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**(2005) 04 AHC CK 0258**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 4071 of 2005**

Ram Saran

APPELLANT

Vs

Food Corpn. of India and Others

RESPONDENT

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**Date of Decision :** 05-04-2005

**Acts Referred:**

**Citation :** (2005) 5 AWC 5027

**Hon'ble Judges :** Vineet Saran, J

**Bench :** Single Bench

**Advocate :** Chandra Bhan Gupta, for the Appellant; Satya Prakash, N.P. Singh and M.D. Misra, for the Respondent

**Final Decision :** Allowed

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## Judgement

Vineet Saran, J.—Heard Sri Chandra Bhan Gupta, learned Counsel for the Petitioner as well as Sri N. P. Singh, learned Counsel appearing for the Respondents. Counter and rejoinder-affidavits have been exchanged and with the consent of the learned Counsel for the parties this writ petition is being disposed of at the admission stage itself.

2. The Food Corporation of India initially engaged the Petitioner as a handling labour for the purposes of loading and unloading. The contention is that the Petitioner has worked as handling labour for more than two decades and that on the basis of his seniority, he is entitled to be promoted as Mandal/Sardar of the gang in which he has been working as handling labour. The submission is that on 1.1.1999, the Assistant Manager of the Corporation (on behalf of the District Manager) had written to the Joint Manager for promotion of the three handling labourers as Mandals in their respective gangs. The name of the Petitioner, who was member of Gang No. 27 was at Serial No. 2 of the said list. Thereafter on 19.11.1999, the name of the Petitioner had again been recommended and forwarded by the District Manager to the Senior Regional Manager for his promotion as Mandal. Thereafter by an order dated 3.9.2004, the Senior Regional Manager delegated the powers for promotion on the post of Mandal/

Sardar to the District Manager, with a further direction that the promotion should be made on the vacant posts on the basis of seniority, within one month, as the work of the depot was suffering in the absence of Mandals and Sardars. On 22.11.2004, the District Manager called for recommendations for promoting handling labourers to the post of Mandal/Sardar on the basis of seniority in their gang. The contention is, that after considering the seniority list and the recommendations of the officials concerned, the District Manager, Food Corporation of India, Kanpur, passed an order dated 3.12.2004 promoting two Mandals on the post of Sardar and 5 handling labourers on the post of Mandal. The name of the Petitioner was found in the said list for promotion as Mandal and was thus promoted as Mandal of Gang No. 27. The said order did mention that promotions were being made provisionally, on ad hoc basis, and were subject to confirmation by the Departmental Promotion Committee (Labour). In pursuance of the aforesaid promotion order, the Petitioner joined as Mandal on 9.12.2004 and was also issued identity card by the Food Corporation of India showing his designation as Mandal of Gang No. 27. However, by the impugned order dated 6.12.2004, passed by Respondent No. 3, the earlier order dated 3.12.2004 by which the Petitioner and others had been granted promotion to the next higher post, was directed to be kept in abeyance till further orders. Aggrieved by the said order dated 6.12.2004, the Petitioner has filed this writ petition. A further prayer has also been made that in compliance of the order dated 3.12.2004, the Petitioner may be allowed to continue to work as Mandal of Gang No. 27.

3. Sri N. P. Singh, learned Counsel appearing for the Respondents has stated that by order dated 6.12.2004, the earlier order had only been kept in abeyance and had neither been cancelled nor withdrawn, and as such the Petitioner cannot be said to be having any grievance against the same. It has further been submitted that the order dated 3.12.2004, had been passed by the District Manager under duress, as would itself be clear from perusal of the order dated 6.12.2004 by which the earlier order had been kept in abeyance. The further contention is that the promotion given to the Petitioner was purely provisional and on ad hoc basis, and as such the Petitioner cannot be said to have accrued any right in his favour. It has thus been urged by Sri Singh that as the order of promotion had been passed under pressure and not out of free will, the setting aside or directing the same to be kept in abeyance was wholly justified. It is also disputed that the Petitioner ever joined as Mandal after the grant of promotion and that any such identity card had been issued in his favour.

4. The Respondents however do not dispute that the order dated 3.12.2004, had been signed and issued by the District Manager (who was the competent officer) whereby promotion had been granted to the Petitioner as Mandal of Gang No. 27, after calling for the seniority list and completing the requisite formalities. It is also not disputed that there exist vacancies on the post of Mandal which have been lying vacant for a substantially long period. The name of the Petitioner had even earlier been recommended by the competent officers for being promoted as Mandal, on the basis of his seniority in the gang, as way back as in the year

1999. For not constituting the Departmental Promotion Committee or the Committee not making any recommendations for such promotion, the Petitioner cannot be held responsible. The issuance of the orders dated 3.9.2004 and 22.11.2004, whereby power of promotion had been delegated to the District Manager, and in pursuance of which the District Manager had called for the seniority list for promotion to the post of Mandal and Sardar, has also not been denied by the Respondents. The order dated 3.12.2004 had been passed in close proximity to the order dated 22.11.2004 which had been issued by the District Manager calling for seniority list for the purposes of grant of promotion. The same gives rise to the presumption that the process for making promotion was on. The issuance and signing of the order dated 3.12.2004 by the District Manager is accepted to the Respondents. It cannot be said that by order dated 3.12.2004, no rights had accrued in favour of the Petitioner even if the same may have been provisional or on ad hoc basis. The Respondents had themselves recommended the case of the Petitioner for promotion on the basis of seniority in his gang. The Petitioner cannot be said to be at fault for the Respondent-authorities not taking timely action for granting promotion on the post which had been lying vacant for several years. As the case of the Petitioner for promotion had been recommended in the year 1999 itself, it was for the Respondent-Corporation to constitute the Departmental Promotion Committee and get its recommendations. The Respondents themselves admit that because of not filling up the promotional post of Mandal and Sardar, the work of Corporation was suffering. Once an order had been passed promoting the Petitioner on the valid recommendations made by the competent officers, the same cannot be withdrawn or kept in abeyance merely because the promotion had been made on ad hoc basis.

5. The ratio of the Division Bench decision of this Court in the case of District and Sessions Judge Vs. Ratnesh Kumar Srivastava and Another, as has been relied upon by the learned Counsel for the Respondents, would not, in my view, apply to the facts of the present case. In the said case, the Division Bench was dealing with the initial appointments having been made on ad hoc or temporary basis. It was held that the ad hoc appointee does not have any right or vested interest on the post except for that another ad hoc appointee cannot replace an ad hoc employee. In the present case, the Petitioner is already in service and he is not claiming appointment, but promotion to the next higher post, which had been granted to him after the recommendations having been made in his favour by the competent authority more than 5 years back, which recommendations have not been denied by the Respondents in their pleadings or during the course of arguments.

6. As held by the single Judge of this Court in the case of Dool Chand Yadav v. Chief Medical Officer, Azamgarh 2002 (1) ESC 12, even a temporary promotion on substantive post cannot be cancelled without giving opportunity to the employee. In the present case also, no opportunity, whatsoever, had been given to the Petitioner before cancelling or withholding the order dated 3.12.2004, by

which he had been granted promotion on ad hoc basis.

7. It is not the case of the Respondents that the promotion order had been obtained by fraud or misrepresentation. In case if the said order had been obtained under pressure of the labourers and the labour Union, it was for the Corporation to take suitable action against the persons who had put pressure forcing the officers to pass such an order. The senior officers of the Corporation cannot be permitted to pass orders only to diffuse a particular situation, and after such situation is diffused, withdraw the same as this would amount to fooling the labourers and depriving them of their valid rights. Such action of the Respondent-Corporation cannot be justified in the Court of law.

8. Thus, in my view, the order dated 6.12.2004, keeping the promotion order dated 3.12.2004 in abeyance, deserves to be set aside, and is hereby quashed. The Petitioner shall be permitted to continue to work as Mandal of Gang No. 27 till regular promotions are made on the post of Mandal on the basis of the recommendations made by the Departmental Promotion Committee.

9. This writ petition stands allowed. No order as to costs.