
(2010) 09 MP CK 0067
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 416 of 2007

Dr. Deshraj Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 9
Constitution of India, 1950 — Article 16, 226, 227, 309
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2010) 09 MP CK 0067

Hon'ble Judges : S.C. Sharma, J;P.K Jaiswal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.—This intra Court Appeal u/s 2(1) M.P. Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2006, is directed against the judgment dated 14.5.2007, passed by the learned Single Judge in Writ Petition No. 1674 of 2006(S). The writ petition was filed by the appellant against the order dated 15.2.2006, by which respondent No. 3 in compliance of earlier orders passed by the M.P. Administrative Tribunal, Indore Bench in O.A. No. 1823/2000, confirmed by the High Court in W.P. No. 467/2000, has been given proforma promotion as "Professor" with effect from the date he assuming charge. While giving the proforma promotion the respondents have applied the doctrine of "no work no pay" and posted the respondent No. 3 as Professor, Periodontia in College of Dentistry, Indore.

2. The recruitment and other service conditions of appellant and respondent No. 3 are governed by Madhya Pradesh Medical Education (Gazetted) Service Recruitment Rules, 1987 (for short "the Recruitment rules"). Both of them are working in the College of Dentistry, Indore.

3. Appellant Dr. Deshraj Jain was appointed as lecturer on 5.8.89. Respondent

No. 3, Dr. Subhash Garg was appointed as Lecturer in the College of Dentistry at Indore. He joined as Lecturer in Periodontia on 21.6.1982. On 29.6.1987 he was regularized and appointed on probation of two years under M.P. Civil Services (Regularization of Adhoc Appointment) Rules, 1986. On 16.9.1988, three of the Readers having been promoted as Professor on regular basis, three posts of Reader fell vacant. According to Dr. Garg, he was eligible for being considered, but he was not considered notwithstanding the fact that under the Recruitment rules, the authorities were bound to consider his case. The Principal of the College recommended the case of Dr. Garg for being considered on 6.10.1989, but unfortunately, no DPC meeting was held. The said Principal made a fresh request on 24.10.91 and again on 3.5.92 and finally the DPC sat on 25.9.92, but even in that meeting, case of Dr. Garg was not considered and by order dated 2.12.92, Dr. Y.N. Saxena and Dr. S.V. Dhodapkar were promoted as Readers in Oral Pathology and Periodontia respectively. On 2.12.92, one Dr. Patni was promoted as Professor of Prosthetics. Being aggrieved by non-consideration of his case, Dr. Garg approached the Administrative Tribunal, which was registered as O.A. No. 18/1993. That application was disposed of by order dated 28.2.94 with the direction that Dr. Garg should be considered for promotion to the post of Reader along with others who are eligible and the Government shall have the discretion to determine the guidelines for selection of the candidates, keeping in view the specific teaching requirement in the College of Dentistry. This order of the Tribunal was assailed by Dr. Garg by filing SLP No. 15892/1994 in the Apex Court, which however was dismissed on 26.9.94. The DPC again sat in May, 1994 and considered and selected Dr. Deshraj Jain (appellant) and was promoted as Reader on 27.5.94 and the case of Dr. Garg was not considered. Dr. Garg approached the Administrative Tribunal by filing an application u/s 9 of the Administrative Tribunal Act, 1985, which was registered as O.A. No. 213/1995.

4. The stand of respondent No. 3 before the Tribunal was that under the rules, the DPC was required to meet at interval ordinarily not exceeding one year, but there was no meeting of DPC from 1988 till 1992 notwithstanding the availability of a vacancy for the post of Reader and this was purposely done only with the object of accommodating appellant and his wife Dr. (Mrs) Sandhya Jain, who had not been eligible for being considered for the post of Reader till 1992.

5. The said application was allowed by the Tribunal vide order dated 5.9.95 by holding that un-amended rules do not provide for promotion to be made subject-wise, directions given to consider the case of Dr. Garg for promotion to the post of Reader with effect from 16.12.92 i.e., the date on which two similarly situated persons Dr. Y.N. Saxena and Dr. S.V. Dhodapkar were promoted, if found eligible to give him his due seniority.

6. The Tribunal, while allowing the application of the respondent No. 3 issued certain directions in paragraphs 16 & 17, which reads as under:

16. In view of the aforesaid position, it is manifest that there is no legal impediment in promoting the present applicant Dr. Garg to the post of Reader as

the scheme of the rules does not show that the promotions have to be strictly in accordance with the specialty and coupled with the fact that the allegations of the applicant about the promotion of one of the Readers has not been denied by the State which was based on merit and seniority and not specialty. Had the case of the applicant being considered earlier with Dr. Saxena and Dr. Dhodpkar this question would not have been arisen at all. Shri Bagadia has argued that the Schedule III makes age limit for promotion as 40 years and the applicant is already 42 years now. But, I find no force in this argument because the petitioner has all through been claiming his promotion, being in the service of the Department, which has been denied to him and he had already filed Original Application in the year 1993 claiming the same relief. As such his claim which relates back to the date when he became eligible for promotion and he made his representation for promotion.

17. In the circumstances stated above and in the light of the observations made by the Supreme Court in the case of Dr. R. Murali Babu Rao and another the State is directed to consider the case of the applicant for promotion to the post of Reader within a period of 3 months from the date of this order by the DPC and if found eligible be given him his due seniority.

7. The aforesaid decision of the Tribunal was challenged by the appellant and his wife Dr. (Mrs) Sandhya Jain in the Supreme Court. All the SLPs preferred against the order of Tribunal were heard and decided by judgment dated 15th October, 1999 (Annexure-R/7).

8. In Dr. (Mrs.) Sandhya Jain Vs. Dr. Subhash Garg and Another, the question that arises for consideration was whether under the rules in force governing the conditions of service, the 5th post of Reader could be filled up by a lecturer of any discipline. The Hon'ble Apex Court, after appreciating the provisions of Recruitment rules came to the conclusion that the 5th post of Reader was being filled up by lecturer belonging to any discipline, on being selected following the criteria of merit with due regard to seniority. Necessarily, therefore, non-consideration of the case of Dr. Garg solely on the ground that there was no available vacancy in the discipline of Periodontia tantamounts to infringement of the constitutional right of consideration under Article 16 and held that the Tribunal, therefore, was justified in issuing the impugned directions while disposing of the original application filed by Dr. Garg. The next question, before the Apex Court was whether the Regulations framed by the Dental Council contains any prohibition for appointing two Readers from one discipline which would stand on the way of the Tribunal to issue the directions for consideration of the case of Dr. Garg. The Apex Court, after appreciating the judgment in the case of Government of Andhra Pradesh and Another Vs. Dr. R. Murali Babu Rao and Another, held that there is no provision in the Dental Council's Regulation, prohibiting appointment of two Readers in a particular discipline in a Dental College. If there is no provision in the Dental College Regulation prohibiting appointment of two Readers in a particular discipline in a Dental College and the

Recruitment rules framed under Article 309 of the Constitution being also silent inasmuch as it does not indicate as to how the 5th post of Reader will be filled up, then the same can be filled up by the administrative decision of the Government and such a decision cannot be held to be repugnant to the provisions of Dental Council Regulations.

9. After the decision of the Apex Court, the State Government issued the order dated 28.12.99 (Annexure-R/18) and by the said order, respondent No. 3 was promoted on the post of Reader with effect from 16.12.92 when similarly situated persons like Dr. Y.N. Saxena and Dr. S.V. Dhodapkar were given promotion on the post of Reader. The said order of the State Government giving proforma promotion and seniority of the respondent No. 3 on the post of Reader with effect from 16.12.92 was not challenged in any court. Thus, it attained finality making the respondent No. 3 eligible to count his seniority in the cadre of Reader with effect from 16.12.92.

10. From the order dated 16.12.92 it is clear and very specific that respondent No. 3 was promoted in parity with Dr. S.V. Dhodapkar.

11. On 4.7.2000, in spite of various representations made by respondent No. 3 for consideration of his case as Professor when four vacancies of Professor were available, respondent No. 1 promoted Dr. S.V. Dhodapkar as Professor, Periodontia and Dr. (Mrs) Sandhya Jain (wife of the appellant) as Reader, Arthodontia. The respondent No. 3, aggrieved by the action of the respondent No. 1 by which his case was not considered for promotion on the post of Professor, challenged the said order by filing an application vide O.A. No. 1823/2000 before the M.P. Administrative Tribunal, Indore Bench, claiming promotion in parity with Dr. S.V. Dhodapkar with effect from 4.7.2000 on the post of Professor. His prayer for interim relief was refused on 5.9.2000, but it was directed that any promotion made to the vacant post of Professors shall be subject to final decision of this case. Thereafter, order of promotion dated 25.11.2000 was passed by which the appellant Dr. Deshraj Jain was promoted on the post of Professor in Prosthodontics subject to final outcome. The respondent No. 3 challenged the said interim order dated 5.9.2000 by filing Writ Petition No. 2114/2000, which was disposed of by the Division Bench of this Court on 31.1.2001, making the same observation. In the meanwhile, on 11.2.2002 the application filed by the respondent No. 3 was allowed by the Tribunal and directions were given to consider the claim of respondent No. 3 in parity with Dr. S.V. Dhodapkar. Paragraph 14 of order dated 11.2.2002 (Annexure-R/10) reads as under:

14. Therefore, for the aforesaid reasons, the petition deserves to be allowed. Hence, it is allowed with the order that the name of the applicants shall also be considered for the promotion on the post of Professor with the date when the name of junior/similarly situated persons are considered for promotion as Professor, and if the applicants found fit for promotion, the necessary orders shall be issued accordingly. The order shall be complied within three months from the

date of communication of this order. Copy of this order be supplied to the counsel of both the parties and also sent to the respondents for compliance.

12. Appellant and his wife were party to the aforesaid Original Application filed by respondent No. 3, therefore, he preferred a Writ Petition No. 467/2002 before this Court. The aforesaid writ petition was dismissed on 24.2.05 by passing a detailed order and all contentions urged on behalf of the appellant were repelled and the order of the Tribunal dated 11.1.02 was upheld and affirmed. Appellant, then filed SLP in the Apex Court, which was dismissed on 2.5.05, after observing that the grievance of the appellant was premature. Thereafter, the State Government vide order dated 15.2.06 (Annexure-P/1) promoted the respondent No. 3 as Professor, Periodontia with retrospective effect from 4.7.2000. It is this action by which the appellant was aggrieved and filed a writ petition bearing W.P. No. 1674/2006(S) on the ground that respondent No. 3 cannot be given retrospective promotion with effect from 4.7.2000 when there was no vacancy on the post of Professor, Periodontia on 4.7.2000 and Dr. S.V. Dhodapkar, who was senior to respondent No. 3 was occupying the said post on 4.7.2000. It is not in dispute that promotion order of respondent No. 3 dated 15.2.06 was passed in compliance to the directions of the Tribunal in O.A. No. 1823/2000 (as affirmed by W.P. No. 467/2002 and by the Apex Court).

13. The sole contention of the appellant before the writ court was that no promotion can be made with retrospective effect and in support of this contention reliance was placed on the decisions of Apex Court in the cases of Uttaranchal Forest Rangers Association (Direct Recruit) and Ors. v. State of U.P. and Ors. (2006) 10 SCC 346, State of Uttaranchal v. Dinesh Kumar Sharma (2007) 1 SCC 683 and Nirmal Chandra v. Union of India 2008 (4) SCALE 829 and argued that there can be no promotion with effect from back date, because a promotion with retrospective effect is contrary to law laid down by the Apex Court. His next submission was that the appellant was promoted after his due selection as Professor and at that point of time, the respondent No. 3 was not born in the cadre and, as such, he could not have been given retrospective promotion. It was also urged that promotion is to be made specialty-wise. It was contended that no vacant post of Professor was available in the year 2000, as post of Professor, Periodontia was occupied by Dr. S.V. Dhodapkar till 2.11.05. It is only after he retired vacancy arose in the year 2005, therefore, if at all the respondent No. 3 could be promoted from the date when vacant post of Professor was available with the State Government and not with retrospective effect. Learned Single Judge was not impressed with the said contention of the appellant on the ground that the controversy is set at rest by the earlier decision of the Apex Court between the parties Dr. (Mrs.) Sandhya Jain Vs. Dr. Subhash Garg and Another, , in which the order dated 5.9.95 of the Tribunal has been affirmed by the Apex Court and held that promotion of respondent No. 3 on the post of Professor with effect from 4.7.2000 was made to maintain his parity between him and Dr. S.V. Dhodapkar. In respect of question of giving retrospective promotion the learned Single Judge has held that the decision of

the Apex Court in the case of State of Uttaranchal (supra) is distinguishable on facts and dismissed the writ petition by impugned order dated 14.5.07, paragraphs No. 9 & 10 are relevant, which reads as under:

9. After hearing learned Counsel for the parties at length and going through the material available on record, I find no merit and substance in the present writ petition. The contention that promotions are to be made specialty-wise and no post was available has no merit and the controversy is set at rest by the earlier decision of the Supreme Court between the parties reported in Dr. (Mrs.) Sandhya Jain Vs. Dr. Subhash Garg and Another, Perusal of the decision would reveal that the Supreme Court after examining the 1987 rules did not accept that promotion is to be made specialty-wise and ultimately, rejected the appeals. A bare glance of the relevant Schedule i.e., Schedule-I read with Schedule-IV of 1987 rules would reveal that it had never been the intention of the Rule-making authorities to provide for specialty-wise promotion under the 1987 rules or its amendment in the year 2007. Though in the present case we are not concerned with the rules amended in the year 2007, under the 1987 Rules, 6 posts of Lecturers are sanctioned, whereas Schedule says Lecturers in Prosthodontics, Periodontia, Oral Diagnosis and Padodontia. Except for Posthetics and Padodontia, no post of Reader in Periodontia, Oral Diagnosis is mentioned in the Schedule. Whereas, in the Schedule, the post of Lecturer in Oral Pathology, Operative and Oral Surgery are separately mentioned though there is no corresponding post of Lecturer in the Schedule. This only goes to show that promotions are not to be made speciality-wise. This fact has been considered in detail in the decision of the Tribunal in O.A. No. 213/1995 filed by Respondent No. 3, against which S.L.Ps. were preferred and by a reasoned judgment reported in Dr. (Mrs.) Sandhya Jain Vs. Dr. Subhash Garg and Another, . Said order of Tribunal has been affirmed by the Supreme Court. Thus, now it is too late in a date to contend that promotions are to be made only speciality-wise. To our mind, there is no ambiguity which requires any harmonious construction of the relevant Recruitment rules as contented by the learned senior counsel for the petitioner. Once a judicial pronouncement is made, then it has got to be obeyed. As pointed out herein above, the Respondent No. 3 was given proforma promotion w.e.f. 16.12.1992 on the post of Reader, so for all practical purposes, he became the member of the cadre of Reader w.e.f. that date. It is pertinent to point out that the order giving promotion to Reader to Respondent No. 3 w.e.f. 16.12.1992 was never challenged by anyone and thus, it attained finality. Respondent No. 3 was due for consideration of promotion to the post of Professor when persons similarly situated were 4.7.2000. Since the case of Respondent No. 3 was not considered, there was a violation of right to equality in the matter of public employment and he pursued his remedy provided under the law. He succeeded and his claim was accepted for consideration for promotion to the post of Professor when Dr. S.V. Dhodapkar was promoted as Professor. In compliance of the said order, case of Respondent No. 3 was considered and as he was found fit, he was given promotion w.e.f. 4.7.2000 to maintain parity between him and

Dr. Dhodapkar. To this extent, no illegality or infirmity can be attributed.

10. The next question is, whether it amounts to retrospective promotion and if yes, whether it could be given in view of the decision of Supreme Court in State of Utteranchal (Supra). So far as first limb is concerned, as has been all along forced to go to the Court of law for enforcement of his legal right, be it as promotion to the post of Reader or promotion to the post of Professor. It is not a case that the Respondent No. 3 was not vigilant for the enforcement of his legal rights. He was diligently pursuing his remedy and when he succeeded, he has been given promotion from the date when similarly situated person viz. Dr. S.V. Dhodapkar was promoted on the post of Professor w.e.f. 4.7.2000. The question of vacancy of the post of Professor is insignificant once an order for compliance of the judicial pronouncement, the Respondent No. 3 was found suitable and fit for promotion. Had there been a situation like this, then the difficulty can be surmounted creating a supernumerary post. Thus, on this ground, the claim of Respondent No. 3 could not be defeated or he cannot be relegated to the square one when he started legal proceedings for enforcement of his right of equal opportunity in the matter of public employment. What he claimed was to consider his case and if found fit, he should be given promotion at par with the similarly situated person. Thus, it cannot be said to be retrospective promotion which was not approved by the Supreme Court in State of Utterachal (Supra). The facts of the case, as mentioned in the decision, are clearly distinguishable from the facts of the present case and do not come to the rescue of petitioner so as to defeat the claim of Respondent No. 3 which was granted to him prior to the decision of Supreme Court. Thus, having issued necessary orders in due compliance of the Judicial pronouncement in favour of Respondent No. 3, now the petitioner cannot be allowed to contend that the State Government or this Court should re-examine the whole matter. Obviously, it is not permissible in the light of previous decisions between the parties.

14. Shri A.M. Mathur, learned Senior Advocate for the appellant invited our attention to the fact that as of now and submitted that the appellant was promoted on the post of Reader to the post of Professor on 25.11.2000 in the discipline of Prosthodontics, while respondent No. 3 was promoted on 15.2.06 with effect from 4.7.2000 in the discipline of Parodontia. On 4.7.2000, the post of Professor in the discipline of Parodontia was not vacant, but occupied by Dr. S.V. Dhodapkar, who retired on 2.11.05, hence, the respondent No. 3 could not be retrospectively promoted with effect from 4.7.2000, as the post was not vacant. Seniority or retrospective promotion cannot be given to one who was not born in the cadre of Professor. So, when the respondent No. 3 was not born in the cadre of Professor, he cannot be promoted on the post of Professor with effect from 4.7.2000 and he could be promoted on the said post with effect from 2.11.05. The order of the learned Single Judge, dismissing the writ petition is contrary to law laid down by the Apex Court in Uttaranchal Forest Rangers Association (Direct Recruit) and Ors. v. State of U.P. and Ors. (supra). He would contend that promotion of the appellant was made under the rules on the basis

of merit-cum-seniority and the respondent No. 3 was not born in the cadre "Professor" when the appellant was promoted as Professor on 25.11.2000, the impugned judgment of the learned Single Judge is based on morality and sympathy, which have no place in applying the legal principles and placed reliance on the decision of the Apex Court in the case of Teri O at Estates (P) Ltd. v. U.T. Chandigarh and Ors. reported in 3004 (2) SCC 130. Learned Senior counsel also submitted that the appellant, who was working as Professor since 25.11.2000 will become junior to the respondent No. 3, which is not permissible, in the light of the previous decision between the parties and prays that this appeal be allowed and the impugned order of the learned Single Judge be set aside.

15. Shri B.L. Pavecha, learned Senior Advocate with Shri Amit S. Agarwal, Advocate appearing for the respondent No. 3 supported the judgment of the learned Single Judge and submitted that the promotion order of the respondent No. 3 for his promotion to the post of Professor was passed on 15.2.06 in compliance of order dated 11.1.02, passed in O.A. No. 1823/2000, which was affirmed by Division Bench of this Court by order dated 24.2.05, passed in W.P. No. 467/02 and the SLP filed by the appellant against the same was dismissed by the Apex Court on 2.5.05. The order passed by the SAT on 11.1.02 and affirmed by the Division Bench on 24.2.05 has become final between the parties. The correctness of these orders cannot now be questioned by the appellant or the respondents on any ground whatsoever and now it is barred by res judicata in between the parties. In respect of retrospective promotion, it is submitted that there is no inflexible rule. There is no absolute prohibition against retrospective promotions. Promotions to the post of Professor are not made specialty-wise, but on the basis of over all seniority and under the Recruitment rules there is no post of Professor in Periodontia. He further submits that it is not the case of the appellant that respondent No. 3 is of inferior merit than the appellant. When the respondent No. 3 was appointed and joint as Lecturer in the College of Dentistry, the appellant and his wife have been student of the respondent No. 3 in the College of Dentistry, Indore and subsequently been appointed as Lecturer with effect from 5.8.89 and are much junior to respondent No. 3. The seniority of the respondent No. 3 is undisputed and as per order dated 5.9.95 the Tribunal while allowing the O.A. No. 213/95 issued direction to consider the case of respondent No. 3 for promotion with effect from 16.12.92 i.e. the date on which two similarly situated persons Dr. Y.N. Saxena and Dr. S.V. Dhodapkar were promoted. The issue of retrospective promotion is already settled by the Division Bench of this Court and the same cannot be raised at this stage as it is barred by res judicata. He would contend that the learned Single Judge, after appreciating all the above argument of the appellant, dismissed the writ petition and there is no scope to interfere with the well considered judgment of the learned Single Judge in this intra Court appeal. Shri B.L. Pavecha extensively read the reasoning given by the learned Single Judge in the impugned order and submitted that no interference was called for in that order.

16. We have heard the learned Senior counsel for the parties at length and after appreciating the arguments we find no substance in this appeal nor we are impressed by the submissions of the learned Senior counsel of the appellant at all as there is no material much less substantial material to interfere with the judgment of the learned Single Judge.

17. The promotion order dated 15.2.06 of respondent No. 3 to the post of Professor is nothing, but a mere formality and the said order has been issued in compliance of the order passed by the Tribunal on 11.2.02 and Division Bench decision of this Court dated 24.2.05, therefore, it cannot be said that the earlier decision passed by the Tribunal and the Division Bench of this Court are not binding and promoting the respondent No. 3 with effect from 4.7.2000 amounts to retrospective promotion, which is not permissible under law and the law laid down by the Apex Court in the case of State of Utteranchal (Supra). To meet out the controversies we would first like to deal whether questioning of promotion of respondent No. 3 on the post of Professor is barred by res judicata?

18. According to appellant his case is that as per Recruitment rules the post of Professors are sanctioned subject-wise. It is submitted that according to norms of the Dental Council of India, Professor in the subject can only be appointed from the Reader of that subject. Reader of one subject cannot be appointed as Professor in other subject. Respondent No. 3 does not belong to subject in which the post of Professor is sanctioned and vacant, therefore, he is not entitled for appointment as Professor in the subject in which post is lying vacant. In O.A. No. 1823/2000 the respondent No. 3 had claimed promotion with retrospective effect and the learned Tribunal by order dated 11.1.02 directed the respondents No. 1 & 2 that the name of respondent No. 3 shall also be considered for the promotion on the post of Professor with the date when the name of junior/similarly situated persons were considered for promotion as Professor and if respondent No. 3 found fit for the promotion, necessary orders shall be issued accordingly. The Division Bench of this Court in paragraph 17 of its judgment dated 24.2.05, after appreciating the entire judgment reported in Dr. (Mrs.) Sandhya Jain Vs. Dr. Subhash Garg and Another, , do not find any direction or observation by the Apex Court that promotion on the post of Reader and Professor shall be made subject-wise and held in paragraph 20 of the said judgment that when the rules are not clear then administrative decision of the State Government would prevail for purpose of promotion of Readers to the post of Professors and for promoting respondent No. 3, the State Government has already taken administrative decision to promote him on the post of Professor and other doctors namely Dr. Saxena, Dr. L.D. Gupta, Dr. Neema, Dr. L.S. Saifi, Dr. S.V. Dhodapkar and Dr. (Mrs.) Sandhya Jain were promoted by the State Government after taking administrative decision and, therefore, it cannot be said that their promotions were illegal. In Dr. (Mrs.) Sandhya Jain Vs. Dr. Subhash Garg and Another, the Apex Court has not said that there is any anomaly or repugnance in the rule and order of the Tribunal dated 11.1.02 was upheld by the Division Bench. By the said decision all questions raised regarding interpretation of rules and binding

nature of observations made by the Tribunal regarding position under the unamended rules and the same has been further upheld by the Apex Court on 2.5.05. The said orders have become final between the parties and correctness of the above orders cannot now be questioned by the appellant and any challenge to the correctness of order dated 11.1.02 of the Tribunal or the Division Bench order dated 24.2.05 is barred by res-judicata as also by constructive res-judicata and no such challenge could be entertained on any ground whatsoever by the learned Single Judge or by this Division Bench and in support of the said decision, learned Senior Counsel for the respondent No. 3 has placed reliance on the judgments of Union of India (UOI) and Others Vs. Southern Railway Employees Cooperative Stores Workmen Union and Others, , Makhija Construction and Enggr. Pvt. Ltd. Vs. Indore Development Authority and Others, and Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat),

19. The Apex Court in the case of Gulabchand Chhotalal (supra) has held that the earlier judgment pronounced by the Apex Court in earlier round of litigation are binding and must be regarded as final between the parties in respect of matters covered by them, must receive due consideration and the second writ petition is barred by constructive res judicata.

20. In Union of India and Ors. and Ors. v. Southern Railway Employees Co-operative Stores Workmen Union and Ors. (supra), original order of CAT, Madras was in favour of 172 workers working in different Railway Employees Co-operative Stores of the Southern Railway and directed them to treat as regular railway servants. Civil Appeal against the judgment of CAT dated 29.6.90 was dismissed by the Apex Court on 7.9.94. Review petition of the Railway too was dismissed by the Apex Court. Thereafter in similar matter arising out of the order of CAT, Hyderabad Bench, the Apex Court has taken the view that such Workman cannot be treated as direct employee of the Railway. When a Contempt Petition was filed for compliance of order dated 26.7.96 passed by the CAT, Madras Bench, a plea was taken by the Railway that in identical circumstances the Apex Court took a different view and, therefore, they are not binding by the order dated 29.6.90, which was affirmed by the Apex Court on 7.9.94. The matter went to the Apex Court in which it has been held that the judgment of CAT dated 29.6.90 is binding on Union of India. It could not escape liability under the judgment on the plea that another Bench of CAT had taken a contrary view in a similar case. The judgment, therefore, directed to be implemented by conferring status of regular railway employees on the persons who were applicants before the Tribunal.

21. In the case of Makhija Construction and Engineering (P) limited v. Indore Development Authority and Anr. (supra), the Apex Court has held that the fact that the appellate Court was wrong in affirming the decision of the learned Single Judge would not make the decision less binding. A precedent operates to bind in similar situations in a distinct case. Res-judicata operates to bind parties to proceedings for no other reason, but that there should be an end to litigation.

22. The question regarding promotion and giving seniority to the respondent No. 3 with the other similarly situated persons, who were promoted on 4.7.2000 was decided by the Tribunal on 11.2.02, which was affirmed by the Division Bench on 24.4.05 and the SLP filed before the Apex Court was dismissed on 2.5.05. The said decision would bind the parties and later on in a subsequent proceedings when order of promotion of respondent No. 3 issued on 15.2.06, the same cannot be assailed that promotion of respondent No. 3 was retrospective, which is not permissible and the decisions of the Apex Court in the case of State of Uttaranchal (supra) is distinguishable because the earlier litigation bind the parties and appellant cannot challenge the earlier orders and proceedings as the same is hit by the principle of res-judicata and the learned Single Judge has rightly refused to interfere in the matter and dismissed the Writ Petition of the appellant.

23. Learned Senior counsel for the respondent No. 3 made a submission that the ratio of any decision must be understood in the background of the facts of that case. A little difference in fact or additional fact may make a lot of difference in the presidential value of a decision and Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

24. In the present case, the appellant was promoted on the post of Professor in Prosthodontics vide order dated 25.11.2000 subject to final out come. The respondent No. 3 was promoted on the post of Reader with effect from 16.12.92 in parity with Dr. S.V. Dhodapkar. In O.A. No. 1203/2000, the respondent No. 3 was claiming promotion in parity with Dr. S.V. Dhodapkar with effect from 4.7.2000 on the post of Professor. The learned Tribunal vide order dated 11.2.02 allowed the application of the respondent No. 3 and directions were given to consider the claim of the respondent No. 3 in parity with Dr. S.V. Dhodapkar. The writ petition filed by the appellant was dismissed on 24.4.05. The SLP of the appellant was also dismissed by the Apex Court on 2.5.05 and, thereafter, in compliance to the order passed by the Tribunal, respondent No. 3 was promoted with effect from 4.7.2000, which cannot be said to be retrospective promotion. Thus, the lis between the party was finally decided by the Apex Court on 2.5.05. In our opinion, the decision of the Apex Court in the case of Uttaranchal Forest Rangers Association (Direct Recruit) and Ors. v. State of U.P. and Ors. (supra), State of Uttaranchal v. Dinesh Kumar Sharma (supra) and Nirmal Chandra v. Union of India (supra) would not applicable in the present facts and circumstances of the case. We agree with the view taken by the learned Single Judge and no interference with the impugned judgment is warranted in this appeal.

25. The Apex Court in Roshan Deen Vs. Preeti Lal, held the following in paragraph 12, which reads as under:

...Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it vide State of U.P. v. District Judge, Unnao. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

26. For the above mentioned reasons this appeal fails and is hereby dismissed with costs of Rs. 5,000/-. Counsel fees as per schedule, if precertified.