

APPEARANCE :- Shri V.B. Wagh, learned counsel for the applicant.

: Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Vice Chariman
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **26.03.2025**

O R A L - O R D E R

(Per : Justice V.K. Jadhav, Vice Chairman)

1. Shri V.B. Wagh, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for respondent authorities, are present.
2. The matter is finally heard with consent of both the sides at the admission stage.
3. By filing this Original Application, the applicant is seeking declaration that he is entitled for ad-hoc promotion for the post of Deputy Director, Divisional Information Office, Latur from S.C. category and further seeking quashing and setting aside the order dated 06.11.2020 issued by the respondent no. 01 thereby cancelling the promotion of the applicant of the post of Deputy Director (Information) and reverting the applicant to the post of District Information Officer.

4. The learned counsel for the applicant submits that during pendency of this Original Application as on 31.08.2022 the applicant came to be retired on attaining the age of superannuation.

5. The learned Presenting Officer has placed before us the judgment of the Hon'ble Supreme Court in the case of **Government of West Bengal & Ors. Vs. Dr. Amal Satpathi & Ors**, Civil Appeal No(s). _____ of 2024 (arising out of SLP (Civil) No(s). _____ of 2024 (Diary No. 43488 of 2023) dated 27.11.2024 and submits that the promotion cannot be retrospectively granted after retirement as it requires the actual assumption of duties and responsibilities of the promotional post.

6. The learned counsel for the applicant submits that while rendering the decision in the case of **Government of West Bengal & Ors. Dr. Amal Satpathi & Ors.** (cited supra) the Hon'ble Supreme Court has referred rule 54(1)(a) of West Bengal Service Rules and, as such, the view taken by the Hon'ble Supreme Court in connection with the said Rules cannot be made applicable to the case of the applicant.

7. We find no substance in the submissions made by the learned counsel for the applicant. So far rule 54(1)(a) of the West Bengal Service Rules are concerned, we have *pari materia* rules i.e. rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and rule 11 of Maharashtra Civil Services (Pay) Rules, 1981. Thus, rule 32 of M.C.S. (General Conditions of Services) Rules and Sub-rules (1) and (2) of Rule 11 of the M.C.S. (Pay) Rules, which are relevant for present discussion, are reproduced herein below:-

Rule 32 of M.C.S. (General Conditions of Services) Rules, 1981 –

“32. How the date of promotion is determined. - *The promotion of a Government servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But, when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.*

[Provided that, if deemed date is given then that Government servant's pay shall be fixed notionally from the date of deemed date given to him, accordingly pay and shall be drawn from the date of actual holding the charge of that post.]”

Sub-rule (1) and (2) of rule 11 of M.C.S. (Pay) Rules, 1981–

“11. Fixation of pay on appointment to another post. *Save as provided in Rules 12, 13, 14, 17 and 20 where a Government servant holding a post in a substantive, temporary or officiating capacity, is promoted or appointed in a substantive, temporary or officiating capacity, to another post including an ex-cadre post, his initial pay shall be regulated as follows:-*

(1) When appointment to the new post involves assumption of duties or responsibilities of greater importance than those attaching to the old post and.-

- (a) if he is holding a post not higher than a Class II post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay nationally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued and in the case of a Government servant drawing pay at the maximum of the pay-scale by an amount equivalent to the last increment; and*
- (b) if he is holding a post higher than a Class II post, he will draw as initial pay the stage of the time-scale next above his pay in respect of the old (lower) post*

(2) If the appointment to the new post does not involve such assumption

- (a) if there is a stage in the time-scale of the new post which is equal to his pay in the old post, he shall draw pay at that stage:*
- (b) if there is no such stage, he will draw pay at the stage next above his pay in the post.)*
- (c) in the case covered by Clause (a), he will draw his next increment on the date on which he would have received increment in the old post and in the case covered by Clause (b), he will draw his next increment in the new post on completion of the required period after which an increment is earned in the time-scale of the new post.*

Provided that, a Government servant on his appointment to such a new post, may at his option, to be exercised within one month from the date of his appointment, elect for fixation of his pay in one of the following manners, namely:-

- (i) either to get his initial pay fixed straightaway with effect from the date of his appointment to the new post; or*

- (ii) *to get his pay fixed with effect from the date of his next Increment in the old post.*

In either case, the date of next increment will fall due only on completion of the required period of qualifying service from the date the pay is fixed In the new post.]

- (d) *if the minimum of the time-scale of the new post is higher than his pay in the old post, he will draw that minimum as initial pay.*

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8. It is thus clear that in terms of rule 32 of M.C.S. (General Conditions of Services) Rules, 1981, the promotion of a Government servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But, when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken. Further, in terms of rule 11 of M.C.S. (Pay) Rules, 1981, where a Government servant is promoted/appointed in substantive, temporary or officiating capacity to another post including an ex-cadre post, his initial pay shall be regulated as per the

provisions prescribed in the said rules. However, rule itself indicates that the fixation of pay that can be done only on actual assumption of the duties and responsibilities of the promotional post.

9. In the case of **Government of West Bengal & Ors. Dr. Amal Satpathi & Ors** (cited supra) in paragraph nos. 18 and 19 the Hon'ble Supreme Court has made the following observations:-

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

19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of [Bihar State Electricity Board and Others v. Dharamdeo Das](#), wherein it was observed as follows:

*“18. It is **no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by***

courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in [Ajay Kumar Shukla v. Arvind Rai](#)¹⁰ where, citing earlier precedents in [Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty](#)¹¹ and [Ajit Singh v. State of Punjab](#), a three-Judge Bench observed thus:

41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in [Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty](#) in para 4 of the report which is reproduced below:

‘4..... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under [Article 14](#) read with [Article 16](#) of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.’

42. A Constitution Bench in [Ajit Singh v. State of Punjab](#), laying emphasis on [Article 14](#) and [Article 16\(1\)](#) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27:

‘Articles 14 and 16(1) : is right to be considered for promotion a fundamental right.

22. *Article 14* and *Article 16(1)* are closely connected. They deal with individual rights of the person. *Article 14* demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. *Article 16(1)* issues a positive command that:

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

It has been held repeatedly by this Court that clause (1) of *Article 16* is a facet of *Article 14* and that it takes its roots from *Article 14*. The said clause particularises the generality in *Article 14* and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. *Article 16 (1)* provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under *Article 16(1)*.

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27. In our opinion, the above view expressed in *Ashok Kumar Gupta* [*Ashok Kumar Gupta*

v. State of U.P. and followed in [Jagdish Lal](#) [\[Jagdish Lal v. State of Haryana\]](#), and other cases, if it is intended to lay down that the right guaranteed to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under [Article 16\(1\)](#) and this has never been doubted in any other case before [Ashok Kumar Gupta](#) [\[Ashok Kumar Gupta v. State of U.P.\]](#), right from 1950.’ “20. In [State of Bihar v. Akhoura Sachindra Nath](#), it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in [Keshav Chandra Joshi v. Union of India](#), where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in [Uttaranchal Forest Rangers’ Assn. \(Direct Recruit\) v. State of U.P.](#), in the following words:

‘37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in [Keshav Chandra Joshi v. Union of India](#) held that when promotion is

outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime.” (emphasis supplied).”

10. In the instant case, the applicant while working on the post of District Information Officer, Aurangabad in view of the policy decision taken by the respondent authorities to give ad-hoc promotion for 11 months or till duly selected candidate is available from MPSC, the applicant was given promotion to the post of Deputy Director of Information vide order dated 9.9.2014 with said 02 conditions. Thereafter, since the candidate from MPSC was not available, after expiry of 11 months the approval was given to the continuation of the applicant on the said promotional post from time to time. By

order dated 6.11.2020 the respondent no. 01 has cancelled the promotion of the applicant on the post of Deputy Director of Information and reverted him back to the post of District Information Officer. The ratio of promotion and nomination is 75:25 and, as such, 02 posts are to be filled in by nomination and 08 posts by promotion. Thus, 02 posts of Deputy Director of Information were to be filled in by direct recruitment, one for Open category and one for S.C. category. Accordingly, the applicant was given promotion on the post meant to be filled up by nomination i.e. purely on ad-hoc basis. Undisputedly, the said ad-hoc promotion involves the assumption of a new post with enlarged responsibilities. Thus, the applicant now could not assume his duties as he retired in the year 2022 on attaining the age of superannuation. The Hon'ble Supreme Court has reiterated that for promotion, which is fundamental right under [Articles 14](#) and [16\(1\)](#) of the Constitution of India, the Government servant does not hold an absolute right to the promotion itself.

11. In view of the authoritative pronouncement of the Hon'ble Supreme court in this regard, we find no substance in the present Original Application as on today. The Original

Application is accordingly liable to be dismissed. Hence, we pass the following order:-

ORDER

- (i) The Original Application No. 500/2020 is hereby dismissed.
- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 26.03.2025

ARJ O.A. NO. 500 OF 2020 VKJ DB PROMOTION