

A HIGH COURT OF JUDICATURE AT PATNA

v.

MADAN MOHAN PRASAD & ORS.

(Civil Appeal No. 7630 of 2011)

SEPTEMBER 05, 2011

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[J.M. PANCHAL AND H.L. GOKHALE, JJ.]

Service Law – Promotion and grant of consequential benefits – Respondent-Munsif in State Judicial Services, suspended from service – Thereafter, writ petitions and SLPs filed – Suspension order as well as departmental proceedings withdrawn – Notification issued posting the respondent as Additional Munsif (lowest post) – Challenged by respondent – He sought direction to the High Court on its administrative side to give him promotions from the dates when his juniors named in the petition were promoted during the period 1970 to 1981, with all increments and other benefits – Thereafter, respondent retired from service – Various petitions as also representations filed – Finally in a writ petition, the Division Bench directed the appellant-High Court on its administrative side to consider the case of promotion of the respondent as also consequential benefit in accordance with law – On appeal, held: Promotion is not a matter of right much less a fundamental right, more particularly when promotion in the subordinate judiciary is to be dealt with by the High Court which has complete control over the subordinate judiciary in view of Article 235 – On facts, respondent was claiming promotions to the post of Civil Judge, thereafter to the post of Additional District Judge and finally to the post of District Judge when his juniors were given such benefits in the years 1971, 1974 and 1978 respectively – Record shows that till the respondent had superannuated from service, he was discharging duties as Additional Munsif and was never confirmed in the cadre of Munsif – Thus, his claim for

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promotion to higher post could not have been considered unless and until he was confirmed on the post of Munsif – Claim of promotion was stale one and could not have been entertained by the High Court – Juniors to the respondent who were given benefits of promotion were not impleaded as parties – In their absence, claim of the respondent could not be examined – Earlier the respondent had filed petition claiming promotions from retrospective dates with all claims, benefits and increments in various cadres from various dates as and when they had accrued and were given to his immediate juniors was dismissed and also attained finality and thus, would operate as res judicata – Also all rights and claims of respondent got crystallized – Neither at the time of disposal of SLP respondent claimed any other relief nor obtained permission to claim relief of promotion in future – Thus, the High Court erred in directing appellant to consider the case of respondent for promotion – Order of the High Court set aside.

Supreme Court Rules, 1966 – Or. XVI r. 10(1) proviso – Requirement of – Held: When a petition for special leave is filed beyond the period of limitation prescribed and is accompanied by an application for condonation of delay, the Court should not condone the delay without notice to the respondent – Once the Court forms an opinion that sufficient cause is made out for condonation of delay then issuance of notice to the respondent to show cause as to why delay should not be condoned may become an empty formality – In order to see that the respondent does not incur unnecessary expenditure for coming to Delhi from far off places and engage an advocate for contesting the said application, delay is condoned ex-parte – However, if the respondent is not issued a notice, then a right would be available to him at the stage of hearing to point out that the Court was not justified in condoning the delay and that the leave, if granted, should be revoked or notice issued should be dismissed.

- A Respondent No.1-Munsif in State Judicial Service filed a writ petition challenging his dismissal from service and he was reinstated in service. However, two years later he was suspended from service and departmental proceedings were initiated against him. Aggrieved,
- B respondent No. 1 filed writ petitions and the same were dismissed. Thereafter, respondent No. 1 filed SLPs. During pendency thereof, the High Court issued a Notification suspending respondent No. 1 from service. This Court directed the High Court to withdraw the
- C suspension order passed against the respondent No.1 as well as departmental proceedings initiated against him. By Notification dated October 12, 1981, respondent No.1 was posted as Additional Munsif (lowest post) which he had joined initially. Subsequently by another Notification
- D dated December 10, 1981 he was posted as Additional Munşif at place 'D'. Meanwhile he made various representations to release his dues and to keep one post of appropriate rank reserved for him but did not receive any reply. He then filed CWJC No.1924 of 1982 for quashing Notification dated December 10, 1981 and
- E seeking direction to the High Court on its administrative side to give him promotions from the dates when his juniors named in the petition were promoted during the period 1970 to 1981, with all increments and other benefits. The charge sheet was amended and fresh
- F departmental proceedings were initiated against respondent No. 1 on August 19, 1982. Respondent No.1 retired from service on September 1, 1983. Various petitions which were filed became infructuous and were disposed of as withdrawn. Thereafter, in one of the SLP,
- G this Court directed the State Government to restore pension payable to him and pay arrears due on the basis that he had superannuated from service from the date of superannuation, and a direction was given to pay him Provident Fund, Gratuity and leave salary as might be
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admissible to him on superannuation. However, no direction was given to the appellant to consider the case of the respondent No.1 with retrospective effect with all benefits. Pension matter of respondent No.1 was finalized. Thereafter, he filed CWJC No. 4862 of 1987 in the High Court for lawful claims as were given to his juniors. The said petition was disposed of with a direction to the respondent No.1 to submit representation to the High Court on its administrative side. Pursuant thereto, the respondent No.1 submitted representations and the same were rejected. Respondent No.1 then filed CWJC No. 6538 of 1990 in the High Court. The Division Bench directed the appellant - High Court of Patna on its administrative side to consider the case of promotion of the respondent No.1 as also consequential benefit in accordance with law. Therefore, the appellant filed the instant appeal.

Disposing of the appeal, the Court

HELD: 1.1. The submission that writ petition was filed by the respondent No.1 on November 10, 1990 i.e. seven years after he had superannuated from service, and therefore, writ petition should have been dismissed on the ground of delay and laches, cannot be accepted. The impugned judgment nowhere shows that such a point was argued by the appellant before the High Court. No grievance is made in the memorandum of SLP, that point regarding delay and laches was argued before the High Court but the same was not dealt with by the High Court when impugned judgment was delivered. Further it becomes evident that by the order passed in CWJC No. 4862 of 1987, the High Court had directed the respondent No.1 to submit representation to the High Court on its administrative side claiming benefits which were given to his juniors but were denied to him, pursuant to which the respondent No.1 had filed last representation on June 23,

- A 1990 which was rejected by High Court on September 17, 1990. The question of delay and laches would have to be considered from the communication dated September 17, 1990 by which claim made by the respondent No.1 to give him benefits which were given to his juniors was rejected and not from the date of superannuation. Thus, the respondent No.1 is not liable to be non-suited on the ground of delay and laches in filing writ petition after his superannuation from service. [Para 12] [987-C-G]

- C 1.2. It is clear from C.W.J.C. No. 6538 of 1990 that the petitioner is claiming promotions to the post of Civil Judge, Senior Division, thereafter to the post of Additional District Judge and finally to the post of District Judge when his juniors were given such benefits in the years 1971, 1974 and 1978 respectively. The record shows that till the respondent No.1 had superannuated from service on August 31, 1983, he was discharging duties as Additional Munsif and was never confirmed in the cadre of Munsif. Therefore, his claim for promotion to higher post could not have been considered unless and until he was confirmed on the post of Munsif. There is no manner of doubt that claim of promotion made in C.W.J.C. No. 6538 of 1990 was stale one and could not have been entertained by the High Court. The juniors to the respondent No.1 who were given benefits of promotion in the years 1971, 1974 and 1978 were not impleaded as respondents in the petition. In their absence, claim advanced by the respondent No.1 could not have been examined by the High Court. [Para 12] [988-D-F-G-H]

- G *P.S. Sadasivaswamy vs. State of Tamil Nadu (1975) 1 SCC 152: 1975(2) SCR 356 – referred to.*

1.3. The submission of the respondent No.1 that Interlocutory Application No. 1 of 2009 was filed for

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condonation of delay in filing SLP and delay was A
condoned without issuing notice to him though it is
mandatorily provided in the proviso to sub-rule(1) of rule
10 of Order XVI of the Supreme Court Rules that there
shall be no condonation of delay without notice to the
respondent and therefore, the SLP should be dismissed B
as barred by limitation cannot be accepted. The Office
Report on limitation which was placed before this Court
along with papers of SLP indicated that there was delay
of eight days in filing SLP and delay of nine days in re-
filing the petition. [Para 14] [1989-D-F] C

1.4. The proviso to sub-rule (1) of Rule 10 of Or. XVI
of the Supreme Court Rules, 1966 requires that when a
petition for special leave has been filed beyond the period
of limitation prescribed therefore, and is accompanied by D
an application for condonation of delay, the Court should
not condone the delay without notice to the respondent.
However, it is noticed that it is consistent practice of this
Court even after framing of Rules of 1966 that delay is
condoned ex-parte without issuing notice to the E
respondent, if the Court hearing the special leave petition
is of the opinion that sufficient cause is made out for
condonation of delay and the petitioner has good case
on merits. There is no manner of doubt that once the
Court forms an opinion that sufficient cause is made out F
for condonation of delay then issuance of notice to the
respondent calling upon him to show cause as to why
delay should not be condoned may become an empty
formality and in order to see that the respondent has not
to incur unnecessary expenditure for coming to Delhi
from far off places and engage an advocate for contesting G
application for condonation of delay, delay is condoned
ex-parte. However, in view of requirements of proviso to
sub-rule (1) of Rule 10 of Order XVI of 1966 Rules, it may
be prudent to issue notice to the respondent before
condoning the delay caused in filing the special leave H

- A petition. However, if the respondent is not issued a notice, then a right would be available to him at the stage of hearing to point out that the Court was not justified in condoning the delay and that the leave, if granted, should be revoked or notice issued should be dismissed. [Para 18] [995-C-G]

M/s. Ram Lal Kapur and Sons (P) Ltd. vs. Ram Nath and Ors. AIR1963 SC 1060:1963 Suppl. SCR 242; *Commissioner of Customs vs. Rangi International* (2003) 11 SCC 366 – referred to.

- C 1.5. At the beginning, respondent No. 1 had attempted to argue that there was unexplained delay of seven months and not of eight days, as was mentioned in the Office Report, but he could not make his submission good. It could not be pointed out to this Court that the calculation of delay of eight days made by the registry was erroneous. The explanation offered by the appellant-High Court in the application for condonation of delay is plausible and acceptable. The averments made in the application for condonation of delay would not indicate that the appellant-High Court was either negligent or diligent in prosecuting the matter nor the record indicates that the High Court had given up lis and acquiesced in the impugned judgment of the High Court. On the facts and in the circumstances of the case, this Court was justified in condoning the delay when the special leave petition was placed for preliminary hearing and was also justified in issuing notice to the respondent. Thus, the submission relating to condonation of delay, which was caused in filing the special leave petition is rejected. [Para 20] [996-G-H; 997-A-C]

- H 1.6. Earlier the respondent No.1 had filed CWJC No. 1924 of 1982 in the High Court of Patna claiming promotions from retrospective dates with all claims, benefits and increments in various cadres from various

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dates as and when they had accrued and were given to his immediate juniors. His prayer was to direct the High Court on its administrative side to issue a revised notification incorporating all the promotions to which he was entitled to from various dates as they had accrued when his immediate juniors were promoted and to post him as District Judge. His another prayer in the writ petition was to quash Notification dated December 10, 1981 by which he was posted as Additional Munsif. The writ petition was dismissed by the High Court as having become infructuous. Feeling aggrieved, the respondent No.1 filed SLP (C) No.8923 of 1983 in this Court which was dismissed as withdrawn. Thus, the order passed in CWJC No. 1924 of 1982 had attained finality when SLP filed against the said order was dismissed as withdrawn. There is no manner of doubt that the order dated February 24, 1983 passed in CWJC No. 1924 of 1982 refusing to grant promotions with retrospective dates read with order passed by this Court in SLP (C) No. 8923 of 1983, would operate as *res judicata*. [Para 21] [997-D-H; 998-A]

1.7. Promotion is not a matter of right much less a fundamental right, more particularly when promotion in the subordinate judiciary is to be dealt with by the High Court which has complete control over the subordinate judiciary in view of Article 235 of the Constitution. All rights and claims of the respondent No.1 got crystallized when order was passed in SLP (C) No.8621 of 1985 read with the order was passed in SLP (C) No. 8923 of 1983. If the respondent No. 1 had any other claim he ought to have made the same before this Court when the above said Special Leave Petitions were disposed of. In fact both the Special Leave Petitions were dismissed and therefore, all his claims stood finally rejected, except the direction given to pay him the pension etc. mentioned in the order passed in SLP (C) No.8621 of 1985. No

- A grievance was made by the respondent No.1 in C.W.J.C. No. 6538 of 1990 that the direction given in SLP (C) No.8621 of 1985 were not complied with by the appellant. Neither at the time of disposal of SLP (C) No.8923 of 1983 nor at the time of disposal of SLP (C) No. 8621 of 1985,
- B respondent No.1 had claimed any other relief and had not obtained permission to claim relief of promotion in future. Therefore, the relief claimed in C.W.J.C. No.6538 of 1990 could not have been granted by the Court. [Para 22] [998-B-F]
- C 1.8. It is evident that CWJC No. 6538 of 1990 was filed for the same reliefs which were claimed in CWJC No. 1924 of 1982 and were rejected, and therefore, it could not have been entertained. Further SLP No. 8261 of 1985
- D which was filed by the respondent No.1 against the order of the High Court in CWJC No. 2059 of 1984 was dismissed and the only relief granted was to direct the State to restore pension payable to him with arrears due on the basis that he had superannuated from service
- E was issued to pay him Provident Fund, Gratuity and leave salary as might be admissible to him on superannuation. It was never directed that the High Court on its administrative side should consider the claim of the respondent No.1 regarding deemed promotions. [Para
- F 23] [998-G-H; 999-A-B]

- 1.9. The Division Bench of the High Court erred in law in directing the appellant to consider the case of respondent No.1 for promotion as also the consequential
- G benefits in accordance with law by the impugned judgment. Thus, the impugned judgment is set aside. [Para 24] [999-C-D]

Case Law Reference:

- H 1975 (2) SCR 356 Referred to. Para 13

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1963 Suppl. SCR 242 Referred to. Para 17, 18 A

(2003) 11 SCC 366 Referred to. Para 19

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From the Judgment & Order dated 27.6.2008 of the High
Court of Judicature at Patna in C.W.J.C. No. 6538 of 1990. B

P.H. Parekh, Ajay Kr. Jha, Pallavi Srivastava, Praekh &
Co. for the Appellant. C

Gopal Singh, Rudreshwar Singh, Gaurav Sharma, Anjani
Aiyagari, Sushma Suri Respondent-In-Person for the
Respondent.

The Judgment of the Court was delivered by D

J.M. PANCHAL, J. 1. Leave Granted

2. This appeal by grant of special leave, is directed against
judgment dated June 27, 2008, rendered by the Division Bench
of High Court of Judicature at Patna in Civil Writ Jurisdiction
No. 6538 of 1990 by which the High Court of Patna on its
administrative side is directed to consider the case of
promotion of the respondent No.1 as also grant of
consequential benefits to him in accordance with law. E

3. The respondent No.1 was appointed to the Bihar
Judicial Service as Munsif at Hajipur on January 13, 1955. On
May 9, 1970, High Court of Patna recommended to the State
Government the dismissal of respondent No.1 from service. On
the basis of recommendation made by the High Court, the
State Government issued a Notification dated January 15,
1972, dismissing the respondent No.1 from service. Thereupon
the respondent No.1 filed W.P. No.121 of 1972 under Article
32 of the Constitution challenging his dismissal from service
before this Court. The petition filed by the respondent No.1 was
allowed vide judgment dated February 23, 1972 on the ground F
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- A that the termination of service was stigmatic and was ordered without holding an enquiry. It may be mentioned that judgment of this Court rendered in the petition filed by the respondent No.1 is reported in (1973) 4 SCC 166. In view of the above mentioned judgment of this Court, the respondent No.1 was
- B reinstated in service. However, he was suspended from service on April 12, 1974 and departmental proceedings were initiated against him. Suspension order was challenged by him by filing CWJC No. 820 of 1974 and initiation of departmental proceedings was challenged by filing CWJC No. 593 of 1975
- C in the High Court of Patna. Both the writ petitions were dismissed in the year 1977 by the High Court. Thereupon, he had filed SLP (C) No.4344 of 1977 challenging dismissal of writ petition filed against suspension order and SLP (C) No. 4345 of 1977 challenging the decision in CWJC No. 593 of
- D 1975 by which his prayer to set aside departmental proceedings was rejected. During the pendency of above numbered two SLPs another Notification dated January 30, 1978 was issued by the High Court suspending him from service. On March 01, 1978 this Court admitted both these
- E Special Leave Petitions which were then converted into C.A. No.525 of 1978 and 526 of 1978 respectively. This Court by judgment dated 24.09.1981 directed the High Court of Patna to withdraw the suspension order dated January 30, 1978 passed against the respondent No.1 as well as departmental proceedings initiated against him and granted liberty to the High
- F Court to amend the charge sheet before initiating departmental proceedings and to consider the question of his suspension from service afresh. By Notification dated October 12, 1981, the respondent No.1 was posted at Sasaram as Additional Munsif, which is the lowest post in judiciary and which post he
- G had joined initially on January 13, 1955. Another Notification was issued on December 10, 1981 posting him at Darbhanga as Additional Munsif. Meanwhile he made various representations to release his dues and to keep one post of appropriate rank reserved for him. He did not receive any reply
- H to those representations. Therefore, he filed CWJC No.1924

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of 1982 on May 6, 1982 for quashing Notification dated December 10, 1981 issued by High Court posting him as Additional Munsif in Darbhanga and prayed to direct the High Court on its administrative side to give him promotions from the dates when his juniors named in the petition were promoted during the period 1970 to 1981, with all increments and other benefits. He also prayed to direct the High Court to issue a revised notification incorporating therein all the promotions to be given to him from due dates and to post him as a District Judge. After necessary amendment in the charge sheet, fresh departmental proceedings were initiated against him on August 19, 1982. No reply was filed by the respondent No.1 before the Inquiry Officer. After inquiry, the Inquiry Officer submitted his report dated December 10, 1982 holding that the charges levelled against him were proved. Thereupon, notice dated January 12, 1983 with copy of the report of Inquiry Officer was served upon him calling upon him to show cause as to why he should not be removed from service. The respondent No.1 did not file reply to the show cause notice.

4. When CWJC No.1924 of 1982 had come up for hearing before the Court on February 24, 1983, the learned Additional Advocate General had informed the Court that the departmental proceedings had concluded and second show cause notice was served upon him, calling upon him to show cause as to why he should not be removed from service. Thereupon, the court had expressed the view that the Writ Petition had become infructuous and dismissed the same accordingly by order dated February 24, 1983.

After receipt of show cause notice dated January 12, 1983 the respondent No.1 instituted CWJC No. 2959 of 1984 to quash (i) notification dated August 19, 1982 issued by High Court initiating departmental proceedings against him (ii) inquiry report dated December 10, 1982 forwarded by the District Judge Darbhanga and (3) notice dated January 12, 1983 calling

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A upon him to show cause as to why he should not be removed from service.

B 5. The learned Additional Advocate General who appeared for the Patna High Court in CWJC No. 2059 of 1984 had informed the Court on February 26, 1985 that the
 C respondent No.1 had retired from service on September 1, 1983 and after his retirement the High Court had considered the question of penalty to be imposed on him and by
 D Memorandum dated June 11, 1984, he was directed to show cause as to why the High Court should not make a
 E recommendation to the State Government for withholding his pension permanently, and as no cause was shown by the respondent No.1, the High Court had recommended to the State Government for withholding his pension permanently but no final decision was yet taken by the State Government in that respect. The Division Bench hearing CWJC No. 2059 of 1984 was of the view that writ petition as filed had become infructuous and an opinion was expressed that respondent No.1 should wait till the final decision was taken by the State Government about finalization of pension. Accordingly, writ
 F petition was dismissed as having become infructuous by judgment dated February 26, 1985 reserving liberty to the respondent No.1 to renew his prayer for monetary claims after finalization of pension matter.

F 6. The grievance of the respondent No.1 was that his claim for promotion from the various dates when his immediate juniors were promoted was not considered by the High Court nor was he paid benefits. Under the circumstances, he had approached
 G this Court by filing SLP (C) No. 8923 of 1983 against order dated February 24, 1983 dismissing CWJC No. 1924 of 1982, as having become infructuous. The said SLP was listed for hearing on August 30, 1983. It was brought* to the notice of this Court that second show cause notice had been issued to the respondent No.1 and that the respondent No.1 was to retire from
 H service on August 31, 1983 i.e. the next day when SLP (C) No.

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8923 of 2003 was taken up for hearing on August 30, 1983. A
The respondent No.1 had thereupon stated before the Court
that the SLP had become infructuous and sought permission
to withdraw the same. In view of the statement of the respondent
No.1, the SLP was disposed of as withdrawn by order dated
August 30, 1983. B

Thus, there is no manner of doubt that order dated
February 24, 1983 passed by the Division Bench of Patna High
Court in CWJC No. 1924 of 1983 refusing to grant relief of
promotion with deemed dates and monetary benefits had C
attained finality when SLP (C) No. 8923 of 1983 filed against
the said order was unconditionally withdrawn by the respondent
No.1 on August 30, 1983.

7. Again the respondent No.1 had filed SLP (C) No. 8621
of 1985, against order dated February 26, 1985 dismissing D
CWJC No. 2059 of 1984 as having become infructuous. During
the pendency of the said SLP, a Resolution No. 10383 dated
August 11, 1985 was passed forfeiting permanently pension
payable to respondent No.1. The said Resolution was
produced on the record of SLP (C) No. 8621 of 1985 on E
November 25, 1986. This Court had passed following order on
November 25, 1986 in SLP (C) No. 8621 of 1985 :-

"The Special Leave Petition is dismissed, but we would
direct the State of Bihar to restore within six weeks the F
pensions payable to the petitioner with arrears due on the
basis that he had superannuated from service from the
date of superannuation. Provident Fund, Gratuity and leave
salary as may be admissible to him on superannuation will
also be paid to the petitioner." G

8. The above quoted order makes it evident that the
special leave petition which was against order dated February
26, 1985 passed by the Division Bench of High Court in CWJC
No. 2059 of 1984 was dismissed. The learned counsel for the
petitioner states at the bar that the respondent No.1 was a H

- A Judicial Officer and therefore, when it was brought to the notice of this Court that his pension had been forfeited permanently, this Court had shown compassion, concern, sympathy and clemency to the respondent No.1 and had directed the State of Bihar to restore pension payable to him and pay arrears due on the basis that he had superannuated from service from the date of superannuation, and a direction was given to pay him Provident Fund, Gratuity and leave salary as might be admissible to him on superannuation. However, it is relevant to notice that no direction was given to the appellant to consider the case of the respondent No.1 with retrospective effect with all benefits.

9. According to the respondent No.1 his pension matter was finalized on July 14, 1987. After finalization of pension matter, he filed CWJC No. 4862 of 1987 in the High Court for lawful claims as were given to his juniors. The said petition was disposed of on November 9, 1989 with a direction to the respondent No.1 to submit representation to the High Court on its administrative side for legitimate claims as were given to his juniors. Pursuant to the above mentioned direction, the respondent No.1 had submitted representation dated February 12, 1990. The said representation was considered by the Standing Committee of the Patna High Court and was rejected on March 30, 1990.

10. Again respondent No.1 had sent representation dated April 30, 1990 repeating his prayer to grant him his lawful claims as were given to his juniors. The same was rejected by High Court on its Administrative side vide order dated May 25, 1990. The respondent No.1 had made third representation dated June 23, 1990 to the same effect which was rejected by the High Court vide communication dated September 17, 1990. Thereupon the respondent No.1 had filed CWJC No. 6538 of 1990 in the High Court of Patna. The Division Bench hearing the same has directed the appellant High Court to consider the case of promotion of the respondent No.1 as also

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consequential benefit in accordance with law vide judgment dated June 27, 2008 which has given rise to the instant appeal. A

11. This Court has heard the learned counsel for the appellant and the respondent No.1 who has appeared in person. The Court has also considered the documents forming part of the appeal. B

12. The contention advanced on behalf of the appellant that writ petition was filed by the respondent No.1 on November 10, 1990 i.e. seven years after he had superannuated from service, and therefore, writ petition should have been dismissed on the ground of delay and laches cannot be accepted. The impugned judgment nowhere shows that such a point was argued by the appellant before the High Court. No grievance is made in the memorandum of SLP, that point regarding delay and laches was argued before the High Court but the same was not dealt with by the High Court when impugned judgment was delivered. Further from the facts noticed, it becomes evident that by order dated November 9, 1989, passed in CWJC No. 4862 of 1987, the High Court had directed the respondent No.1 to submit representation to the High Court on its administrative side claiming benefits which were given to his juniors but were denied to him, pursuant to which the respondent No.1 had filed last representation on June 23, 1990 which was rejected by High Court on September 17, 1990. The question of delay and laches will have to be considered from the communication dated September 17, 1990 by which claim made by the respondent No.1 to give him benefits which were given to his juniors was rejected and not from the date of superannuation. Thus, the respondent No.1 is not liable to be non-suited on the ground of delay and laches in filing writ petition after his superannuation from service. C
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However, there is no manner of doubt that the respondent No.1 is claiming promotions to different cadres from the post of Additional Munsif as well as promotional benefits from the H

A due dates as were given to his juniors in the years 1971, 1974 and 1978. In C.W.J.C. No. 6538 of 1990 from which the present appeal arises the petitioner had claimed following relief in paragraph 20 of the writ petition :

B “It is therefore respectfully prayed Your Lordship may be graciously pleased to admit this Writ Petition and may be pleased to direct the respondent Nos. 1 and 2 to give all the service claims of this petitioner as given to his juniors during the period he was illegally kept out of service and adequate compensation for having ruined the career of
C petitioner as fully stated in para 1 and 4 of this writ petition and may be pleased to pass such other order or orders as may be considered fit and proper”.

If one looks to the averments made in the petition it
D becomes at once clear that the petitioner is claiming promotions to the post of Civil Judge, Senior Division, thereafter to the post of Additional District Judge and finally to the post of District Judge when his juniors were given such benefits in the years 1971, 1974 and 1978 respectively.

E The record shows that till the respondent No.1 had superannuated from service on August 31, 1983, he was discharging duties as Additional Munsif and was never confirmed in the cadre of Munsif. Therefore, his claim for promotion to higher post could not have been considered
F unless and until he was confirmed on the post of Munsif. On this ground alone, the writ petition filed by him was liable to be dismissed.

There is no manner of doubt that claim of promotion made
G in C.W.J.C. No. 6538 of 1990 was stale one and could not have been entertained by the High Court. Further juniors to the respondent No.1 who were given benefits of promotion in the years 1971, 1974 and 1978 were not impleaded as respondents in the petition. In their absence, claim advanced
H by the respondent No.1 could not have been examined by the

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High Court. Thus, the impugned judgment is liable to be set aside on the ground that stale claim of promotions to different cadres was advanced by the respondent No.1 after great delay and that too without impleading his juniors. A

13. In *P.S. Sadasivaswamy Vs. State of Tamil Nadu* (1975) 1 SCC 152, this court has laid down a firm proposition of law that a person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion and the High Court can refuse to exercise its extraordinary powers under Article 226 in case the person aggrieved does not approach the Court expeditiously for appropriate relief and puts forward stale claim and tries to unsettle settled matters. Therefore, C.W.J.C. No. 6538 of 1990 in which stale claim of promotion was made by the respondent No.1 was liable to be dismissed. B C D

14. The contention of the respondent No.1 that Interlocutory Application No. 1 of 2009 was filed for condonation of delay in filing SLP and delay was condoned without issuing notice to him though it is mandatorily provided in the proviso to sub-rule(1) of rule 10 of Order XVI of the Supreme Court Rules that there shall be no condonation of delay without notice to the respondent and therefore, the SLP should be dismissed as barred by limitation has no substance. The Office Report on limitation dated December 24, 2008 which was placed before this Court along with papers of SLP indicated that there was delay of eight days in filing SLP and delay of nine days in re-filing the petition. The SLP was placed for preliminary hearing before the Court on February 9, 2009 and after hearing the learned counsel for the petitioner, following order was passed:- E F

"Delay condoned. G

Issue notice.

There shall be interim stay of the impugned order until further orders." H

A 15. In order to deal with the contention raised by the
 respondent No. 1 it would be necessary to refer to the Scheme
 envisaged by the Supreme Court Rules, 1950, which was
 subsequently amended and the Scheme contemplated by the
 Supreme Court Rules, 1966 as well as certain relevant
 B decisions on the point.

16. The Supreme Court of India, in the exercise of its rule-
 making powers, and with the approval of the President, had
 made the Supreme Court Rules, 1950. Order XIII of the Rules
 C of 1950 dealt with appeals by special leave. Rule 1, which is
 relevant for the purpose of deciding the issue raised in this
 appeal by the respondent No. 1, was reading as under: -

D "1. A petition for special leave to appeal shall be lodged
 in the Court within sixty days from the date of refusal of a
 certificate by the High Court or within ninety days from the
 date of the judgment sought to be appealed from,
 whichever is longer:

Provided that

E (i) in computing the period of ninety days the time
 requisite for obtaining a certified copy of the
 judgment sought to be appealed from shall be
 excluded;

F (ii) where the period of limitation claimed is sixty days
 from the date of the refusal of a certificate, the time
 taken subsequent to the date of refusal in obtaining
 a certified copy of the judgment (in cases where no
 G certified copy of the judgment had been obtained
 prior to the date of such refusal) shall be excluded
 in computing the period of sixty days;

(iii) where an application for certificate made to the High
 Court is dismissed as being out of time the period
 of limitation shall count from the date of the
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- judgment sought to be appealed from and not from the date of the dismissal of the said application; A
- (iv) where an application for leave to appeal to the High Court from the judgment of a single Judge of that Court has been made and refused, the period from the making of the application to the rejection thereof shall be excluded in computing the period under this Rule; B
- (v) the Court may for sufficient cause extend the time on application made for the purpose." C

The Supreme Court Rules, 1950 were published in the Gazette of India Extra Ordinary dated January 28, 1950 and amended by the Supreme Court of India Notifications dated April 25, 1950, July 5, 1950, August 19, 1950, June 18, 1951, May 6, 1952, January 16, 1954, July 10, 1954, April 12, 1955, March 19, 1956, July 14, 1956, July 11, 1957, November 22, 1957, January 9, 1958 and April 8, 1959. After amendment Order XIII Rule 1 provided as under: - D

"1. Subject to the provisions of Sections 4, 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963) a Petition for Special Leave to Appeal shall be lodged in the Court in a case where a certificate for leave to appeal was refused by the High Court within sixty days from the date of the order of refusal and any other case within ninety days from the date of judgment or order sought to be appealed from." E F

Till the Supreme Court Rules 1966 were made by the Supreme Court, it was the practice of this Court to condone the delay caused in filing Special Leave Petition, without issuing notice to the respondent. G

17. At this stage, it would be relevant to notice a Constitution Bench judgment of this Court in *M/s. Ram Lal Kapur and Sons (P) Ltd. vs. Ram Nath and others* AIR 1963 SC 1060. In the said case the first respondent Ram Nath was H

A owner of a building in Delhi of which the appellant company was one of the tenants. The appellant moved the Rent Controller, Delhi under Section 7A of the Delhi and Ajmer Rent Control Act, 1947 for fixation of the fair rent of the portion in its occupation. The Rent Controller, Delhi computed the fair rent
 B for the entire building at Rs.565/- per month and the fair rent payable by the appellant at Rs.146/- per month. The respondent landlord preferred an appeal against the order of the Rent Controller to the learned District Judge, Delhi, but the appeal was dismissed. Thereafter, he moved the High Court
 C of the Punjab under Article 227 of the Constitution challenging the correctness and propriety of every finding by the Rent Controller and of the District Judge on appeal. The petition came on for hearing before a learned single Judge of the High Court. A Division Bench of the High Court had sometime
 D previously held in another batch of cases that Section 7A was unconstitutional and void. Following this decision the learned single Judge allowed the petition of the first respondent Ram Nath and set aside the order of the Rent Controller as without jurisdiction, without considering the other matters which would
 E arise if the Section was valid and the Rent Controller had jurisdiction. From this decision of the learned single Judge the appellant preferred an appeal under the Letters Patent to a Division Bench.

Meanwhile, the judgment of the Division Bench holding that
 F Section 7A was unconstitutional was brought up by way of appeal to this Court. As the said appeal was getting ready to be heard, the appellant, i.e., M/s. Ram Lal and Sons (P) Ltd. applied for and obtained special leave to appeal to this Court though the appeal filed by the appellant before the High Court
 G was pending. Letters Patent Appeal was thereafter withdrawn by the appellant. An appeal against judgment of the Division Bench of the High Court holding that Section 7A was unconstitutional was heard by this Court and the same was allowed by judgment dated August 2, 1961 and this Court held

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reversing the judgment of the High Court that Section 7A of the Act was valid. A

It would thus be seen that only point which the learned Judge considered and on which the revision petition of the landlord respondent was allowed no longer subsisted and hence the appellant was entitled to have the appeal allowed. As the learned single Judge did not consider the other objections raised by the first respondent to the order of the Rent Controller fixing the standard fair rent payable by the appellant, the appeal had to be remanded to the High Court for being dealt with according to law. B C

However, a preliminary objection to the hearing of the appeal was raised by the learned counsel for the landlord respondent. His submission was that the special leave which was granted by this Court ex-parte should be revoked as having been improperly obtained. The judgment of the learned single Judge to appeal from which the leave was granted was dated January 5, 1955 and the application to this Court seeking leave was made on January 5, 1959, i.e., after a lapse of four years. It was obvious that it was a petition which had been filed far beyond the period of limitation prescribed by the Rules of this Court. The learned counsel for the respondent urged that there were no sufficient grounds for condoning that long delay and that this Court should, therefore, revoke the leave. The Constitution Bench of this Court was not disposed to accede to this request for revoking the leave. The learned counsel had drawn attention of the Constitution Bench to a few decisions in which leave granted ex-parte was revoked at the stage of hearing of the appeal on an objection raised by the respondent. However, the Constitution Bench did not consider that the facts of the appeal before it was bearing any analogy to those in the decisions cited. The Five Judge Constitution Bench was of the opinion that in fact the grant of special leave in the circumstances of the case merely served to shorten the proceedings and this Court had acceded to the petition for H

- A leave obviously because the appeals in this Court from judgments in the cases where view was taken that Section 7A was unconstitutional, were getting ready for hearing and there was some advantage if the appellant was in a position to intervene in those other appeals. However, the Constitution Bench made following pertinent observations in paragraph 9 of the reported decision. They are as under: -

C "9. Nevertheless, we consider that we should add that, except in very rare cases, if not invariably, it should be proper that this Court should adopt as a settled rule that the delay in making an application for special leave should not be condoned ex parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave. Such a course besides being just, would be preferable to having to decide applications for revoking leave on the ground that the delay in making the same was improperly condoned years after the grant of the leave when the Court naturally feels embarrassed by the injustice which would be caused to the appellant if leave were then revoked when he would be deprived of the opportunity of pursuing other remedies if leave had been refused earlier. We would suggest that the rules of the Court should be amended suitably to achieve this purpose."

F 18. The Rules framed in the year 1950 were replaced by the present Rules, which are known as The Supreme Court Rules, 1966. They came into force with effect from January 15, 1966. The weighty recommendations made by the Constitution Bench in *Ram Lal and Sons (P) Ltd.* case (Supra) were taken into consideration and proviso to sub-rule (1) of Rule 10 of Order XVI was enacted, which reads as under:-

H "10 (1) Unless a caveat as prescribed by rule 2 of Order XVIII has been lodged by the other parties, who appeared in the Court below, petitions for grant of special leave shall be put up for hearing ex-parte, but the Court, if it thinks fit,

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may direct issue of notice to the respondent and adjourn the hearing of the petition: A

Provided that where a petition for special leave has been filed beyond the period of limitation prescribed therefor and is accompanied by an application for condonation of delay, the Court shall not condone the delay without notice to the respondent." B

Naturally, the proviso requires that when a petition for special leave has been filed beyond the period of limitation prescribed therefore and is accompanied by an application for condonation of delay, the Court should not condone the delay without notice to the respondent. However, it is noticed that it is consistent practice of this Court even after framing of Rules of 1966 that delay is condoned ex-parte without issuing notice to the respondent, if the Court hearing the special leave petition is of the opinion that sufficient cause is made out for condonation of delay and the petitioner has good case on merits. There is no manner of doubt that once the Court forms an opinion that sufficient cause is made out for condonation of delay then issuance of notice to the respondent calling upon him to show cause as to why delay should not be condoned may become an empty formality and in order to see that the respondent has not to incur unnecessary expenditure for coming to Delhi from far off places and engage an advocate for contesting application for condonation of delay, delay is condoned ex-parte. However, in view of requirements of proviso to sub-rule (1) of Rule 10 of Order XVI of 1966 Rules, it may be prudent to issue notice to the respondent before condoning the delay caused in filing the special leave petition. However, if the respondent is not noticed, then a right would be available to him at the stage of hearing to point out that the Court was not justified in condoning the delay and that the leave, if granted, should be revoked or notice issued should be dismissed. C
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19. In *Commissioner of Customs vs. Rangi International* (2003) 11 SCC 366, the SLP from which the appeal arose was H

A filed after a delay of 246 days. When the matter came up for preliminary hearing, it was found that without noticing the provisions of Supreme Court Rules in regard to the condonation of delay, this Court on 12.7.2000, had condoned the delay ex-parte and granted leave. On 2.4.2002, when the respondent
 B appeared before the Court, a preliminary objection was raised that the condonation of delay was contrary to the Supreme Court Rules. Therefore, the Court hearing the appeal had looked to the papers. The Court found that proper particulars were not given in the application for condonation of delay. Therefore, the
 C Court hearing the appeal had called upon the appellant to file an additional affidavit in support of the application for condonation of delay. Accordingly, the appellant had filed additional affidavit. To this the respondent had filed a counter pointing out that the explanation given by the appellant even in
 D the additional affidavit did not explain the delay satisfactorily nor had the appellant been diligent in filing the appeal. This Court heard the learned counsel for the appellant as well as the respondent and having considered the reasons given for condonation of delay in the original affidavit as well as in the additional affidavit filed by the appellant was of the opinion that
 E the appellant had not satisfactorily explained the delay in preferring the appeal. Therefore, accepting the contention of the respondent this Court had revoked the leave granted on 12.7.2000 and consequently dismissed the SLP as barred by limitation.

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20. In view of the course adopted by this Court in the above mentioned decision this Court had heard the appellant and the respondent to satisfy itself as to whether sufficient cause was made out for condonation of delay of eight days.

G At the beginning, the respondent No. 1 had attempted to argue that there was unexplained delay of seven months and not of eight days, as was mentioned in the Office Report, but he could not make his submission good. It could not be pointed out to this Court that the calculation of delay of eight days made by
 H the registry was erroneous. The explanation offered by the

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appellant High Court in the application for condonation of delay is plausible and acceptable. The averments made in the application for condonation of delay would not indicate that the appellant High Court was either negligent or diligent in prosecuting the matter nor the record indicates that the High Court had given up lis and acquiesced in the impugned judgment of the High Court. On the facts and in the circumstances of the case this Court is of the opinion that this Court was justified in condoning the delay when the special leave petition was placed for preliminary hearing and was also justified in issuing notice to the respondent. Thus, this Court does not find any substance in the contention raised by the respondent No. 1 relating to condonation of delay, which was caused in filing the special leave petition and, therefore, the same is hereby rejected.

21. Coming to the merits of the matter this Court finds that earlier the respondent No.1 had filed CWJC No. 1924 of 1982 in the High Court of Patna claiming promotions from retrospective dates with all claims, benefits and increments in various cadres from various dates as and when they had accrued and were given to his immediate juniors. His prayer was to direct the High Court on its administrative side to issue a revised notification incorporating all the promotions to which he was entitled to from various dates as they had accrued when his immediate juniors were promoted and to post him as District Judge. His another prayer in the writ petition was to quash Notification dated December 10, 1981 by which he was posted as Additional Munsif in Darbhanga. The writ petition was dismissed by the High Court vide order dated February 24, 1983 as having become infructuous. Feeling aggrieved, the respondent No.1 had filed SLP (C) No.8923 of 1983 in this Court which was dismissed as withdrawn by order dated August 30, 1983. Thus the order dated February 24, 1983 passed in CWJC No. 1924 of 1982 had attained finality when SLP filed against the said order was dismissed as withdrawn. There is no manner of doubt that the order dated February 24, 1983

A passed in CWJC No. 1924 of 1982 refusing to grant promotions with retrospective dates read with order passed by this Court in SLP (C) No. 8923 of 1983, would operate as *res judicata*.

B 22. It is well settled that promotion is not a matter of right much less a fundamental right, more particularly when promotion in the subordinate judiciary is to be dealt with by the High Court which has complete control over the subordinate judiciary in view of Article 235 of the Constitution. All rights and claims of the respondent No.1 got crystallized when this Court passed order dated November 25, 1986 in SLP (C) No.8621 of 1985 read with order dated August 30, 1983 passed by this Court in SLP (C) No. 8923 of 1983. If the respondent No. 1 had any other claim he ought to have made the same before this Court when the above numbered Special Leave Petitions were disposed of. In fact both the Special Leave Petitions were dismissed and therefore all his claims stood finally rejected, except the direction given to pay him the pension etc. mentioned in order dated November 25, 1986 passed in SLP (C) No.8621 of 1985. No grievance was made by the respondent No.1 in C.W.J.C. No. 6538 of 1990 that the direction given by this Court on November 25, 1986 in SLP (C) No.8621 of 1985 were not complied with by the appellant. Neither at the time of disposal of SLP (C) No.8923 of 1983 nor at the time of disposal of SLP (C) No. 8621 of 1985 the respondent No.1 had claimed any other relief and had not obtained permission to claim relief of promotion in future. Therefore, the relief claimed in C.W.J.C. No.6538 of 1990 could not have been granted by the Court.

G 23. It is evident that, CWJC No. 6538 of 1990 was filed for the same reliefs which were claimed in CWJC No. 1924 of 1982 and were rejected, and therefore, it could not have been entertained. Further SLP No. 8261 of 1985 which was filed by the respondent No.1 against judgment and order dated February 26, 1985 of the High Court of Judicature at Patna in

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CWJC No. 2059 of 1984 was dismissed and the only relief granted by this Court was to direct the State of Bihar to restore pension payable to him with arrears due on the basis that he had superannuated from service from the date of superannuation and a further direction was issued to pay him Provident Fund, Gratuity and leave salary as might be admissible to him on superannuation. This court had never directed that the High Court of Patna on its administrative side should consider the claim of the respondent No.1 regarding deemed promotions.

24. In view of the above discussion, this Court is of the opinion that the High Court has erred in law in directing the original respondent No.2 i.e. present appellant to consider the case of promotion of respondent No.1 as also the consequential benefits in accordance with law by the impugned judgment. Thus the impugned judgment is liable to be set aside.

For the foregoing reasons the appeal succeeds, the judgment dated June 27, 2008 rendered by the Division Bench of High Court of Judicature at Patna in CWJC No. 6578 of 1990, directing the present appellant to consider the case of respondent No.1 for promotion as also consequential benefits, is hereby set aside. The appeal accordingly stands disposed of.

N.J.

Appeal disposed of.