IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19506 of 2022

In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950.

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Krushna Chandra Panda …. **Petitioner**

-versus-

State of Odisha & Others …. **Opposite Parties**

For Petitioner : M/s.L.K. Mohanty, R. Das & S.Das.

For Opp. Parties : M/s. Mr. Sangram Jena, Addl. Government Advocate

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:24.11.2023 and Date of Judgment:24.01.2024

Biraja Prasanna Satapathy, J.

1. The present Writ Petition has been filed *inter alia* challenging the order dtd.02.05.2022 so passed by Opposite Party No.1 under Annexure-17. Vide the said order, the claim of the Petitioner to get the benefit of retrospective promotion to the cadre of Junior SES w.e.f. 24.10.1989 was rejected.

2. It is the case of the Petitioner that Petitioner was appointed as an Asst. Teacher against Trained Matric Post, which is coming under LSES cadre on 24.10.1986 by facing

regular process of selection conducted by the District Selection Committee headed by the then Inspector of School, Koraput and by following the provisions of Orissa Subordinate Education Service (General Branch) Rule, 1972 (in short 'Rules'). Petitioner while continuing as against the Trained Matric Post, he acquired the B.Ed. qualification in the year 1989.

2.1. It is contended that as provided under Rule-10(a)(b) of the Rules, Teachers belonging to LSES cadre became eligible for promotion to the post of Junior SES cadre on completion of 3 years service with B.Ed. qualification. As further provided under Rule-15, read with Rule-10(b) and 11(a) of the Rules, the Selection Committee is required to meet every year to consider promotion to the higher post i.e. to the cadre of Junior SES.

2.2. It is contended that even though Petitioner acquired the B.Ed. qualification in the year 1989 and in terms of Rules-10 of the 1972 Rules, he became eligible to get the benefit of promotion to the rank of Junior SES, on completion of 3 years of service, but the same was never extended in his favour till the Petitioner was so promoted to the rank of Junior SES only vide order dtd.24.09.2005 under Annxure-2.

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2.3. It is contended that claiming similar benefit of retrospective promotion in terms of the provisions contained under the 1972 Rules when O.A No.1673(C)/ 1993 was filed before the Tribunal by one Rabindra Kumar Panda and another, the Tribunal vide order dtd.28.09.2007 directed to convene a special Selection Committee for considering the claim of the Petitioners therein for promotion to the cadre of Junior SES against the year wise vacancies of the year 1984 and to promote the Petitioner if found eligible.

2.4. It is contended that the order passed by the Tribunal on 28.09.2007 was duly complied with by the Opposite Parties by extending the benefit of retrospective promotion against the year wise vacancy vide order dtd.28.09.2011 under Annexure-3.

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2.5. It is also contended that similar order passed by the Tribunal on 28.07.1999 in O.A No.433(C)/1994 was assailed by the State before this Court in W.P.(C) No.5790 of 2002. This Court vide order dtd.10.08.2017 while disposing the writ petition was not inclined to interfere with the direction so issued by the Tribunal. While confirming the order passed by the Tribunal, this Court held as follows in Para-6 of the order:-

*"**6.** On a close scrutiny of case record, it reveals that vacancy in the post of Junior SES was available in the year 1985. The opposite parties claimed promotion to the said post on the plea that they were otherwise eligible for promotion. No counter affidavit was filed by the State-Petitioner (the contesting respondents) before learned Tribunal disputing such claim. Resorting to the doctrine of non traverse, we are constrained to hold that the vacancy meant for promotion was available in the cadre of Junior SES in the year 1985. On perusal of impugned order under Annexure-1, it appears that Annexure-4 to the Original Application was indicative of the fact that the opposite parties had already acquired B.Ed. qualification in the year 1985, when vacancy in the cadre of Junior SES arose. T here is no pleading by the State-Petitioners in the writ petition to the effect that the opposite parties were not eligible be considered for promotion to the cadre of Junior SES in the year 1985. Thus, the submission of Mr. Samal with regard to eligibility of the Opposite Parties for promotion cannot be accepted.*

In that view of the matter, we are of that the view that the opposite parties were eligible to be considered for promotion in the year 1985. Rule-15 read with Rule-10(b) and Rule 11(a) of the Rules 1972 make it clear that the Selection Committee should meet each year to consider filing up of vacancy in the Junior SES cadre for that year. Admittedly, the case of the opposite parties were considered only in the year 1993 for no fault of their. It appears from the concluding paragraph of the impugned order under Annexure-1 that learned Tribunal was conscious of the fact that the opposite parties have not discharged the duties and responsibilities in the cadre of Junior SES till their promotion to the said cadre in the year 1993. As such, taking into consideration the entirety of facts and circumstances of the case, learned Tribunal has directed that the pay of the opposite parties in the promotional cadre of Junior SES should be notionally fixed, taking into account the date of occurrence of vacancy to which they were promoted subsequently. Learned Tribunal has also made clear that the opposite parties would not be entitled to any back wages for the intervening period for the simple reason that they had not discharged the duties and responsibilities attached to the higher post. Thus, we find no infirmity in the impugned order under Annexure-1".

2.6. It is also contended that similar prayer made by one Naibn Kumar Khamari in O.A. No.1804/1998 when was allowed by the Tribunal vide order dtd.07.09.2011 under Annexure-4, Opposite Party No.1 vide order dtd.20.02.2013 under Annexure-5 directed Opposite Party No.2 to comply the said order. Pursuant to such direction issued by

Opposite Party No.1 under Annexure-5, Sri Nabin Kumar Khamari was also extended with the benefit of retrospective promotion vide order dtd.26.02.2013 under Annexure-6.

2.7. Taking into account the benefit extended in favour of similarly situated employees when Odisha Secondary Teachers Association made a representatioin before Opposite Party No.1 to grant retrospective promotion to eligible teachers to the rank of Junior SES against year wise vacancies, Opposite Party No.1 vide letter dtd.12.06.2013 under Annexure-7 requested Opposite Party No.2 to finalize the gradation list of Junior SES Teacher under intimation to the Department. On receipt of such request vide letter under Annexure-7, Opposite Party No.2 vide his letter dtd.07.02.2014 under Annexure-8 requested the Government to consider the prayer of the Association to extend the benefit of promotion to the rank of Junior SES retrospectively as against the year wise vacancies to eligible LSES cadre Teacher.

2.8. It is contended that on the face of such benefit extended in favour of similarly situated employees and the request made by Opposite Party No.2 in his letter dtd.07.02.2014 under Annexure-8, when the present Petitioner was not extended with the benefit of retrospective promotion to the rank of Junior SES from the date of his

eligibility in terms of the provisions contained under Rule-10(a) of 1972 Rules, Petitioner approached the Tribunal claiming such benefit in O.A No.87(C) of 2014. The Tribunal vide order dtd.19.09.2015 under Annexure-9 while disposing the matter directed Opposite Party No.1 to pass appropriate order in the matter of promotion of the Petitioner retrospectively on the basis of the gradation list submitted by the Director within a period of three months from the date of receipt of this order. The Tribunal further held that Petitioner and other similarly situated Teachers shall be promoted to the post of Junior SES notionally against the year wise vacancies without any financial benefit as has been done in case of the applicants in O.A No.1673 (C) of 1993 and O.A. No.1804/1998.

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2.9. Challenging the order passed by the Tribunal on 14.09.2015 under Annexure-9, State approached this Court in filing W.P.(C) No.22983 of 2016. This Court while not interfering with the order passed by the Tribunal, disposed of the same vide order dtd.29.03.2017 by permitting the Opposite Party No.1 to pass a reasoned order as directed as expeditiously as possible. Relevant extract of the order at Para-7 is reproduced hereunder:-

> ***"7**. The Tribunal has passed the impugned order taking into consideration the earlier order dated 28.11.2007 passed in O.A. No.1673 (C) of 1993 filed by*

> *one Rabindra Kumar Panda and another. Since the said order was confirmed, the same benefit is extended to the present opposite party no1., which is not disputed at the Bar. As there is no error apparent on the face of the record, this Court is not inclined to interfere with the same in exercise of the jurisdiction under Article 227 of the Constitution of India. However, pursuant to the direction issued by the Tribunal in the impugned order, Petitioner no.1 shall take a decision and pass a reasoned order as expeditiously as possible".*

2.10. It is contended that on the face of the direction issued by the Tribunal under Annexure-9 so confirmed by this Court in its order dtd.29.03.2017 under Annexure-10, Opposite Party No.1 without proper appreciation of the order passed by the Tribunal and the benefit extended in favour of similarly situated applicants in O.A No.1673(C) of 1993 and O.A. No.1804 of 1998, rejected the claim of the Petitioner vide order dtd.18.09.2017 under Annexure-11. However, it is contended that the Tribunal who was in seisin of the matter in C.P. No.432(C) of 2015 did not accept the compliance made by Opposite Party No.1 in rejecting the claim of the Petitioner vide order dtd.18.09.2017, and vide order dtd.17.11.2017 under Annexure-12 directed Opposite Party Nos.1 and 2 to appear in person. However, in the meantime this Court while dealing with the matter in CONTC No.1097/2018 passed the following order on 24.02.2021 under Annexure-13:-

> *"Heard learned counsel for the parties.*

Since all the matters arises out of a common questions of facts and law, they are heard analogously and taken up together for disposal by this common order.

The petitioners in the aforesaid Writ Petitions have challenged the judgment rendered by the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.87(C) of 2014 and O.A No.3866 (C) of 2012 and the order passed by this Court in W.P.(C) No.22983 of 2016.

The brief facts of the case is that W.P.(C) No.9682 of 2017 was disposed of on vide order dated 19.6.2017 with a direction to petitioner No.1-Secretary, to Govt. in School and Mass Education Department, Bhubaneswar to take a decision and pass a reasoned order pursuant to the order dated 28.11.2007 passed by the learned Administrative Tribunal in OA No. 1673 (C) filed by one Rabindra Kumar Panda and another. After the said direction was issued to petitioner no. 1, he has passed an order on 18.9.2017 and in the meantime, since the said order passed by this Court, was not complied with, contempt petition has been filed. At the same time, another group of applications have been filed wherein the parties have challenged the anomaly due to which different orders passed by the Tribunal which are confirmed by this Court and the same are also implemented by the Government in the meantime. All those facts are to be considered by the opposite parties while considering the grievance of the present petitioners.

Considering the submissions of the learned counsel for the parties, this Court disposes of all the CONTC/ Writ Petitions/RVWPET with an observation that Since different Original Applications, different Writ Petitions have been filed and different orders have been passed in different dates and it was not brought to the knowledge of the Court regarding the status of the parties and their serial numbers in the Gradation list and moreover, the fact that the Government has already implemented the order by giving antedate promotion to some of the applicants, if the present petitioners case are falling within the purview of those Court's/Tribunal's orders, in such event, the opposite party no.1 shall afford an opportunity of hearing to all the applicants in the respective Contcs/ Writ Petitions/RVWPET and pass a reasoned order to that effect. However, the entire exercise shall be completed within a period of three months from the date of receipt of copy of this order, without being influenced by the earlier order passed by this Court/ Tribunal.

With the above observation/direction, the aforesaid Contc/ Writ Petitions/RVWPET are accordingly disposed of.

2.11. It is contended that present Petitioner on wrong advice while challenging the order dtd.24.02.2021, approached the Hon'ble Apex Court in Special Leave to

Appeal No.7048-7413/2021. Hon'ble Apex Court vide order dtd.27.01.2022 while confirming the order passed by this Court on 24.02.2021, further observed that the State Government should consider the matter and pass appropriate reasoned order after considering the submissions of all concerned. Hon'ble Apex Court also observed that the merits and demerits of the rival contentions shall be gone into by the State purely on their own merit.

2.12. Learned counsel for the Petitioner contended that after disposal of the matter by this Court vide order dtd.24.02.2021 under Annexure-13 and pursuant to an order passed by this Court on 17.08.2021 in CONTC No.3985 of 2021, filed by one Smt. Sobharani Mohanty, the rejection of similar claim made by the Government vide order dtd.21.04.2018 was withdrawn vide order dtd.23.08.2021 under Annexure-16. After withdrawing the order of rejection, Smt. Sobharani Mohanty was extended with the benefit of retrospective promotion to the rank of Junior SES vide order dtd.31.08.2021 under Annexure-17-Series. Not only that similar order passed by the Tribunal to extend retrospective promotion in O.A No.3885(C) of 2012 was also complied with by Opposite Party No.2 vide order dtd.29.09.2021 under Annexure-17-Series. However,

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on the face of the benefit of retrospective promotion being extended in favour of the applicants in O.A No.1673(C)/1993, 1804/1998 as well as O.A. No.3885(C) of 2012 and O.A No.537/2015, the claim of the present petitioner once again was rejected vide the impugned order dtd.02.05.2022 under Annexure-19.

2.13. Learned counsel for the Petitioner contended that since similar benefit of retrospective promotion to the rank of Junior SES as against year wise vacancy in terms of the order passed by the Tribunal in O.A No.1673(C)/1993, 1804/1998 as well as O.A. No.3885(C) of 2012 and O.A No.537/2015 was allowed by the State-Opposite Parties, on the face of the order passed by the Tribunal initially in its order dtd.14.09.2015 under Annexure-9 and further order passed by this Court on 29.03.2017 under Annexure-10 and 24.02.2021 under Annexure-13, the claim of the Petitioner could not have been rejected *inter alia* on the ground indicated in the impugned order dtd.02.05.2022.

2.14. It is also contended that the Original Application filed by the present petitioner was allowed initially vide order dtd.14.09.2015 with a direction to extend the benefit of retrospective promotion as has been extended in favour of the applicants in O.A. Nos. 1673(C)/1993 & 1804/1998. While the claim of the Petitioner on the face of such order

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was rejected ultimately vide the impugned order, but similar claim allowed by the Tribunal vide order dtd.16.09.2016 in O.A. No.537(C) of 2015 and order dtd.16.09.2016 passed in O.A. No.3885(C) of 2012 was allowed by the State vide order issued on 31.08.2021 and 29.09.2021 under Annexure-17-Series.

2.15. It is accordingly contended that since similar benefit has been extended in favour of similarly situated Teachers in terms of order passed by the Tribunal in all those Original Applications so indicated hereinabove, the ground on which Petitioner's claim has been rejected is not sustainable in the eye of law.

In support of his aforesaid submissions, learned counsel for the Petitioner relied on the decisions of the Hon'ble Apex Court in the case of ***Maharaj Krishan Bhatt & Another vs. State of Jammu and Kashmir & Others*** reported in ***(2008) 9 SCC-24***, ***State of Uttar Pradesh & Others vs. Arvind Kumar Srivastava & Others*** reported in ***(2015) 1 SCC-347.***

2.16. In the case of ***Maharaj Krishan Bhatt & Another,*** Hon'ble Apex Court in Para-21, 22 and 23 has held as follows:-

*"**21.** It was no doubt contended by the learned counsel for the respondent-State that Article 14 or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief illegally or against a statute.*

22. *There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing Writ petition No. 519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in consonance with law, the Division Bench confirmed it and this Court did not think it proper to interfere with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in Writ Petition No. 519 of 1987 in the case of present writ petitioners also.*

23. *In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State Authorities ought to have gracefully accepted the decision by granting similar benefits to present writ-petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed Letters Patent Appeal by affirming the order of the Single Judge. The Letters Patent Appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored".*

2.17. Similarly in the case of ***Arvind Kumar Srivastava & Others,*** *Hon'ble Apex Court in Para-22 has held as follows:-*

*"**22.** The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:*

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly

situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

2.18. Learned counsel for the Petitioner also relied on another decision of the Hon'ble Apex Court in the case of ***State of Karnataka & Others vs. C. Lalitha***, reported in ***(2006) 2 SCC-747.*** Hon'ble Apex Court in Para-29 of the said judgment has held as follows:-

"29. *Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well-settled that*

the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category - I Post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to".

2.19. Learned counsel for the Petitioner also relied on another order passed by this Court on 04.04.2023 in WPC(OAC) No.1702 of 2018. This Court placing reliance on the order passed in O.A No.3885(C) of 2012, held as follows in Para-6.

> ***"6.*** *Having heard learned counsel for the parties and taking into account the order passed by the Tribunal in O.A NO.3885(C) of 2012 and batch, it is the view of this Court that the petitioner is also entitled to get the benefit of the said order. Therefore, this Court while disposing the Writ Petition, directs Opp. Party No.2 to pass appropriate order taking into account the order passed by the Tribunal on 16.09.2016 in O.A NO.3885(C) of 2012 and batch and the benefits extended in favour of the applicants vide order dated 03.09.2021 and 29.09.2021. The aforesaid exercise shall be undertaken and completed within a period of three months from the date of receipt of this order".*

3. Per contra, learned Addl. Government Advocate for the State on the other hand made his submissions basing on the stand taken in the counter affidavit so filed by Opposite Party No.3. It is the case of the Opposite Parties that the Petitioner was appointed as an Asst. Teacher in Trained Matric Post on Ad hoc basis for a period of 89 days. While so continuing, Petitioner acquired B.Ed. qualification in the year 1989. However, the services of the Petitioner was regularized vide order dtd.17.09.1998 and the

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Petitioner thereafter was given promotion to the rank of Trained Intermediate vide order dtd.25.11.2003 w.e.f. 01.12.2003. Petitioner thereafter was given the benefit of promotion to the rank of Junior SES vide order dtd.05.10.2005.

3.1. It is contended that Petitioner basing on the order passed on 05.10.2005 under Annexure-2 accepted the benefit of promotion to the rank of Junior SES without any objection and for the first time in the year 2014, he claimed the benefit of retrospective promotion by filing O.A No.87(C) /2014. The Tribunal when vide order dtd.14.09.2005 under Annexure-9 allowed the claim, the State being aggrieved by such order approached this Court in W.P.(C) No.22983 of 2016. The writ petition when was disposed of vide order dtd.29.03.2017 with confirmation of the order passed by the Tribunal, the claim of the Petitioner was initially rejected by the State vide order dtd.18.09.2017 under Annexure-11.

3.2. But this Court vide order dtd.24.02.2021 under Annexure-13 when directed the State to pass a reasoned order by giving opportunity of hearing to all concerned, the matter was carried by the present Petitioner before the Hon'ble Apex Court in Special Leave to Appeal No.7408-7413/2021. Hon'ble Apex Court vide order dtd.27.01.2022,

while disposing the Special Leave to Appeal though held the order passed by this Court on 24.02.2021 as just and proper, but observed that State has to take a decision after due consideration of the rival contentions and on its own merit.

3.3. In terms of the order passed by this Court on 24.02.2021 under Annexure-13 and further order passed by the Hon'ble Apex Court on 27.01.2022 under Annexure-14, State after due consideration of the claim of the Petitioner rejected the same vide order dtd.02.05.2022 under Annexure-19.

3.4. It is contended that Petitioner when was extended with the benefit of promotion to Junior SES cadre vide order dtd.05.10.2005 under Annexure-2, Petitioner accepted the same without raising any objection whatsoever. Petitioner when for the first time raised his claim to get the benefit of retrospective promotion placing reliance on the provisions contained under Rule-10(a) of 1972 Rules, the 1972 Rules was already repealed with Introduction of Orissa Subordinate Education (Method of Recruitment and Conditions of Service) Rules, 1993 on 17.12.1993. Therefore, by the time the Petitioner raised his claim to get the benefit of retrospective promotion in accordance with the provisions contained under Rule-10(a)

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and 10(b) of 1974 rules, the said rule was no more existence having been repealed w.e.f. 17.12.1993.

3.5. Therefore, in view of the decision of the Hon'ble Apex Court in the case of ***State of Odisha & Another vs. Anup Kumar Senapati & Anothers***, reported in ***(2019) 19 SCC-626,*** Petitioner's claim cannot be considered in terms of the repealed provisions so contained under 1972 Rules. Hon'ble Apex Court in Para-32 of the judgment in the case of ***Anup Kumar Senapati & Anothers*** has held as follows:-

> ***"32.*** *It is apparent from the aforesaid discussion that what is unaffected by the repeal of a statute is a right acquired or accrued and not mere hope or expectation of or liberty to apply for acquiring a right. There is a distinction in making an application for acquiring a right. If under some repealed enactment, a right has been given, but on investigation in respect of a right is necessary whether such right should be or should not be given, no such right is saved. Right to take advantage of a provision is not saved. After repeal, an advantage available under the repealed Act to apply and obtain relief is not a right which is saved when the application was necessary and it was discretionary to grant the relief and investigation was required whether relief should be granted or not. The repeal would not save the right to obtain such a relief. The right of preemption is not an accrued right. It is a remedial right to take advantage of an enactment. The right of a Government servant to be considered for promotion under repealed rules is not a vested right unless repeal provision contains some saving and right has been violated earlier".*

3.6. Learned State Counsel in addition to Para-32, also relied on Para-27 and 39 to 45 of the decision. Hon'ble Apex Court in Para-27 and 39 to 45 in the case of ***Anup Kumar Senapati*** has held as follows:-

27. In our opinion, the prayer made to release grant-in-aid under the 1994 Order after its repeal was misconceived and would not be possible for any Government within the economic capacity to release the grant-in-aid retrospectively. Delay by itself defeats the right, if any, to claim the grant-in-aid which is dependent upon the option of the institution to apply for it. They may choose not to apply for the grant-in-aid as it comes with several riders as imposed by the Government. Thus, original applications filed belatedly after the repeal of the 1994 Order, could not have been entertained at all and the employees filing the applications after repeal of the 1994 Order, cannot be said to be entitled for any relief owing to laches having slept over their right, if any. available under the 1994 Order.

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39. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants- in-aid have been released under the 1994 Order as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist. negative equality when the right does not exist, cannot be claimed.

*40. In Basawaraj v. LA * O ^ 33 it was held thus: (SCC p. 85. para 8)*

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Sing Anand Buttons Ltd. v. State of Haryana

35, K.K. Bhalla v. State of M.P.36 and Fuljit Kaur v. State of Punjab37.)"

41. In Chaman Lal v. State of Punjab38, it was observed as under: (SCC pp. 720-21, para 16)

"16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in Basawaraj v. LA033 considered this issue and held as under: (SCC p. 85, para 8)

8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.

(Vide Chandigarh Admn. v. Jagjit Singh 34, Anand Buttons Ltd. v. State of Haryana35, K.K. Bhalla v. State of M.P.36 and Fuljit Kaur v. State of Punjab37.)"

42. In Fuljit Kaur v. State of Punjab37, it was observed thus: (SCC p. 462. para 11)

"11. The respondent cannot claim parity with D.S. Longia v. State of Punjab39, in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does

not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (Vide Coromandel Fertilizers Ltd. v. Union of India 40, Panchi Devi v. State of Rajasthan and Shanti Sports Club v. Union of India 2)"

43. In Doiwala Sehkari Shram Samvida Samiti Lid. v. State of Uttaranchal, this Court in the context of negative equality observed thus: (SCC pp. 655-56. para 28)

"28. This Court in Union of India v. International Trading Co. 44 has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In d case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."

44. In Bondu Ramaswamy v. BDA 45, this Court observed thus: (SCC p. 194. para 146)

"146. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the rules or scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

45.In Kulwinder Pal Singh v. State of Punjab 46, this Court while relying upon State of U.P. v. Rajkumar Sharma 47, observed as under: (Kulwinder Pal Singh case 46, SCC pp. 539-40, para 16)

"16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage

negative equalities. In State of U.P. v. Rajkumar Sharma[11] it was held as under: (SCC p. 337, para 15)

'15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U .P.^ 48 ; Jaipur Development Authority v. Daulat Mal Jain49; State of Haryana v. Ram Kumar Mann 50; Faridabad CT Scan Centre v. D.G. Health Services51; Jalandhar Improvement Trust v. Sampuran Singh52; State of Punjab v. Rajeev Sarwal53; Yogesh Kumar v. State (NCT of Delhi)^ 54. Union of India v. International Trading Co.44 and Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit v. Indore Development Authority55.)"

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality."

3.7. Learned Addl. Government Advocate also relied on the decisions in the case of **1) *Union of India & Another vs. Manpreet Singh Ponam etc,*** reported in ***2022 Levelaw (SC)-254***, **2) State of Himachal Pradesh & Others vs. Raj Kumar & Others, 3) C. Jacob vs. Director of Geology & Mining & Another, 4) Union of India & Others vs. M.K. Sarkar, 5) State of Orissa & Another vs. Mamata Mohanty, 6) *Union of India & Others vs. Chaman Rana*, 7) *Shiba Shankar Mohapatra & Others vs. State of Orissa & Others.*** Hon'ble Apex Court in the case ***Manpreet Singh Ponam etc***. in Para-18 to 20 has held as follows:-

"18. *A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules.*

In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

19. This Court in the case of Union of India v. KK Vadhera and Ors., 1989 Supp (2) SCC 625 has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that: "5....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can 8 be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

20. Similarly, this Court in the case of Ganga Vishan Gujrati and Ors. v. State of Rajasthan, (2019) 16 SCC 28 has held that: 45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 . The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath, 1991 Supp (1) SCC 334 and State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683. In Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267, this Court revisited the precedents on the subject and observed: (SCC pp. 281-82, para 45) "45. ... (i) The effective date of selection has to be understood in the

context of the Service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be. (ii) Inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution. (iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules. (iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime." This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693."

3.8. State of Himachal Pradesh & Others vs. Raj Kumar & Others reported in **2022 LiveLaw (SC)-502.** Hon'ble Apex Court in the case **Raj Kumar & Others**. in Para-36 & 37 has held as follows:-

"36. *A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:*

1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein. 58
2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates 59.

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3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules.

The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the Deepak Agarwal v. State of U.P., (2011) 6 SCC 725, Para 26; Union of India v. Krishna Kumar, (2019) 4 SCC 319, Para 10.

Deepak Agarwal v. State of U.P., (2011) 6 SCC 725, Para 26; Union of India v. Krishna Kumar, (2019) 4 SCC 319, Para 10. policy decision taken by the Government. 60 There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit.61 The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14. 62

4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately. 63

5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases. 64 37.1 The above-referred observations made in the fifteen decisions that have distinguished Rangaiah's case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished Rangaiah hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that K. Ramulu v. Suryaprakash Rao, (1997) 3 SCC 59, Paras 12 and 13, Shyam Chandra Das v. State of Orissa, (2003) 4 SCC 218, Para 9, State of Punjab v. Arun Kumar Aggarwal, (2007) 10 SCC 402, Para 38; Deepak Agarwal v. State of U.P., (2011) 6 SCC 725, Para 28. G. Venkateshwara Rao v. Union of India, (1999) 8 SCC 455, Para 4. Rajasthan Public Service Commission v. Charan Ram, (1998) 4 SCC 202, Para 15; K. Ramulu v. Suryaprakash Rao, (1997) 3 SCC 59, Para 15. In Delhi Judicial Services Association v. Delhi High Court, *(2001) 5 SCC 145, Para 5. Deepak Agarwal v. State of U.P., (2011) 6 SCC 725, Para 25. existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case.*

37.2 The decision in Deepak Agarwal (supra) is a complete departure from the principle in Rangaiah, in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions

including that of Union of India v. Krishna Kumar (supra). In fact, in Krishna Kumar Court held that there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place." 37.3 The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

(a) The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services".

3.9. C. Jacob vs. Director of Geology & Mining & Another reported in **(2008) 10 SCC-115.** Hon'ble Apex Court in the case **Director of Geology & Mining & Another** in Para-9 to 11 has held as follows:-

"9.*The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation*

and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

***10**. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.*

***11.** When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of `acknowledgment of a jural relationship' to give rise to a fresh cause of action".*

3.10. Union of India & Others vs. M.K. Sarkar, reported in **(2010) 2 SCC-59.** Hon'ble Apex Court in the case **M.K. Sarkar** in Para-14 to 16 has held as follows:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 :

"The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would

not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/ writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15.When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing `consideration' of a claim or representation should examine whether the claim or representation is with reference to a `live' issue or whether it is with reference to a `dead' or `stale' issue. If it is with reference to a `dead' or `state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect".

3.11. State of Orissa & Another vs. Mamata Mohanty, reported in **(2011) 3 SCC-436** and the decision of this Court passed in W.P.(C) No.8281 of 2018, **(State of Odisha & Others vs. Susama Pattnaik & Another).** This Court in Para-3.5, 3.6. & 7 has held as follows:-

"3.5. Mr. Jena, learned counsel also contended that even though the Opposite Party No.1 retired on 31.03.2012, but she approached the Tribunal only in the year 2015. Therefore, on the ground of delay also the matter should not have been entertained by the Tribunal with passing of the order in question.

In support of the said submission, Mr. Jena relied on the decision of the Hon'ble Apex Court in the case of C. Jacob vs. Director of Geology and Mining & Another reported in (2008) 10 SCC 115. In the said reported judgment, Hon'ble Apex Court in Para-09 to 14 has held as follows:-

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not

revive the stale claim, nor amount to some kind of `acknowledgment of a jural relationship' to give rise to a fresh cause of action.

12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.

14. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for `consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing `consideration' of such claims".

3.6. Mr. Jena, also relied on another decision of the Hon'ble Apex Court in the case of Union of India and Others vs. M.K. Sarkar reported in (2010) 2 SCC 59. In the said reported judgment, Hon'ble Apex Court in Para-09, 10, 13 and 17 has held as follows:-

"09. When a scheme extending the benefit of option for switchover, stipulates that the benefit will be available only to those who exercise the option within a specified time, the option should obviously be exercised within such time. The option scheme made it clear that no option could be exercised after the last date. In this case, the respondent chose not to exercise the option and continued to remain under the Contributory Provident Fund Scheme,

and more important, received the entire PF amount on his retirement.

10. The fact that the respondent was the head of his department and all communications relating to the offer of Eighth Option and the several communications extending the validity period for exercising the option for pension scheme, were sent to the heads of the departments for being circulated to all eligible employees/retired employees, is not in dispute. Therefore, the respondent who himself was the head of his department could not feign ignorance of the Eighth Option or the extensions of the validity period of the Eighth Option.

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13. Having enjoyed the benefits and income from the provident fund amount for more than 22 years, the respondent could not seek switch over to pension scheme which would result in respondent getting in addition to the PF amount already received, a large amount as arrears of pension for 22 years (which will be much more than the provident fund amount that will have to be refunded in the event of switch over) and also monthly pension for the rest of his life. If his request for such belated exercise of option is accepted, the effect would be to permit the respondent to secure the double benefit of both provident fund scheme as also pension scheme, which is unjust and impermissible. The validity period of the option to switch over to pension scheme expired on 31.12.1978 and there was no recurring or continuing cause of action. The respondent's representation dated 8.10.1998 seeking an option to shift to pension scheme with effect from 1976 ought to have been straight away rejected as barred by limitation/delay and laches.

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17. Even on merits, the application has to fail. In Krishena Kumar vs. Union of India - 1990 (4) SCC 207, a Constitution Bench of this Court considering the options given to the Railway employees to shift to pension scheme, held that prescription of cut off dates while giving each option was not arbitrary or lacking in nexus. This Court also held that provident fund retirees who failed to exercise option within the time were not entitled to be included in the pension scheme on any ground of parity. Therefore, the respondent who did not exercise the option available when he retired in 1976, was not entitled to seek an opportunity to exercise option to shift to the pension scheme, after the expiry of the validity period for option scheme, that too in the year 1998 after 22 years".

7. Therefore, placing reliance on the decisions relied on by Mr. Jena as cited (supra) and the fact that the order of

reversion passed on 15.02.2011 was never assailed by the Opposite Party No.1 at any point of time, the order passed by the Tribunal on 20.06.2017 as well as the order dismissing the Review Petition on 08.02.2018 are not sustainable in the eye of law. Therefore, this Court is inclined to quash the order dated 20.06.2017 passed in O.A No.1409 of 2015 as well as the order dated 08.02.2011 passed in Review Petition No.44 of 2017. While quashing both the orders, this Court dismisses the matter filed by the Opposite Party No.1 in O.A No.1409 of 2015".

3.12. Mr. S. Jena, learned Addl. Government Advocate for the State also relied another decision of the Hon'ble Apex Court in the case of ***Union of India & Others vs. Chaman Rana***, reported in ***(2018) 5 SCC-798***. Hon'ble Apex Court in Para-8 has held as follows:-

"9. Manifestly, the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on Dev Dutt (supra) be considered, the cause of action based thereon accrued on 12.05.2008. There ha s to be a difference between a cause of action and what is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financialburden on the government that would follow by such or ders of promotion".

3.13. Mr. Jena, learned Addl. Government Advocate for the State further relied another decision of the Hon'ble Apex Court in the case of ***Shiba Shankar Mohapatra & Others***

vs. State of Orissa & Others, reported in ***(2010) 12 SCC 471***. This Court in Para-29 & 30 of the aforesaid judgment has held as follows:-

> *"29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (vide Aflatoon & Ors. vs. Lt. Governor, Delhi & Ors. AIR 1974 SC 2077; State of Mysore vs. V.K. Kangan & Ors., AIR 1975 SC 2190; Municipal Council, Ahmednagar & Anr. vs Shah Hyder Beig & Ors., AIR 2000 SC 671; Inder Jit Gupta vs. Union of India & Ors. (2001) 6 SCC 637; Shiv Dass vs. Union of India & Ors., AIR 2007 SC 1330; Regional Manager, A.P.SRTC vs. N. Satyanarayana & Ors. (2008) 1 SCC 210; and City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala & Ors. (2009) 1 SCC 168).*
>
> *30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation".*

4. To the submissions made by the learned counsel for the State, learned counsel for the Petitioner made further submissions basing on the stand taken in the rejoinder affidavit so filed by the Petitioner. While reiterating his submission that similar orders passed by the Tribunal in O.A No.1673(C)/1993, 1804/1998 as well as O.A. No.3885(C) of 2012 and O.A No.537/2015 was not only

implemented by the State but also similar order passed by the Tribunal on 16.09.2016 in O.A No.3815(C) of 2013 was allowed by Opposite Party No.2 vide his order dtd.17.10.2022 under Annexure-21 and consequential benefit was extended by the D.E.O., Khurda vide order dtd.04.02.2023 under Annexure-22.

5. Learned counsel for the Petitioner contended that since similar order passed subsequent to the order passed by the Tribunal to the case of the Petitioner under Annexure-9, was implemented by the State as found from the orders available under Annexures-17-Series and 21 coupled with the benefit extended in favour of the applicants in O.A No.1673(C)/1993, 1804/1998 as well as O.A. No.3885(C) of 2012 and O.A No.537/2015. The stand taken by the Opposite Parties in their counter is not at all entertainable and so also the decisions relied on by learned Addl. Government Advocate.

5.1. Since similar benefit has been extended by the State basing on the orders passed by the Tribunal subsequent to the order passed in the case of the Petitioner under Annexure-9, the ground on which the claim of the Petitioner has been rejected is not sustainable in the eye of law. The State being a model employer, Petitioner cannot be discriminated between employees similarly situated in view

of the decisions of the Hon'ble Apex Court in the case of ***Arvind Kumar Srivastava & C. Lalitha*** as cited (supra).

6. I have heard Mr. L.K. Mohanty, learned counsel for the Petitioner & Mr. S. Jena, learned Addl. Government Advocate for the State. On their consent, the matter was taken up for final disposal at the stage of admission with due exchange of pleadings.

7. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that the present Petitioner was appointed as against a Trained Matric Post, where he joined on 24.10.1986. The said date of entry into Government service is also reflected in the service book of the Petitioner as found from Annexure-1. The stand taken by the Opposite Parties that Petitioner was appointed initially on ad hoc basis and accordingly he is not similarly situated is not acceptable as no such document has been produced showing the engagement of the Petitioner being made on ad hoc basis. Petitioner however was extended with the benefit of promotion to the rank of Junior SES vide order dtd.05.10.2005. But considering the extension of the benefit of retrospective promotion to the rank of Junior SES and its implementation by the State vide order dtd.28.09.2011 under Annexure-3, Orissa Secondary

Teachers Association when moved the Government with a prayer to extend similar benefits in favour of the present Petitioner and similarly situated Teachers to the rank of Junior SES on retrospective basis basing on the year wise vacancies so available.

7.1. Opposite Party No.1 vide letter dtd.12.06.2013 under Annexure-7 when directed Opposite Party No.2 to finalize the gradation list of Junior SES Teacher and to examine the prayer made by the Association, Opposite Party No.2 vide his letter dtd.07.02.2014 under Annexure-8 while providing the gradation list of Junior SES, requested the Government to consider the prayer and to allow promotion to the rank of Junior SES retrospectively from the date mentioned in Column No.10 of the gradation list on notional basis.

7.2. On the face of such request made by Opposite Party No.2 in his letter dtd.07.02.2014 under Annexure-8, when the benefit was not extended, Petitioner approached the Tribunal in O.A. No.87(C) of 2014. The Tribunal placing reliance on the order passed in O.A. No.1673(C) of 1993 and 1804 of 1998 with its implementation by the State, disposed of O.A. No.87(C) of 2014 vide order dtd.14.09.2015 under Annexure-9 and with a direction on the Opposite Parties to extend the benefit as has been

extended in favour of the applicants in O.A. No.1673(C) of 1993 and 1804 of 1998.

7.3. The order passed by the Tribunal on 14.09.2015 though was assailed by the State before this Court in W.P.(C) No.22983 of 2016, but this Court vide order dtd.29.03.2017 under Annexure-10 was not inclined to interfere with the order passed by the Tribunal and disposed of the matter with a direction on Opposite Party No.1 to take a decision and pass a reasoned order. However, on the face of the order passed by the Tribunal on 14.09.2015 under Annexure-9 so confirmed by this Court in its order dtd.29.03.2017, the claim of the Petitioner was rejected by Opposite Party No.1 vide order dtd.18.09.2017 under Annexure-11.

7.4. The rejection of the claim of the Petitioner vide order dtd.18.09.2017 was not accepted by the Tribunal and the Tribunal vide order dtd.17.11.2017 under Annexure-12 directed for filing of the compliance report to its order passed on 18.09.2015. But as found from the record while the matter stood thus, this Court in CONTC No.1097 of 2018 passed a further order on 24.02.2021 by holding that since the Government has already implemented the order by giving ante-dated promotion to some of the applicants, if the present Petitioner falls within the purview of those

orders, in such event Opposite Party No.1 shall afford an opportunity of hearing to the Petitioner and pass a reasoned order to that effect.

7.5. Even though the order passed by this Court on 24.02.2021 under Annexure-13 was assailed by the present Petitioner before the Hon'ble Apex Court in Special Leave to Appeal No.7408-7413 of 2021, but Hon'ble Apex Court while holding the order passed by this Court on 24.02.2021 was a correct one, further observed that Opposite Party No.1 shall consider the merits and demerits of rival contentions and after going through the same on its own merit passed a fresh order. Pursuant to the order passed by this Court on 24.02.2021 and further order passed by the Hon'ble Apex Court on 27.01.2022 under Annexure-14, the claim of the Petitioner was considered and rejected vide order dtd.02.05.2022 under Annexure-19.

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7.6. As found from the record, which is not disputed similar benefit as claimed by the present Petitioner has been allowed by the State while implementing the order passed in O.A No.1673(C) of 1993 and O.A No.1804 of 1998 vide order issued on 28.09.2011 under Annexure-3 and order issued on 20.02.2013 under Annexure-5 with consequential order dtd.26.02.2013 under Annexure-6. As further found from the record, considering the request

made by the Association when Opposite Party No.1 requested Opposite Party No.2 to prepare the gradation list of Junior SES Teacher and to examine the entitlement of similarly situated Teachers, Opposite Party No.2 vide his letter dtd.07.02.2014 under Annexure-8 while submitting the gradation list clearly opined to extend the benefit of retrospective promotion in favour of the present Petitioner and similarly situated Teachers belonging to their association vide Annexure-9. On the face of such request made by Opposite Party No.2 when the claim of the Petitioner was not considered, Petitioner approached the Tribunal in O.A No.87(C) of 2014. Therefore, the plea taken by the State that the claim of the petitioner is a belated one and in view of the decisions of the Hon'ble Apex Court in the case of ***Arvind Kumar Srivastava & C. Lalitha*** as cited supra is not acceptable to this Court.

7.7. Not only that on the face of the order passed by the Tribunal vide order dtd.14.09.2015 under Annexure-9, with confirmation of the same by this Court, Opposite Party No.1 was not supposed to reject the claim vide order dtd.18.09.2017. But basing on similar order passed by the Tribunal in O.A. No.537(C) of 2015 and 3885(C) of 2012 as well as O.A No.678(C) of 2012, similar benefit was extended in favour of similarly situated Teachers vide order

dtd.31.08.2021 and 29.09.2021 under Annexure-17-Series. Not only that similar benefit in terms of the order passed by the Tribunal in O.A No.3815(C) of 2013 on 16.09.2016 was also allowed by the Director-Opposite Party No.2 vide order dtd.17.10.2022. Since similar benefit in favour of similarly situated Teachers pursuant to the order passed by the Tribunal in different Original Applications starting from O.A No.1673(C) of 1993 was extended vide order under Annexures-3, 6, 17-Series as well as Annexure-21 and Petitioner has raised his claim at the appropriate time, the ground on which the claim of the Petitioner has been rejected vide the impugned order dtd.02.05.2022 under Annexure-19 is not sustainable in the eye of law in view of the decision of the Hon'ble Apex Court in the case of ***Arvind Kumar Srivastava & C. Lalitha*** as cited (supra).

8. In view of such position, this Court is inclined to quash the order dtd.02.05.2022 so passed by the Government-Opposite Party No.1 under Annexure-19. While quashing the same, this Court directs Opposite Party Nos.1 and 2 to extend the benefit of retrospective promotion to the rank of Jr. SES basing on year wise vacancies as was available in the light of the benefit extended in favour of similar Teachers vide order issued under Annexures-3, 6,

17 Series as well as Annexure-21 within a period of three (3) months from the date of receipt of this order. However, there shall be no order as to costs.

9. With the aforesaid observations and directions, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 24th of January, 2024/Subrat

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