manager, in Kashichak Branch of the Bank, he was apprehended in connection with a trap case and accordingly a Vigilance P. S. Case No. 100 of 2009, under Sections 7/13(2) and 13(i)(d) of the Prevention of Corruption Act, was instituted against him. He also submits that on account of the aforesaid charges, the petitioner was put to a departmental proceeding, which culminated into the dismissal with further direction that the same shall ordinarily be a disqualification for further employment. He next submits that the respondent No.3 had assailed the order of punishment in appeal, however, the same also stood dismissed. In the meantime, the private respondent had filed an application under the Act of 1972 for payment of his gratuity amount before the Assistant Labour Commissioner(C)-cum-Controlling Authority on account of his alleged superannuation from the services of Bank w.e.f. 31.12.2014 resulting into registration of Case No. 48/1(33)/2018/ALC-PT. The petitioner appeared and filed its reply as well as supplementary reply denying all the allegation and also raised objections, inter alia, the claim being not maintainable and time barred. The Assistant Labour Commissioner(C)-cum-Controlling Authority after hearing the parties, allowed the said application vide order dated 02.06.2020 which is impugned herein.

4. Learned senior counsel further drawn the attention of this Court to the Service Regulations for Regional Rural Banks as framed by the Central Government in exercise of power vested in it under Section 17(1) second proviso of Regional Rural Bank Act, 1976 and Madhya Bihar Gramin Bank (Officers and Employees) service Regulation, 2010 and submits that these regulations were applicable and binding on all the Officers and Employees of the Bank and, in fact, in terms of Section 32 of the said Regional Rural Banks, Act, 1976, the provisions of Regional Rural Banks Act, 1976 has overriding effect over the provisions of other laws. He next submits that the Regulation 3 of Chapter II of the Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 deals with the classification of ***"Officers"*** and ***"Employees"*** and the word employee does not cover Officers of the Bank. It is evident from the contents of proviso of Regulation 72(2) above that it keeps rider on the forfeiture of

Gratuity of employee only in the circumstances mentioned therein and not on the forfeiture of Gratuity of the Officers. He also relied upon one of the judgments rendered by the Hon'ble Apex Court in the case of P. Rajan Sandhi v. Union of India and others in Civil Appeal No. 4095 of 2006. Further reliance has also been made on the judgment rendered by the Hon'ble Kolkata High Court in the case of United Bank of India v. Sri Pranab Kumar and others in WP No. 15864 (w) of 2014.

5. Learned senior counsel further submits that in any view of the matter, the order impugned is wholly without jurisdiction and, as such, relegating the matter to take recourse of alternative remedy does not arise. He lastly submits that in identical matter in C.W.J.C. No. 24585 of 2018 filed by the Bank, notice has been issued and stay has been granted by learned co-ordinate Bench vide order dated 22.06.2020.

6. On the other hand, Mr. Ajay Kumar Prasad, learned counsel appearing on behalf of the respondent No.3 submits that the order passed by the Assistant Labour Commissioner (C) -cum- Controlling Authority under the Act of 1972, is in consonance with the terms of Section 72 of the Madhya Bihar Gramin Bank (Officers and Employees) service Regulation, 2010. He submits that the petitioner has not exhausted statutory remedy of appeal before the Appellate Authority under Section 7(vii) (sic) of the Payment of Gratuity Act. He has also drawn the attention of this court towards various orders passed by the learned co-ordinate Bench of this Court, including the case of the Chairman, Madhay Bihar Gramin Bank v. Union of India and others in CWJC No. 7139 of 2019 and further in CWJC No. 14919 of 2018 [The Chairman Uttar Bihar Gramin Bank and another v. The Union of India and Others] and CWJC No.3796 of 2019 [Uttar Bihar Gramin Bank and another v. The Assistant Labour Commissioner (Central) and others]. A supplementary affidavit has also been filed on behalf of the respondent No.3 bringing on record the order passed by the different learned co-ordinate Benches of this Court, which has been annexed as Annexure R3 series, wherein, the learned Court having found the writ not maintainable, relegated the matter to the Appellate Authority to exhaust the alternative remedy. While concluding his submissions, he submits that Section 72 of the Madhya Bihar Gramin Bank (Officers and Employees) service Regulation, 2010, would be applicable to all the officers or

employees which reads as follows:

> "72. Gratuity,- (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payament of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.
>
> (2) Every officer or employee shall be eligible for gratuity on,-
>
> (a) retirement,
>
> (b) death,
>
> (c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or
>
> (d) resignation after completing 10 years of continuous service or
>
> (e) termination of service in any other way except by way of punishment after completion of 10 years of service:
>
> Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only."

He lastly submits that the employee includes the officer also, otherwise it would be unjust discrimination while granting benefit of gratuity.

7. Having heard the parties at length and considering the materials available on record including the Regulations brought on record by the learned counsel for the petitioner as also the different orders passed by this Court relegating the matter to the Appellate Authority under Section 7(viii) (sic) of the Payment of Gratuity Act, this Court is of the opinion that issue of jurisdiction can be raised at any time even in appeal or execution. This Court thinks it apt and proper to quote paragraphs 22 and 23 of the judgment rendered by the Apex Court in the case of Kanwar Singh Saini v. High Court of Delhi which reads as follows:

> "22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Vide United Commercial Bank Ltd. v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios (P) Ltd. v. Navrang Studios, Sardar Hasan Siddiqui v. State, A.R. Antulay v. R.S. Nayak Union of India v. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Parkash Wanti, U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., State of Gujarat v. Rajesh Kumar Chimanlal Barot, Kesar Singh v. Sadhu Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and CCE v. Flock (India) (P) Ltd.]
>
> 23. When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, "that performance cannot be enforced in any other manner". Thus for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act."

This Court also gone through the orders passed by the different Benches of this Court and in order to maintain the uniformity, the present writ application stands disposed of grating liberty to the petitioner to avail the remedy of appeal as provided under the Act.

8. It is needless to say that in case, any appeal is filed before the Appellate Authority, the Appellate Authority shall take note of Section 14 of the Limitation Act for the purposes of condonation of delay, if any, and it would also be under obligation to consider all the points including the point of jurisdiction, as would be raised by the petitioner.■

Petition Disposed Of.

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