



***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 09.01.2023

Judgment delivered on: 03.07.2023

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W.P. (C) 2742/2021 & CM APPL. 20040/2021

NIRMALA VINCENT

.....Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr P. Nagesh, Senior Advocate with Mr Akshay Sharma, Mr Shivam Wadhwa and Mr Suhas, Advocates.

For the Respondent Mr Mukul Singh, Central Government Standing Counsel with Ms Ira Singh and Mr. Aditya Bhanu Neekhra, Advocates

CORAM:

HON'BLE MR JUSTICE SANJEEV SACHDEVA

HON'BLE MR JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns condition at Serial No. 9 in Schedule I of the National Company Law Tribunal (Recruitment, Salary and other Terms and Conditions of Service of Officers and other Employees) Rules,



2020 (hereinafter referred to as the Rules), issued by Respondent No.1, to the extent that they prescribe a degree in law as a qualification for an Assistant to be promoted to the post of Court Officer in Respondent No. 3, National Company Law Tribunal (hereinafter referred to as the NCLT).

2. Petitioner joined the Registrar of Companies, Delhi as a Lower Division Clerk on 30.10.1987 and thereafter she was appointed as a Lower Division Clerk at the Company Law Board (CLB for short) on deputation basis on 18.02.1991. She was promoted to the post of Upper Division Clerk on regular basis in the CLB on 03.01.2008. She was subsequently promoted to the post of Assistant on regular basis in the CLB on 28.02.2014.

3. On 25.10.2016, Petitioner applied for being appointed to post of Court Officer in NCLT, New Delhi Bench on deputation basis. By Office Order dated 25.01.2017 passed by the Ministry of Corporate Affairs (MCA), Petitioner along with other officers and employees were transferred to NCLT with effect from 01.06.2016 in terms of Section 466 read with Section 418(1) of the Companies Act, 2013.

4. Petitioner was thereafter asked to appear for an interview before the Selection Committee. On 09.03.2017, the Competent Authority of



NCLT selected the petitioner for the post of Court Officer in NCLT, New Delhi Bench on deputation basis in the Pay Band (PB-2) of Rs. 9300-34800 + GP Rs. 4800 (Level-8) initially for a period of 1 year from the date of assumption of charge of post.

5. By Office Order dated 28.11.2017 Petitioner was reverted back to the post of Assistant. However, by the same Office Order Petitioner was assigned to look after the charge of the Court Officer but without payment of any extra remuneration.

6. On 21.01.2020, Respondent No. 1 notified the impugned Rules, which prescribed that the post of Court Officer would be filled by 100% promotion from the feeder post of Senior Legal Assistant with 2 years regular service in Level 7 of Pay Matrix or from the post of Assistant, with a degree in law and 6 years regular service in Level 6 in Pay Matrix. The Rules further prescribed that in case of deputation/absorption to the same post, a degree in law was “preferable”.

7. On 26.06.2020, the Deputy Registrar, NCLT New Delhi made a request to the Ministry of Corporate Affairs for grant of one time relaxation to the Petitioner in terms of Rule 16 (Power to Relax) in the notified Recruitment Rules. The request was made for relaxation for



promotion of the Petitioner in the feeder cadre of Assistant to the post of Court Officer without insisting on a degree of law as a precondition.

8. Thereafter vide letter dated 04.08.2020, the President of NCLT also requested the MCA to relax the eligibility criteria of having a law degree for the post of Court Officer, only in the case of the Petitioner.

9. On 23.10.2020, MCA informed NCLT that it had nominated 2 officials as members of the Departmental Promotion Committee (DPC for short) for selection of candidates for appointment under promotion quota in NCLT and pursuant to this; the NCLT issued an advertisement on 17.08.2020, inviting applications for various posts including the post of Court Officer for appointment on deputation basis.

10. Vide letter dated 24.11.2020, MCA responded to the recommendations by the Deputy Registrar and President, NCLT and enquired about any other such cases pending in NCLT, where employees transferred from erstwhile CLB to NCLT had become ineligible for promotion on notification of the impugned Rules, but were otherwise eligible for promotion.

11. In response to this query, the Joint Registrar of NCLT wrote a letter dated 03.12.2020 confirming that the Petitioner was the only such case transferred from the CLB who was in the zone of consideration for



promotion to the post of Court Officer and, that she had only become ineligible due to the educational qualification of a law degree provided in the impugned Rules.

12. Vide Letter dated 18.12.2020, MCA requested NCLT to nominate officers as members of the DPC to be held for selection of candidates for appointment under promotion quota. Subsequently, NCLT issued another Office Memorandum dated 21.12.2020 inviting applications from eligible officers/officials.

13. By Letter dated 05.01.2021, MCA responded to the NCLT's request for one time relaxation for the Petitioner and stated that they must complete the already initiated recruitment process (through fresh recruitment on deputation / absorption basis) and thereafter a consolidated proposal for relaxation of Recruitment Rules, if any, may be submitted to MCA for consideration.

14. Petitioner thus seeks quashing of Serial No. 9 in Schedule I of the Recruitment Rules dated 21.01.2020 issued by MCA to the extent that they require a degree in law for an Assistant to be promoted to the post of Court Officer as being arbitrary and discriminatory. She also seeks setting aside of letter dated 05.01.2021 issued by MCA for not considering her representation dated 09.02.2021 for one time relaxation



of Recruitment Rules.

15. In the alternative, Petitioner seeks a direction to the Respondents for making the qualification of degree in law for promotion to Court Officer, as optional, instead of mandatory and a direction to the Respondents to appoint her as Court Office on promotion basis by granting one time relaxation.

16. Learned Senior counsel appearing for the Petitioner submits that the Petitioner has completed more than 8 years in service in the grade pay of Rs. 4200/- as on 27.02.2022. He submits that as per the OM No. AB.14017/48/2010-Estt..(RR) dated 31.12.2010 issued by DoPT, this qualifies her to be promoted from the post of Assistant to the post of Court Officer in Level 8.

17. He submits that the Petitioner is an Assistant on paper, but she has been handling the work of a Court Officer for the last 6 years, as is apparent from Office Memo dated 20.11.2017. He submits that the Petitioner has also been given the additional responsibility of carrying out the functions of a yet higher post i.e. Assistant Registrar, without any extra remuneration. He relies on an Office Order dated 05.03.2022 which assigns the powers of Assistant Registrar (In charge) to the Petitioner with effect from 06.03.2022. He further submits that during



and post the Covid period, Petitioner has been holding the post of Court Officer for not only the New Delhi Bench of the NCLT, but also the Hyderabad, Bombay and Chennai Benches.

18. He submits that the role of a Court Officer in NCLT is not quasi-judicial in nature and mostly consists of giving dates and organising files for the Bench.

19. He submits that the Petitioner is set to retire on 30.04.2024 and has become ineligible for promotion only after the introduction of the impugned Rules and even if she were to now pursue a law degree, she would retire much before its completion.

20. Learned Senior Counsel appearing for the Petitioner further contends that as per the Recruitment Rules, there are two feeder cadres to the post of Court Officer, from which promotion is to be made in the ratio of 50:50 :- Senior Legal Assistants and Assistants. The post of Senior Legal Assistant is appointed from the feeder cadre of Junior Legal Assistants who are required to have a degree in law to be appointed. However, Assistants have no such requirement. However, due to the new Rules, the first promotional post for Assistants, which is Court Officer, now mandates them to have a degree in law. Hence for an Assistant without a degree in law, no promotional avenues exist.



21. He further contends that a person eligible for promotion through the feeder cadre of Assistant requires a degree in law, whereas for a person appointed on deputation the candidate should “preferably” hold a degree in law. This, he submits is illegal as it closes all promotional avenues for the Petitioner and is also discriminatory towards Assistants, by giving preference to deputationists over promotees.

22. He submits that as per Rule 10 of the impugned Rules, a person appointed on deputation is eligible for absorption. Thus, a person appointed through deputation, where the degree of law was ‘preferable’, could be absorbed at a later date and be regularly appointed to the post of Court Officer, without having a degree in law. He submits that the Respondents are treating deputation as a stop gap mode of recruitment, which is impermissible.

23. He further submits that Clause 3.1.3. of the Office Memorandum dated 31.12.2012 provides for retention of existing eligibility service which states that in case the eligibility service in existing rules is being enhanced and the change is likely to adversely affect some people holding the feeder cadre posts on regular basis, a note shall be made to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on date of notification of the new rules. He submits that the Respondents have failed to mention any note



in the impugned new Recruitment Rules for candidates whose promotion aspects are likely to be affected.

24. Learned Senior Counsel appearing for the Petitioner further submits that the classification made between people appointed through promotion and on deputation basis is not based on any intelligible differentia, since a person absorbed through deputation would be holding the post of Court Officer, without a degree in law.

25. He further submits that the Respondents are contradicting themselves by saying that a Court Officer will exercise judicial functions, but also stating that they conduct mostly registry work.

26. Learned Senior Counsel also refers to the guidelines of the Union Public Service Commission (UPSC) vide F.NO F.10/14/90 –Appt, at Clause 2(b) which state that in case of promotion, one time relaxation in educational qualification may be considered to ensure that the officer has at least one chance of promotion after constitution of service/promulgation of the new recruitment rules. This too, he submits has not been considered by the Respondents.

27. In the alternative, Learned Senior Counsel for the Petitioner submits that Rule 16 of the impugned Rules give power to the Central Government in consultation with the President of the NCLT to relax



any of the provisions of the rules. He submits that the President and Registrar of NCLT have both already requested the MCA to invoke this rule and consider one time relaxation in educational qualification for the Petitioner. However, none of the recommendations were considered. He prays that as an alternative to the main prayer of striking down of the recruitment rules as arbitrary and discriminatory, MCA may be directed to consider the Petitioner's case for a one time relaxation.

28. Per Contra, learned counsel appearing for the Respondent Union of India submits that no employee has a right to claim a particular condition of service and approach the court to seek direction to frame the rules concerning condition of service of the employee in a particular manner. It is submitted that it is the prerogative of the executive to frame the service condition of the employee and having accepted the same, the employee is bound by the same.

29. He submits that as per the recruitment rules, degree in law was kept mandatory in case of promotion to the post of Court Officer since NCLT is a quasi-judicial body and duty/nature of court officer is primarily concerned with registry matters, and thus it is appropriate to keep Law degree mandatory for the post of Court Officer, in the interest of the institution. Regarding appointment by deputation/absorption, a



degree in law was kept 'preferable' on the basis of suggestions given by the NCLT, for its smooth functioning.

30. He submits that relaxation of eligibility criteria can only be ascertained after the already commenced recruitment has been completed. He submits that once the recruitment process is completed in accordance with the notified rules, a consolidated proposal may be submitted to the MCA for decision on relaxation of recruitment rules.

31. He further submits that Article 14 of the Constitution of India permits reasonable classification and prohibits class legislation. Respondent No.1 is entitled to make a reasonable classification for the purpose of Recruitment Rules and treat all in one class on equal footing. He submits that the requirement of a degree of law is within the permissible reasonable classification as it is based on intelligible differentia which distinguishes those that are grouped in the promotion route from others in the deputation route. He submits that the differentia has a rational relation to the object that only suitable and qualified persons can hold the post of Court Officer through the promotion route. The degree in law is mandatory for appointment through promotion, since the person will hold the post permanently and the post has judicial functions.



32. He submits that appointment through deputation is a stop gap mode of recruitment, only if posts cannot be filled through promotion. He further submits that Rule 16 (Power to Relax) of the Recruitment Rules gives power to relax any of the provisions of the Rules with respect to any class or category of persons, not to individual persons. As has been confirmed by the NCLT and NCLAT, the Petitioner is the only case of ineligibility in qualifications, where relaxation is being sought and as such, no relaxation can be granted.

33. Relevant portion of the impugned Entry (9) in Schedule I reads as under:

Name of Post	Whether Selection post or non-selection post	Educational and other qualifications required for direct recruitment	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.	Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of vacancies to be filled by various methods
(1)	(5)	(7)	(8)	(10)
Court Officer	Non- Selection	NA	NA	<u>100% by promotion on basis of seniority failing which by deputation /</u>

**Deputation/Absorption:**

Officers working under Central or State Governments or Union Territories or Courts or Tribunals possessing preferably a degree in law from a recognised University;-

(a) (i) holding analogous post on regular basis; or

(ii) a post in level 7 in pay matrix of Seventh Central Pay Commission or equivalent with two years' regular service in the grade; or

(iii) a post in Level 6 in pay matrix of Seventh Central Pay Commission or equivalent with six years' regular service in the grade,

(b) having experience in administrative or establishment or court matters.

Note 1:The departmental officers in the feeder grade who are in direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.

Note 2: The period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment shall ordinarily not exceed three years.

Note 3: The maximum age limit for appointment by deputation shall not be exceeding fifty-six years as on the closing date of receipt of applications.

Note 4: For purposes of appointment on deputation/ absorption basis, the service rendered on a regular basis by an officer prior to 01st January 2016 or the date from which the revised pay structure based on the Seventh Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding level in the pay matrix of the Seventh Central Pay Commission

(emphasis supplied)

34. It may be noticed that for the post of Court Officer, the feeder



posts are the post of Senior Legal Assistant and Assistant in the ratio of 50:50. For Senior Legal Assistant two years regular service in level-7 in pay matrix of Seventh Central Pay Commission is required. For Assistant six years regular service in level-6 in pay matrix of Seventh Central Pay Commission is required. Additionally a degree in law is mandated. It is also stipulated that the post is to be filled 100% by promotion on the basis of seniority failing which by deputation/absorption.

35. For Deputation/Absorption officers working under Central or State Governments or Union Territories or Courts or Tribunals possessing preferably a degree in law from a recognised University and (a) (i) holding analogous post on regular basis; or (ii) a post in level 7 in pay matrix of Seventh Central Pay Commission or equivalent with two years' regular service in the grade; or (iii) a post in Level 6 in pay matrix of Seventh Central Pay Commission or equivalent with six years' regular service in the grade, and (b) having experience in administrative or establishment or court matters are eligible for being considered.

36. Petitioner was appointed on the post of Court Officer on deputation basis on 09.03.2017. Petitioner was reverted back to the post of Assistant on 28.11.2017 but by the same order was assigned to look after the charge of the post of Court Officer. She has continued to look



after the post of Court Officer since 09.03.2017.

37. Subject impugned rules were notified on 21.01.2020, after the Petitioner was appointed on the post of Court Officer. Prior to notification of the impugned rules on 21.01.2020, there was no such stipulation that a degree in law was required for being appointed on the post of Court Officer. This condition has been introduced by the impugned rules.

38. Petitioner has continued to perform the duties of Court Officer since 09.03.2017, for over 6 years. She has also performed the duties of Court officer not only for Delhi Bench of NCLT but also that of the Court Officer for the Hyderabad, Bombay and Chennai Benches of NCLT during Covid-19. Further, Petitioner has also been assigned the powers of the Post of Assistant Registrar (In charge) with effect from 06.03.2022.

39. As per the impugned Rules, in respect of a person appointed on deputation, a degree in law is not mandatory though it is preferable.

40. Rule 10 of the impugned rules reads as under:

“10. Absorption of employees on appointment on deputation.-(1) Notwithstanding anything contained in the provisions of these rules, the persons appointed on deputation basis, who fulfil the qualifications and



experience laid down in these rules and who are considered suitable by Departmental Promotion Committee, shall be eligible for absorption, in respective grade subject to the condition that such persons exercise their option for the absorption.

(2) Such absorption shall also be subject to the condition that their parent departments or cadre controlling authorities do not have any objection to their being absorbed in the Tribunal.

(3) Seniority of officer or employees mentioned in sub rule (1) shall be determined with reference to the date of their absorption to the post concerned”

41. A person appointed on deputation can be appointed to the said post on regular basis which clearly implies that a person who does not possess a degree in law and is on deputation can be subsequently absorbed on the post of Court Officer.

42. Respondents have contended in the Counter Affidavit as under:

“(iv) That as per the notified RRs for NCLT, degree in Law was kept mandatory in the case of promotion to the post of Court Officer which is justifiable since NCLT is a quasi-judicial body and duty/nature of court officer primarily concerned with registry matters and thus, it is appropriate to keep Law degree mandatory for the post of Court Officer in the interest of Body. However, as regards, deputation/absorption, degree in law was kept



preferably on the basis of suggestions given by NCLT and that sufficient number of applications would be received and also for smooth functioning of NCLT. Also, the method of recruitment to the post of Court Officer is 100% by promotion on the basis of seniority failing which by deputation/absorption. The promotion is prime mode and deputation/absorption is secondary option to fill up the post of Court Officer in NCLT, in absence of promotion. Also, committee for appointment on deputation basis is Selection Committee, however, absorption is only possible after found suitable by Departmental Promotion Committee (DPC). ”

43. The impugned Rules read with the Counter Affidavit, clearly show that a Degree in law is not mandatory for the post of Court Officer. As per the Counter Affidavit, the charter of duties of the Court officer is concerned with Registry matters. It is not the stand of the Respondents that the Court Officer is also performing *quasi judicial* function apart from dealing with administrative matters. The impugned rules as noticed hereinabove contemplate a situation where a person not possessing a degree in law but appointed on deputation may be absorbed. This is sought to be explained in the Court Affidavit by contending that “*degree in law was kept preferably on the basis of suggestions given by NCLT*”.



44. The stand of the Respondent fortifies the alternative prayer of the Petitioner that power of relaxation should be exercised in her favour in terms of Rule 16.

45. Rule 16 of the impugned rules reads as under:

“16. Power to relax.-Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, in consultation with the President of the Tribunal by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.”

46. As per Rule 16 Central Government has the power to relax any of the provision of the rules in consultation with the President of the Tribunal. It may also be noticed that the President of the NCLT on 04.08.2020 recommended to the Respondent for the necessary relaxation in terms of Rules 16.

47. The President of NCLT by letter dated 04.08.2020 recommended as under:

“Accordingly, I recommend that possessing degree in law may be relaxed in the case of this candidate as per Rule 16, because she is the only candidate completed six years of service in the feeder cadre of Assistant and eligible to the post of Court Officer. Apart from this, in all respects she is fit to become Court Officer, for she has been effectively discharging the duties of Court Officer for the



last 3½ years.”

48. Further, by letter dated 03.12.2020, the NCLT has confirmed that Petitioner is the only case of an employee transferred from the CLB who was in the zone of consideration for promotion to the post of Court Officer and that she had only become ineligible due to the educational qualification of a law degree provided in the impugned Rules.

49. As noticed above, the impugned Rules were notified much after the Petitioner was transferred from CLB and appointed on deputation basis to the post of Court Officer. The only reason for not considering the case of the Petitioner for relaxation is that *“it is not justifiable to amend the rules to deal with a case of a single employee”*. It has been contended before us that power to relax any provision has to be in respect of any class or category of persons and since Petitioner is the only case of ineligibility in qualifications, where relaxation is being sought and as such, no relaxation can be granted.

50. The Constitution Bench of the Supreme Court of India in *Ram Krishna Dalmia v. S.R. Tendolkar*, 1959 SCR 279 : AIR 1958 SC 538 held as under:

“11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the



notification is founded on Article 14 of the Constitution. In Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045] a Constitution Bench of seven Judges of this Court at p. 1048-49 explained the true meaning and scope of Article 14 as follows;

“The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit Lal Choudhuri v. Union of India [1950 SCC 833 : (1950) SCR 869] , State of Bombay v. F.N. Balsara [1951 SCC 860 : (1951) SCR 682] , State of West Bengal v. Anwar Ali Sarkar [(1952) 1 SCC 1 : (1952) SCR 284] , Kathi Raning Rawat v. State of Saurashtra [(1952) 1 SCC 215 : (1952) SCR 435] , Lachmandas Kewalram Ahuja v. State of Bombay [(1952) 1 SCC 726 : (1952) SCR 710] , Qasim Razvi v. State of Hyderabad [(1953) SCR 581] and Habeeb Mohamad v. State of Hyderabad [(1953) SCR 661] . It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to



the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

*(b) *****”*

51. Clearly as per the Supreme Court a single individual can be treated as a class by himself. The rationale given by the Respondents for not considering the case of the Petitioner because she is the only one who has been adversely affected by the impugned rules cannot be sustained. Merely because Petitioner is the only case of ineligibility on account of subsequent amendment of the Rules cannot be a ground to deny consideration of her case for relaxation. She constitutes a class in



herself and is thus entitled to be considered for relaxation in terms of Rule 16.

52. Further reference may be had to Clause 3.1.3. of the Office Memorandum dated 31.12.2012 which reads as under:

“RETENTION OF EXISTING ELIGIBILITY SERVICE

3.1.3. Where the eligibility service for promotion prescribed in existing rules is being enhanced (to be in conformity with the guidelines issues by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.”

53. Reference may also be had to the relevant portion of the Union Public Service Commission (UPSC) guidelines issued vide F.NO F.10/14/90 which read as under:

“2. Relaxation in education qualifications

Generally, no relaxation in educational qualifications should be agreed to but exception can be made in the following circumstances

(a) Where (in transfer on deputation cases), in previous



circulation of the vacancy/vacancies to all sources prescribed in the recruitment rules has clearly established that persons with requisite educational qualifications are not available. If the relaxation is agreed to, the department may be requested to re-circulate the post with the relaxed educational qualifications

- (b) *In cases of promotion, one time relaxation in educational qualifications may be considered to ensure that the officer has at least one chance for promotion after the constitution has arisen owing to inadvertent omission to protect the interest of such officers while framing the recruitment rules.*
- (c) *In cases of promotion where educational qualifications have been upgraded after the officer was appointed to the feeder grade, relaxation of qualification can be considered if the higher qualifications are not immediately critical to the mission of the organisation / quality / level of services to be provided by the organisation.*
- (d) *Normally such relaxation may not be given in grades beyond Rs. 3000-4500. But for some higher specialised or scientific posts beyond this grade, relaxation in certain disciplines of the requisite qualifications may be considered, if the case relates to overlapping/closely related educational qualifications.”*

54. In the case of the Petitioner, though she has completed eight years service in the post of Assistant and discharged the functions of



the post of Court Officer for over six years and that of the Assistant Registrar since 06.03.2022, she is denied all opportunities of promotion as the only promotional avenue for the post of Assistant is that to the Post of Court Officer. In this view of the matter also Petitioner is entitled to be considered for the purposes of grant of relaxation of the condition of Degree in law in terms of Rule 16.

55. The Supreme Court of India in *A. Satyanarayana v. S. Purushotham*, (2008) 5 SCC 416 held as under:

*“28. The superior courts, while exercising their power of judicial review, must determine the issue having regard to the effect of the subordinate legislation in question. There must exist a rational nexus between the impugned legislation and the object of promotion. Promotions are granted to a higher post to avoid stagnation as also frustration amongst the employees. This Court, in a large number of decisions, has emphasised the necessity of providing for promotional avenues. (See *Food Corporation of India v. Parashotam Das Bansal* [(2008) 5 SCC 100] .) The State, keeping in view that object, having found itself unable to provide such promotional avenue, provided for the scheme of accelerated career progress (ACP). The validity and effect of the impugned legislation must be judged keeping in view the object and purport thereof. This Court would apply such principle of interpretation of statute which would enable it to subserve the object in place of subverting the same.*



30. *Although mere chance of promotion is not a fundamental right, but right to be considered therefor is. In that view of the matter, any policy whereby all promotional avenues to be promoted in respect of a category of employees for all times to come cannot be nullified and the same would be hit by Article 16 of the Constitution of India.*

(underlining supplied)

56. The Supreme Court of India in *P.U. Joshi v. Accountant General* 2003 2 SCC 632 has held as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the



State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

57. Supreme Court in *P.U. Joshi (supra)* has held that prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and is within the exclusive discretion and jurisdiction of the State and it is not for the Courts to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. It is also open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to



time, as the administrative exigencies may need or necessitate. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

58. In view of the ratio in the case of *P.U. Joshi (supra)*, the relief sought by the Petitioner seeking quashing of condition at Serial No. 9 in Schedule I of the National Company Law Tribunal (Recruitment, Salary and other Terms and Conditions of Service of Officers and other Employees) Rules, 2020, issued by Respondent No.1, to the extent that they prescribe a degree in law as a qualification for an Assistant to be promoted to the post of Court Officer in Respondent No. 3, National Company Law Tribunal cannot be granted and is thus declined.

59. However, in view of the discussion hereinabove, Petition is disposed of with a direction to the Respondents to consider the case of the Petitioner, within a period of four weeks, for the purposes of grant of relaxation of the condition of a degree in law as a precondition for appointment to the post of Court Officer in NCLT and if relaxation is



granted, petitioner be given retrospective appointment from the date she otherwise became eligible.

60. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

VIKAS MAHAJAN, J

July 03, 2023
HJ

भारतमेव जयते