
(2013) 10 DEL CK 0131
In the Delhi High Court
Case No : Writ Petition (C) 2073 of 2002

M.L. Sharma

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2013) 10 DEL CK 0131

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.S. Tiwari in Both Nos. and Party in Person in W.P. C 2073/2002, for the Appellant; P.K. Singh for Mr. R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Since the above captioned 2 petitions raise common questions the same are being decided together. In the Department of Company Affairs, there exists a specialized service, namely, the Indian Company Law Service (earlier known as Central Company Law Service). The same had two distinct branches, the legal branch and the accounts branch and the members of the service were persons drawn from the legal and the accounting profession.

2. Prior to July 12, 1990, the hierarchical structure of the service was as follows:-
Super Time Grade <- Grade-I <- Grade-II <- Grade-III <- Grade-IV.

3. In the year 1965, Department of Company Affairs, Govt. of India notified the Central Company Law Service Rules, 1965 (hereinafter referred to as the "CCLS Rules, 1965"), the relevant portion whereof reads as under:-

1. Short title and commencement

(1) These rules may be called the Central Company Law Services Rules, 1965.

(2) They shall come into force on the 1st day of October, 1965.

(a) "approved service" in relation to any grade means the period or periods of service in that grade, rendered after selection, according to prescribed procedure, for long term appointment to the grade, and includes any period or periods during which an officer would have held a duty post in that grade but for his being on leave or otherwise not being available for holding such a post and includes such weightage, if any, as may be given at their discretion by the Selection Committee referred to in rule 5 at the time of initial constitution of the Service.

6. Maintenance of the Service

(i) After the initial constitution has been completed in accordance with rule 5, or as the case may be, after the initial appointments have been made under rule 5A, future vacancies shall be filled in the manner specified in sub-Rule (2).

(2) Subject to the proviso to sub-rule (1)-

(a) a duty post in Super-time Grade shall be filled by a promotion of a member of the Service in Grade I.

8. Promotions.

(i) A person shall not ordinarily be eligible for promotion:-

(i) to a duty post in Super-time Grade unless he has completed five years of approved service in a duty post in Grade-L...

(Emphasis Supplied)

4. On July 12, 1990, a Presidential order was passed merging Grade-II in CCLS with Grade-I with effect from January 01, 1986. By the same order, eleven Grade-I posts were downgraded to Grade-III but with effect from August 01, 1990.

5. On August 25, 1994 a cadre review of CCLS was undertaken whereby the Super Time Grade, Grade-I, Grade-III and Grade-IV in CCLS were re-designated as Senior Administrative Grade, Junior Administrative Grade, Senior Time Scale and Junior Time Scale respectively. Thus, the hierarchical structure of CCLS after the cadre review was as follows:-Senior Administrative Grade (Super Time Grade) <- Junior Administrative Grade (Grade-I) <- Senior Time Scale (Grade-III) <- Junior Time Scale (Grade-IV).

6. Needless to state, the merger/cadre review of grades in CCLS necessitated amendment of CCLS Rules, 1965. However, it was only on April 25, 1997 that the Department of Company Affairs, Government of India repealed CCLS Rules, 1965 and notified Central Company Law Service Rules, 1997 (hereinafter referred to as the "CCLS Rules, 1997"). It would be relevant to note the following provisions of the CCLS Rules, 1997:-

1. Short title and commencement:

(1) These rules may be called the Central Company Law Service Rules, 1997.

(2) They shall come into force on the date of their publication in the official gazette.

2. Definitions:

In these rules, unless the context otherwise requires:-

(a) Approved service" in relation to any grade means the period or periods of service in that grade rendered after selection according to prescribed procedure for regular appointment to the grade and includes any period or periods during which an officer would have held a duty post in that grade but for his being on leave or otherwise not being available for holding such a post.

6. Future maintenance of the Service

(1) Any vacancy in any of the grades referred to in Schedule I, shall, after the initial constitution of the service as provided in rule 5, be filled in the manner specified in sub-rule (2).

(2) (a) A duty post in Senior Administrative Grade shall be filled by promotion of a member of the service in the Junior Administrative Grade.

8. Promotion

(1) A person shall not ordinarily be eligible for promotion:

(a) to a duty post in the Senior Administrative Grade (pay scale Rs. 5900-200-6700) unless he has completed eight years of approved service in a duty post in the Junior Administrative Grade (pay scale Rs. 3700-125-4700-150-5000);

(Emphasis Supplied)

7. A comparison of the CCLS Rules, 1965 with the CCLS Rules, 1997 goes to show that under CCLS Rules, 1965 an officer who had rendered 5 years" approved service in Grade-I was eligible to be considered for promotion to Super Time Grade the position under CCLS Rules, 1997 was that an officer who had rendered eight years" approved service in Grade-I (re-designated as Junior Administrative Grade) was eligible to be promoted to the Super Time Grade (re-designated as Senior Administrative Grade).

8. On November 15, 1996 the department issued a seniority list of officers working in Grade-I in accordance with the Presidential order dated July 12, 1990 merging Grade-II with Grade-I, in that, officers working in Grade-II on July 12, 1990 i.e. the date of issuance of merger order were deemed to have been appointed in Grade-I with effect from January 01, 1986.

9. On February 06, 1997 the department conducted a DPC for making promotion to Senior Administrative Grade in CCLS considering only those officers who had rendered eight years" approved service in the Grade-I on said date.

10. Thereafter the petitioner in W.P. (C) No. 2319/2002, Sh. S.P. Vashishtha, an officer working in Legal Branch of CCLS, who had rendered more than five but less than eight years service in Grade-I, filed two applications u/s 19 of the Administrative Tribunals Act, 1985 being OAs Nos. 145/1997 and 272/1997. In O.A. No. 145/1997, S.P. Vashishtha challenged the Presidential order dated July 12, 1990 merging Grade-II with Grade-I as also the seniority list dated November 15, 1996 issued on the basis of said merger order. In O.A. No. 272/1997 S.P. Vashishtha challenged the action of the department in effecting promotions to the Senior Administrative Grade on the basis of eligibility criteria of having rendered eight years" approved service in the Grade-I prescribed in CCLS Rules, 1997. Additionally, the petitioner in W.P. (C) No. 2307/2002, M.L. Sharma, another officer working in Legal Branch of CCLS who had rendered more than five but less than eight years approved service in Grade-I, also filed an application being O.A. No. 428/1997 before the Tribunal challenging the action of the department of making promotions to the Senior Administrative Grade on the basis of eligibility criteria prescribed in CCLS Rules, 1997.

11. Vide judgment dated October 03, 1997 the Tribunal decided the aforesaid three original applications together.

12. On the issue of legality of the order dated July 12, 1990, merging Grade-II with Grade-I, the Tribunal held that it is not within its province to interfere with the order dated July 12, 1990 essentially for the reason that the said order is in the nature of a policy decision taken by the Government and that the Courts ordinarily do not interfere with a policy decision unless it is shown that said decision is mala-fide or extremely perverse; which the Tribunal claimed has not been shown to it.

13. On the issue of making promotions to the Senior Administrative Grade on the basis of eligibility criteria of having rendered eight years" approved service in the Grade-I prescribed in the CCLS Rules, 1997, the Tribunal held as under:-

8. Now the question to be resolved in these cases is whether for the purpose of promotion to the post of SAG, the respondents can insist eligibility criteria of eight years approved service which was the requirement in the recruitment rules of 25.4.1997, while the DPC for the post was held on 6.2.1997. It was stated in OA 428/97 that the recruitment rules prior to the new recruitment rules had stipulated the eligibility criteria of five years approved service, for the purpose of consideration for promotion to the post of SAG and the respondents have wrongly applied the criteria of 8 years approved service which came into operation only on 25.4.1997 and the said new recruitment rules with new criteria, in the absence of any express retrospective effect in the rules, should not have been applied to those vacancies that arose prior to the issuance of the said recruitment rules. Since the DPC was held on 6.2.1997 and the new recruitment rules had not been notified by that time, the DPC have held for considering available vacancies prior to issuance of the new recruitment rules, the obvious conclusion is that new rules are applicable for recruitment to the

post of SAG which had become available as vacant prior to issuance of the new recruitment rules. Thus, the claim of the petitioners seems to be legitimate and the respondents are wrongly applying the new rules with the eligibility criteria of eight years approved service and are illegally excluding the petitioners who have five years approved service from considering for the post of SAG. The petitioners have a right to be considered for the post of SAG as they had five years approved service at the time when the vacancies arose and the requirement of eight years approved service contained in rule that was notified subsequent to the date when the vacancies arose, and a review DPC will have to be held in accordance with the old rules wherein the requirement of eligibility was five years approved service. The respondents shall hold the DPC/review DPC in accordance with old rules and applying principle that the recruitment rules applicable shall be the one which are available at the time when the vacancies arose. The Hon''ble Supreme Court in a number of cases has re-iterated the valuable principle. Even in the latest case of Goyal, this principle has been reiterated.

(Emphasis Supplied)

14. On the issue of legality of the seniority list dated November 15, 1996 issued by the department, the Tribunal held as under:-

9. The next issue that comes up for resolution is whether the seniority list issued by the respondent in both the Branches namely Accounts as well as Legal Branch consisting of the officers of JAG/Grade-I is correct or not. It goes without saying that since the respondents had issued the merger order on 12.7.1990, as stated above, the officers who have been working in Grade-II will have to be treated as those working in JAG w.e.f. 1.1.1986. Since the order dated 12.07.1990 had clearly stated that the merger of Grade-II of CCLS with Grade-I shall be effective w.e.f. 1.1.1986. The seniority list will have to be amended as per this order and consider all persons who have been holding Grade-II as on 12.7.1990 shall be considered to have been holding the post of Grade-I w.e.f. 1.1.1986 or w.e.f. the date they joined the posts subsequently but prior to 12.7.1990.

10. Similarly, since by the order dated 12.7.1990, eleven posts of Grade-I to Grade-III have been down-graded and made effective from 1.1.1990 and the seniority list of those persons shall also be amended or revised accordingly. Since the issue at present is with regard to the seniority of those persons in Grade-I/JAG, the down gradation of eleven posts of Grade-I to Grade-III may not be relevant except for the purpose of excluding those officers from the seniority list of JAG/Grade-I, if found to be otherwise ineligible, since their posts have been downgraded to STC and they are no longer belonging to Grade-I w.e.f. 1.1.1990. Any mistake to this regard, shall also be made good by way of amendment or revision of the seniority list dated 12.11.1986 and the same shall be effected without any further delay.

11. The third important grievance of the petitioners in these OAs is that the

promotion to the SAG shall be made only after finalizing the seniority list and from the candidates who are holding the JAG/Grade-I in accordance with the old recruitment rules namely with five years approved service. The grievance of the petitioners has some substance. The promotion to the SAG for which the DPC was held on 6.2.1997 shall be held by DPC/review DPC only after finalizing the seniority list in accordance with this judgment and in the lines stated hereinabove. The respondents shall not hold DPC or review DPC for the purpose of promoting officers to the SAG without finalizing the seniority list of JAG/Grade-I in the lines suggested in this order hereinabove.

12. With this, all the three OAs stand partly allowed and the respondents are directed to give full effect to their own orders of merger and cadre review issued on 12.7.1990 and 1.9.1994 and thereafter revise the seniority of the officers belonging to the JAG/Grade-I, with effect from 1.1.1986 or from 1.1.1990 as stated in the face of the order itself and thereafter only proceed to hold the review DPC/DPC for filling the post of SAG.

(Emphasis Supplied)

15. Be it noted here that neither the petitioners nor the department challenged the aforesaid judgment dated October 03, 1997 passed by the Tribunal and thus the same i.e. the judgment dated October 03, 1997 attained finality.

16. Pursuant thereto, on October 22, 1997 the department issued a separate seniority list(s) of the officers working in Junior Administrative Grade (Grade-I) in the Accounts and Legal branches of CCLS in terms of the directions contained in the judgment dated October 03, 1997 passed by the Tribunal. Both the petitioners made representations to the department against the said provisional seniority list but subsequently withdrew the same vide their letters dated January 01, 1998. On January 28, 1998 the department finalized the aforesaid provisional list.

17. On May 19, 1998 the department conducted a review DPC for filling up the vacancies which had arisen in the Senior Administrative Grade. Significantly, the names of the petitioners were not included in the zone of consideration for said vacancies.

18. Aggrieved by the aforesaid, the petitioners filed (separate) applications before the Tribunal essentially contending therein that:-

(i) The department had committed an illegality in treating the officers working in Grade-II in CCLS on July 12, 1990 as having been appointed to the Junior Administrative Grade (Grade-I) with effect from January 01, 1986 even though they were appointed to Junior Administrative Grade (Grade-I) at a much later date; and

(ii) The department committed an illegality in including the names of the officers who were working in Grade-II on July 12, 1990 in the zone of consideration for the vacancies which were sought to be filled up by the DPC held on May 19, 1998

for the reason as per CCLS Rules, 1965/1997 only such officers could be considered for promotion to the post of Senior Administrative Grade (Super Time Grade) who had rendered five/eight years approved service in the Junior Administrative Grade (Grade-I), which condition was not fulfilled in the case of such officers. The definition of "approved service" as contained in the CCLS Rules, 1965/1997 implied that the officer concerned should have "actually worked" in the Junior Administrative Grade (Grade-I), which is not the case with the officers who were working in Grade-II on July 12, 1990 for they were not actually working in Junior Administrative Grade (Grade-I) before July 12, 1990 but were only "deemed to be working" in said grade with effect from January 01, 1986.

19. Vide impugned judgment dated April 11, 2001 the Tribunal dismissed the application(s) filed by the petitioners on the grounds that:-

(i) It is not open to the petitioners to challenge the seniority assigned by the department to the officers working in the Junior Administrative Grade, when such seniority was assigned in terms of the judgment dated October 03, 1997 passed by the Tribunal, particularly when said judgment has attained finality;

(ii) It is also not open to the petitioners to challenge the action of the department in effecting promotion to the Senior Administrative Grade on the basis of the seniority list dated January 28, 1998 of the officers working in the Junior Administrative Grade, when the petitioners had accepted the seniority assigned to them in said seniority list in all its implications;

(iii) It is not open to the petitioners to question the merger/cadre review of CCLS on the ground that the same was not carried out in accordance with the relevant Recruitment Rules when the said ground was not taken by them before the Tribunal in the earlier OAs filed by them; and

(iv) The petitioners cannot be allowed to question the action of the department in effecting promotion of the officers who were working in Grade-II on July 12, 1990 by dwelling upon the concept of "approved service" when such officers were treated to have been working in the Junior Administrative Grade/Grade-I with effect from January 01, 1986 on account of merger of Grade-II with Grade-I/Junior Administrative Grade which was effective from January 01, 1986, particularly when such merger was upheld by the Tribunal vide its judgment dated October 03, 1997 and the same i.e. the judgment dated October 03, 1997 has attained finality.

20. Aggrieved, the petitioners have filed the above captioned petitions under Article 226 of the Constitution of India.

21. At the hearing of the writ petition(s), learned counsel for the petitioners reiterated the submissions advanced before the Tribunal and thus we do not re-note the same since we have already noted hereinabove the contentions which were urged before the Tribunal.

22. As evident from the aforesaid conspectus of facts, the problem in the instant case started with issuance of the Presidential order dated July 12, 1990 merging Grade-II with Grade-I with effect from January 01, 1986 i.e. retrospectively.

23. Then happened cadre review of CCLS on August 25, 1994 whereby the Super Time Grade, Grade-I, Grade-III and Grade-IV were re-designated as Senior Administrative Grade, Junior Administrative Grade, Senior Time Scale and Junior Time Scale respectively.

24. The aforesaid merger and cadre review of CCLS necessitated the amendment of CCLS Rules, 1965 however due to the lethargy of the Government the same were amended only on April 25, 1997 with the issuance of CCLS Rules, 1997.

25. CCLS Rules, 1997 brought about a significant change in the eligibility criteria prescribed for promotion to the post of Super Time Grade (re-designated as Senior Administrative Grade). Whereas under the CCLS Rules, 1965 an officer who had rendered five years approved service in the Junior Administrative Grade/ Grade-I was eligible to be considered for promotion to Senior Administrative Grade the CCLS Rules, 1997 prescribed that an officer who had rendered eight years service in the Junior Administrative Grade could be considered for promotion to the post of Senior Administrative Grade.

26. On February 06, 1997 the department conducted a DPC to fill up vacancies which had arisen in the Senior Administrative Grade, which DPC considered only those officers for promotion who had fulfilled eligibility criteria of having rendered eight years of approved service in the Junior Administrative Grade prescribed in the CCLS Rules, 1997.

27. The petitioners filed applications before the Tribunals challenging the merger order dated July 12, 1990 as also the action of the DPC of considering only those officers for promotion to the Senior Administrative Grade who had fulfilled eligibility criteria prescribed in the CCLS Rules, 1997.

28. Vide judgment dated October 03, 1997 the Tribunal repelled the challenge laid by the petitioners to the Presidential order dated July 12, 1990 merging Grade-II with Grade-I. Furthermore, the Tribunal quashed the DPC held on February 06, 1997 and directed the department to hold a review DPC and that said DPC would consider such officers for promotion to the Senior Administrative Grade who fulfilled the eligibility criteria of having rendered five years of approved service in the Junior Administrative Grade prescribed in the CCLS Rules, 1965. Most significantly, the Tribunal held as under:-

It goes without saying that since the respondents had issued the merger order on 12.7.1990, as stated above, the officers who have been working in Grade-II will have to be treated as those working in JAG w.e.f. 1.1.1986. The seniority list will have to be amended as per this order and consider all persons who have been holding Grade-II as on 12.7.1990 shall be considered to have been holding the post of Grade-I w.e.f. 1.1.1986 or w.e.f. the date they joined the posts

subsequently but prior to 12.7.1990."

29. As already noted hereinabove, neither the petitioners nor the department had challenged the aforesaid judgment dated October 03, 1997 passed by the Tribunal.

30. Thereafter on October 22, 1997 the department issued a provisional seniority list of the officers working in the Junior Administrative Grade/Grade-I in terms of the directions contained in the judgment dated October 03, 1997 passed by the Tribunal, in that, the department fixed the date of appointment of the officers working in Grade-II on July 12, 1990 in the Junior Administrative Grade/Grade-I as January 01, 1986.

31. The petitioners sought to challenge the aforesaid provisional seniority list by making representations to the department but later withdrew the same. On January 28, 1998 the department finalized the aforesaid provisional seniority list.

32. Thereafter the department made promotions to the Senior Administrative Grade on the basis that the officers working in Grade-II on July 12, 1990 were "deemed" to be appointed to Grade-I on January 01, 1986, which action was clearly in consonance with the directions contained in the judgment dated October 03, 1997 passed by the Tribunal.

33. In view of aforesaid emphatic and categorical direction given by the Tribunal in its judgment dated October 03, 1997 to the department to treat the date of appointment of the officers working in Grade-II on July 12, 1990 as January 01, 1986, it is not at all open to the petitioners to challenge the action of the department to effect promotions to the Senior Administrative Grade on the basis that the officers working in Grade-II on July 12, 1990 were "deemed" to be appointed to Grade-I on January 01, 1986, particularly when the petitioners chose not to challenge the judgment dated October 03, 1997 passed by the Tribunal as also accepted the seniority assigned to them vis-a-vis the officers working in Grade-II on July 12, 1990 in the provisional/final seniority lists dated October 22, 1997/January 28, 1998.

34. Coming to the argument predicated upon the definition of "approved service" contained in the CCLS Rules, 1965/1997 we deem it apposite to reproduce the following definition of "approved service" contained in the CCLS Rules:-

(a) "approved service" in relation to any grade means the period or periods of service in that grade, rendered after selection, according to prescribed procedure, for long term appointment to the grade, and includes any period or periods during which an officer would have held a duty post in that grade but for his being on leave or otherwise not being available for holding such a post and includes such weightage, if any, as may be given at their discretion by the Selection Committee referred to in rule 5 at the time of initial constitution of the Service.

35. The argument advanced by the learned counsel for the petitioner is that the

definition of "approved service" implies that the officer concerned should have rendered "actual" period or periods of service in that grade, rendered after selection.

36. If we accept the interpretation given by the learned counsel for the petitioner to the definition of "approved service" we would be adding word "actual" to said definition. It is well settled that the Courts cannot add words to a statute or read words into it which are not there.

37. In the instant case, the officers working in Grade-II on July 12, 1990 were deemed to have been appointed to Junior Administrative Grade/Grade-I on January 01, 1986 in view of the directions contained in the judgment dated October 03, 1997 passed by the Tribunal. The DPC in question had met on May 19, 1998 by which time the officers working in Grade-II on July 12, 1990 had rendered five/eight years of approved service in the Junior Administrative Grade/Grade-I and thus were rightly considered by the DPC for promotion to the Senior Administrative Grade. There was no requirement in the CCLS Rules, 1965 or 1997 that the officer concerned should have "actually worked" for five/eight years in the Junior Administrative Grade/Grade-I as sought to be projected by the learned counsel for the petitioner.

38. A somewhat comparable situation had arisen before a Division Bench of the Orissa High Court in the decision reported as *Sribatsa Kumar Mohapatra, Dr. and Others Vs. State of Orissa and Others*, The facts of the said case were that the petitioner in said case was appointed to the post of Junior Teacher/Lecturer on ad-hoc basis on June 08, 1984 and later regularized to said post on September 09, 1986. Thereafter the petitioner was allowed to accept an assignment on deputation under Kingdom of Saudi Arabia for a period of five years. On January 17, 1992 DPC was held to consider the cases of eligible Junior Teachers/Lecturers to the post of Assistant Professor. After his selection by the DPC, the petitioner was appointed to the post of Assistant Professor. The respondents challenged the appointment of the petitioner to the post of Assistant Professor on the ground that the petitioner did not fulfill the eligibility condition relating to the "teaching experience" prescribed in the Orissa Medical Education Service (Recruitment) Rules, 1979. The relevant portion of the Rules involved in the said case reads as under:-

3. Definitions: In these rules, unless the context otherwise requires:-

(k) "teaching experience" means the period of service rendered in a teaching post or posts in any Speciality or Higher Speciality in a teaching institution recognized by the Indian Medical Council to be reckoned from the date of appointment to the Junior or senior teaching post, in consultation with the Commission as the case may be:

5. Appointment of Assistant Professors-....

(2) No person shall be eligible to be appointed as an Assistant Professor unless

he-

(b) has not less than three years of teaching experience as a Lecturer, after obtaining post-graduate degree in the concerned specialty or higher specialty.

39. After noting the aforesaid provisions, the Court repelled the challenge laid down by the respondents to the appointment of the petitioner to the post of Assistant Professor in the following terms:-

14. The first question that arises for consideration in this case is whether the petitioners in two sets of writ petitions namely, Dr. S.K. Mohapatra and Dr. Niranjan Mohanty had adequate teaching experience as required under Rule 5(2) of Rules, 1979 for the purpose of eligibility for promotion at the time when the Selection Boards considered their cases of promotion for the respective posts. In this regard it is necessary to have a look to the definition of "teaching experience" given in Rule 3(k) of the Rules, 1979, according to which, the period of service rendered in a teaching post or posts in any specialty or higher specialty in a teaching institution recognized by the Indian Medical Council is reckoned from the date of appointment to those posts, in consultation with the Commission. Therefore for the purposes of fulfillment of qualification of three years "teaching experience" for promotion, it is necessary that (1) a Junior Teacher/Lecturer should render service in a teaching post in a teaching institution, (ii) that teaching institution should be recognized by the Indian Medical Council and (iii) that three years period of service should be counted from the date of appointment made only in consultation with the Commission and not from the date of ad hoc appointment.

17. Learned counsel for the opposite parties have further given stress that the period of deputation and unauthorized absence cannot be counted towards teaching experience-as the petitioner did not hold the teaching classes. In this regard, again the definition "teaching experience" given in Rule 3(k) of the Rules, 1979 is liable to be perused. According to the said rule for the purpose of counting the teaching experience, the period of service rendered in a teaching post is to be reckoned from the date of appointment in a teaching institution recognized by the Indian Medical Council. The petitioner was given appointment on the recommendation of the OPSC in the year 1986 as mentioned above. By the order of Government the lien of the petitioner's service in the post of teacher remained to continue when he had been on deputation or on leave which was regularized later by the Government. Therefore, for all purposes, he shall be deemed to have rendered service in a teaching post of Junior Lecturer in the Medical Colleges recognized by the Indian Medical Council consequently. In the definition of "teaching experience" it has been nowhere provided that it would be necessary to conduct teaching classes for reckoning the teaching experience. The only requirement is that a person should render service in a teaching post. Therefore, if a person continued in a teaching post retaining his lien, it cannot be said that he was not in service in a teaching post, in case of his leave or deputation period.

18. Therefore, even if a person remains on leave, his leave period cannot be excluded in reckoning the teaching experience. The definition given in Rule 3(k) of the Rules 1979 is different from the actual teaching experience and related to the service period in a teaching post only. Therefore, in our opinion the Tribunal has committed manifest error of law in reckoning the teaching experience of the petitioner excluding his period of leave/deputation and thereby holding that he was not having 3 years teaching experience as required under Rules 5(2)(b) of the Rules, 1979 for the purpose of getting promotion to the post of Asst. Professor.

40. Lastly, we note the following observations made by the Supreme Court in the decisions reported as Union of India and Others Vs. K.B. Rajoria,

20. In the context of this case, the High Court erred in equating the words "regular service" with "actual experience" relying on the decision in Union of India Vs. M. Bhaskar. In that case the eligibility criterion expressly was of "completion of 2 years" experience in Grade II. The case is therefore entirely distinguishable.

21. The notional promotion was given to Krishnamoorti to right the wrong that had been done to him by his supersession on 22-2-1995. If Krishnamoorti is denied the right to be considered for promotion to the post of Director General on the basis of such notional promotion, particularly when the relevant provisions so provide, it would result in perpetuating the wrong done to him. That is exactly what the High Court has done.

41. In view of the above discussion, we find no merit in the instant petitions and the same are accordingly dismissed. No costs.