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**(2020) 11 KL CK 0002**

**In the High Court Of Kerala**

**Case No : Original Petition (Cat) No. 128 Of 2019**

Union Of India And Anr

APPELLANT

Vs

G. Swaminathan

RESPONDENT

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**Date of Decision : 18-11-2020**

**Acts Referred:**

**Citation : (2020) 11 KL CK 0002**

**Hon'ble Judges : A.M. Shaffique, J;Gopinath P., J**

**Bench : Division Bench**

**Advocate : P. Vijayakumar, G. Hariharan, Praveen. H., K.S. Smitha, T.T. Shaniba, M.V. Vipindas**

**Final Decision : Disposed Of**

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## **Judgement**

Gopinath, J

1. The Union of India and its officers have filed this original petition challenging the order dated 11.10.2018 in OA No. 788 of 2017 on the file of the Central Administrative Tribunal, Ernakulam Bench.

2. The respondent (applicant before the Tribunal) had approached the Tribunal praying inter alia for a direction to the petitioners herein (respondents before the Tribunal) to extend to him the benefits of a scheme known as the 'Flexible Complementing Scheme' (FCS) with effect from 6.6.1987 and grant in situ promotions in accordance with the said scheme with effect from the date on which they were due and to accordingly calculate and disburse the benefits payable. The respondent had earlier approached the Tribunal seeking an extension of the FCS scheme to hydrologists in the Central Groundwater Board. It was his case that hydrologists were excluded from the benefit of the scheme on account of the fact that the post of hydrologist was wrongly categorized as a Group-B Post. Through an order dated 14.8.1997 in OA 886/97, the Tribunal allowed this claim and found that the FCS scheme had to be extended to hydrologists also. This order of the Tribunal was upheld by this Court in OP No.

22691 of 1997. The order of the Tribunal as affirmed by this Court was implemented. The respondent again approached the Tribunal by filing OA No. 788 of 1997. According to the respondent he was entitled to promotion/placement as Scientist Grade-'C' with effect from 1.1.1991 Whereas the benefit was extended to him only with effect from 1.1.1992 and to promotion placement as Scientist Grade-'D' with effect from 1.1.1995 whereas the said benefit was never granted to him. The 1st respondent retired from service on 31.1.2004.

3. The petitioners had filed a reply statement before the Tribunal where after setting out the background facts, it was stated as follows: -

"The applicant joined as Junior Hydrogeologist (Group 'B' Gazetted) w.e.f 21.11.1983, later on re-designated as Assistant Hydrologist (Group 'B' Gazetted) and is eligible for his in-situ promotion to the grade of Scientist 'C' under FCS w.e.f 01.01.1992 on completion of 08 years residency period in the feeder grade as per provision of the existing recruitment rules and further in-situ promotion to the grade of Scientist 'D' under FCS w.e.f 01.01.1997 on completion of 05 years residency period."

A reading of the aforesaid shows that even according to the petitioners, the respondent was entitled to the benefit of FCS by placement as scientist 'C' with effect from 1.1.1992, on completion of 8 years of residency in the feeder grade and further placement as Scientist Grade-'D' with effect from 1.1.1997 on the completion of a period of 5 years as Scientist Grade-'C'. The Tribunal has noticed the submissions and has only directed the grant of benefits as contemplated by the scheme.

4. The learned Assistant Solicitor General appearing for the petitioners would contend that if the order of the Tribunal is implemented, unintended and undeserved benefits would accrue to the respondent and that placement in the higher grade under the FCS was not automatic and that it was to be granted only after evaluation of scientific work in the manner contemplated by the scheme.

5. The learned counsel appearing for the respondent would contend that while the respondent had claimed that he was entitled to promotion/placement as Scientist Grade-'C' with effect from 1.1.1991 and to promotion/placement as Scientist Grade-'D' with effect from 1.1.1995, he would be satisfied if the petitioners would extend the benefit from 1.1.1992 (as Scientist-C) and from 1.1.1997 (as Scientist-D) as was admitted in the reply statement which we have extracted hereinbefore.

6. We have considered the contentions raised. There is possibly merit in the contention raised by the learned Assistant Solicitor General that placement in the higher grade under the FCS was not automatic and that it was to be granted only after evaluation of scientific work in the manner contemplated by the scheme. In that view of the matter, there could not have been automatic up-gradation after completion of the prescribed period of residency in a particular grade. However, we are not called upon to examine that issue since it is the specific case of the

petitioners before the Tribunal that the respondent was entitled to promotion/ placement as Scientist Grade-'C' with effect from 1.1.1991 and to promotion/ placement as Scientist Grade-'D' with effect from 1.1.1995.

7. In the light of the above without going into the merits, we dispose of this original petition holding that the respondent was entitled to promotion/ placement as Scientist Grade-'C' with effect from 1.1.1991 and to promotion/ placement as Scientist Grade-'D' with effect from 1.1.1995 and direct the petitioners herein to recalculate and disburse any arrears of pay/pension/pensionary benefits on that basis. Any amount of arrears found payable on such recalculation shall be disbursed within a period of 3 months from the date of receipt of a copy of this Judgment. No costs.