

It was also contended that the scheme had already been introduced for medical officers working in appellant's organization. During pendency of the writ petition, scheme was framed for promotion to selection grade and some of the respondents obtained benefits. The Single Judge of the High Court allowed the writ petition. The Division Bench upheld the order. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1 Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service. [Para 9] [418-C-D]

Dr. Ms. O.Z. Hussain v. Union of India 1990 Supp. SCC 688; *M/s. Ujagar Prints etc. etc. v. Union of India and Ors.* AIR 1989 SC 972; *Council of Scientific and Industrial Research and Anr. v. K.G.S. Bhatt and Anr.* 1989 (4) SCC 635 – referred to.

1.2 When employees are denied an opportunity of promotion for long years (in the instant case 30 years) on the ground that he fell within a category of employees excluded from promotional prospect, the Superior Court will have the jurisdiction to issue necessary direction. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior Court of the country. [Paras 12 and 13] [419-G-H; 420-A-B]

A *State of Tripura & Ors. v. K.K. Roy* 2004 (9) SCC 65 – referred to.

B 1.3 Respondents constituted 1 % of the total work force. A huge financial benefit was given to unionised employees constituting 85 % strength of the total work force by giving career progression scheme as well as the selection grade. It is really of some significance that the promotional avenues alleged to be existed for the cadre of Assistant Engineers were not taken before the Single Judge of High Court. A ground was taken in the Memorandum of the Letters Patent Appeal. Even the same does not appear to have been pressed. No affidavit has ever been filed by the appellant making averments of the said fact. The submission that the cadre of Assistant Engineers is not important for the appellant for providing promotional avenue to them, is rejected. [Paras 18 and 20] [422-B-D]

E 1.4 It cannot be understood how the cadre of Medical Officers would be important, as like the respondents, they also do not contribute towards the main functions of the appellant. Such a plea is wholly untenable. An employee is an employee. How the employees would be structured is undoubtedly within the realm of the statutory authority but by reason thereof, it cannot tinker with their essential fundamental right. [Para 21] [422-E-F]

F 1.5 The introduction of grant of selection grade does not provide for a promotional scheme. It is available to a limited number of employees. By reason thereof a promotional scheme cannot be said to have been framed. The scheme of Accelerated Career Progression is distinct and different from grant of selection grade. Although such a provision has been made for the unionized employees but even then they are also entitled to grant of selection grade as well. [Para 23] [422-G-H; 423-A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 991 A
of 2008

From the final Judgment and Order dated 15.9.2006 of
the High Court of Calcutta at Calcutta in APO No. 269/2003.

Amarendra Sharan, A.S.G., S. Chandra Shekhar and Amit B
Anand Tiwari for the Appellants.

Soumitra Ghose Chaudhuri, Parijat Sinha, R. Rea Sinha,
S.C. Ghosh and Snehasish Mukherjee for the Respondents.

The Judgment of the Court was delivered by C

S.B. SINHA, J. 1. Leave granted.

2. Appellant is a statutory body constituted under the Food
Corporation of India Act, 1964. Its functions, inter alia, are relate
to procurement and distribution of food grains. It, inter alia, D
implements the food policy of the Government of India. The Act
provides for regulation making power. Pursuant thereto or in
furtherance thereof regulations have been made laying the
promotion policy of its officers known as FCI (Staff) Regulations.

3. Respondents herein were appointed in the Engineering E
section. Although Food Corporation is not an engineering
oriented organization, services of engineers are necessary for
maintenance of godowns and other structures. They constitute
about one per cent of its total work force. Admittedly, respondents
were stagnated. There was no promotional avenue for them. F

Appellant itself had approached the Union of India for
creation of promotional avenue and formulating schemes
providing for Assured Carrier Promotion. Admittedly, several
other categories of employees filed writ applications praying
for a direction upon the appellant to formulate suitable schemes G
of organizational structure. Indisputably, a recommendation in
that behalf was also made by Fifth Central Pay Revision
Commission.

4. As the recommendations contained in the report of the H

A Pay Commission were not implemented, a writ petition was filed by some of the employees. In the said writ petition, a contention was raised that such a scheme had already been introduced for medical officers working in the appellant's organization pursuant to or in furtherance of a judgment rendered by the High Court of Judicature at Andhra Pradesh. In its counter affidavit, the appellant, inter alia, averred :

C "With reference to paragraph No.12 of the Writ Petition, I repeat and reiterate my submissions and statements contained in the earlier paragraphs and state that the main function of the Corporation is procurement, distribution of the food grains, with little scope for promotion of the Engineers who were appointed in the Corporation to look after the skeleton work relating to godown construction and its maintenance. They have genuine cause and their grievance is being taken care by formulating scheme of selection grade scales for all the stagnating Executives.

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E With reference to paragraph No.2 of the writ application, I state that the Corporation's main functions are procurement/distribution of food grains. The Engineers have been appointed to look after the maintenance of godowns and other buildings of FCI. As far as stagnation in FCI is concerned, it is stated that not only the Assistant Manager (Engineering) are stagnating but other employees are also facing this problems. The Corporation is trying to resolve the problem by framing its own schemes regarding upgradation of posts and creating selection grade scales in consultation with the Government of India.

F This proposal is already under active consideration of Government of India and final decision of the Government is already under active consideration of Government is still awaited."

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H 5. During pendency of the said writ petition, a scheme was framed for promotion to selection grade. Some of the

respondents have obtained the benefits thereunder.

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6. A learned Single Judge of the Calcutta High Court, upon considering the pleadings of the parties as also other materials brought on records held :

"It appears that save and except the engineers of the FCI, all categories particularly the unionized employees (Group C) get 2 and 3 promotions, due to the availabilities of promotional opportunities in their respective cadres. These unionized peoples sought for implementation for ACPs scheme for them in spite of the fact that they were not coming within the four corners of the said scheme. It appears from letter dated 29th April, 2000 that FCI entered into a memorandum of settlement with unionized employees but the petitioners are officers of Group 'B' staffs. In the said memorandum of settlement, the FCI formulated a scheme of organizational restructure for those unionized employees. In spite of such fact, the FCI again sought permission from the Central Government by letter dated May 14, 1999 to give further monetary benefits to them Such permission, however, was rejected by the Central Government by letter dated April 20, 2000. Thus, it cannot be contended that the Government of India has rejected the recommendation of ACPs scheme for the petitioners. The said rejection was for approval of ACPs Scheme for unionized employee who already got 2 or 3 promotions in their service life besides the benefit of scheme entered by memorandum of settlement. Therefore, it does not appear that the recommendation for engineers has been rejected. It is, therefore, clear that FCI never recommended the case of engineers to the Government of India and as such, no question of rejection of such recommendation arose."

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7. It also took into consideration the action taken by the Government of India in relation to the Assistant Managers (Quality Control). The learned Single Judge noticed that the

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A reason for rejection of their claim was that they were already covered under the scheme of reorganisational structure as was agreed to by the parties by way of settlement dated 29th April, 2000. It further took notice of the fact that the Kerala High Court had quashed the said order. The writ petition, on the said grounds, was allowed.

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8. The Division Bench of the High Court affirmed the said view.

9. Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service.

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10. This Court in *Dr. Ms. O.Z. Hussain v. Union of India* [1990 Supp. SCC 688], opined :

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“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the

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Directorate.”

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11. The question also came up for consideration in *M/s. Ujagar Prints etc. etc. v. Union of India & Ors.* [AIR 1989 SC 972] and *Council of Scientific and Industrial Research & Anr. v. K.G.S. Bhatt & Anr.* [(1989) 4 SCC 635]. In the latter decision, this Court held :

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“It is often said and indeed, adroitly, an organisation public or private does not ‘hire a hand’ but engages or employees a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. “The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors”. (See : Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions.”

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12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that he fell within a category of employees excluded from promotional prospect, the Superior Court will have the jurisdiction to issue necessary direction.

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13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years,

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A the Court although may not issue any direction as to in which
manner a scheme should be formulated or by reason thereof
interfere with the operation of existing channel of promotion
to the officers working in different departments and officers
of the Government but the jurisdiction to issue direction to
B make a scheme cannot be denied to a Superior Court of the
country.

14. This Court in *State of Tripura & Ors. v. K.K. Roy* [(2004) 9 SCC 65], upon taking into consideration some of the earlier decisions of this Court, held :

C “6. It is not a case where there existed an avenue for
promotion. It is also not a case where the State intended
to make amendments in the promotional policy. The
appellant being a State within the meaning of Article 12 of
D the Constitution should have created promotional avenues
for the respondent having regard to its constitutional
obligations adumbrated in Articles 14 and 16 of the
Constitution of India. Despite its constitutional obligations,
E the State cannot take a stand that as the respondent herein
accepted the terms and conditions of the offer of
appointment knowing fully well that there was no avenue
for promotion, he cannot resile therefrom. It is not a case
where the principles of estoppel or waiver should be
applied having regard to the constitutional functions of the
State. It is not disputed that the other States in India/Union
F of India having regard to the recommendations made in
this behalf by the Pay Commission introduced the Scheme
of Assured Career Promotion in terms 'whereof the
incumbent of a post if not promoted within a period of 12
G years is granted one higher scale of pay and another upon
completion of 24 years if in the meanwhile he had not
been promoted despite existence of promotional avenues.
When questioned, the learned counsel appearing on behalf
of the appellant, even could not point out that the State of
H Tripura has introduced such a scheme. We wonder as to
why such a scheme was not introduced by the appellant

like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the appellant should have followed the said principle."

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15. Mr. Amarendra Sharan, learned Additional Solicitor General of India, however, submitted that the High Court committed a serious error in holding that the respondents had been stagnating in their posts. Drawing our attention to ground No.21 in the Memo of Appeal filed before the Division Bench of the Calcutta High Court against the judgment of learned Single Judge, it was submitted that there were four promotional avenues available to them, namely, from Assistant Manager to Deputy Manager, from Deputy Manager to Joint Manager, from Joint Manager to Manager and from Manager to Executive Director. It was further submitted that even by reason of introduction of selection grade, about 1/3rd of the officers in the cadre of Assistant Engineer have benefited therefrom.

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16. We have noticed hereinbefore the stand taken by the appellant itself in its counter affidavit filed before the Calcutta High Court. When a categorical statement was made therein, we fail to understand as to how the same could have been resiled from. Respondents constitute about one per cent of the total work force. A huge financial benefit has been given to unionized employees constituting 85 per cent strength of the total work force by giving career progression scheme as well as the selection grade.

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17. Furthermore, this Court in Civil Miscellaneous Petition No.19864 of 1989 in Writ Petition No.1044 of 1984 wherein the appellant was a party directed enforcement of the report of a High Powered Committee in regard to revision of pay scale, additional dearness allowance, pensionary and other benefits etc. Pursuant thereto, a committee was constituted. A final report was submitted by the said Committee on 2.11.1988. As the

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A Central Government did not act thereupon expeditiously, this Court issued certain directions in regard to the implementation of the recommendations made in the report from the dates specified therein.

B 18. It is really of some significance that the promotional avenues alleged to be existed for the cadre of Assistant Engineers were not taken before the learned Single Judge. A ground was taken in the Memorandum of the Letters Patent Appeal. Even the same does not appear to have been pressed. C No affidavit has ever been filed by the appellant making averments of the said fact.

19. Admittedly, a direction was issued by the Andhra Pradesh High Court to the appellant for framing a scheme for medical officers, stands implemented.

D 20. So far as the contention of the learned counsel that the cadre of Assistant Engineers is not important for the appellant for providing promotional avenue to them is concerned, the same is stated to be rejected.

E 21. We fail to understand how the cadre of Medical Officers would be important, as like the respondents, they also do not contribute towards the main functions of the appellant. Such a plea even otherwise is wholly untenable. An employee is an employee. How the employees would be structured is undoubtedly within the realm of the statutory authority but by F reason thereof, it cannot tinker with their essential fundamental right.

22. We wish such a plea had not been raised by the appellant before us.

G 23. So far as introduction of grant of selection grade is concerned, the same does not provide for a promotional scheme. It is available to a limited number of employees. By reason thereof a promotional scheme cannot be said to have H been framed. The scheme of Accelerated Career Progression

is distinct and different from grant of selection grade. We have noticed hereinbefore that although such a provision has been made for the unionized employees but even then they are also entitled to grant of selection grade as well. A

24. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs.50,000/- (Rupees fifty thousand only). B

N.J.

Appeal dismissed.