2025 INSC 1235

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……OF 2025
(Arising out of Special Leave Petition (Civil) No……. of 2025)
(@ Diary No.57192 of 2024)

THE UNION OF INDIA & ORS. **APPELLANTS**

VERSUS

SUBIT KUMAR DAS **RESPONDENT**

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. Delay condoned.

2. Leave granted.

3. The Union of India through the Secretary, Ministry of Information and Broadcasting and the All India Radio through its Director General are aggrieved by the direction issued by the Division Bench of the Calcutta High Court requiring them to absorb the services of the respondent on the post of Technician at the Eastern Zone of All India Radio under the Scheduled

Castes (SC) category. According to the appellants, such direction to absorb the services of the respondent enlarges the right of a candidate placed in the Reserved Panel much after its expiry and runs counter to the Recruitment Rules. The respondent supports the said direction by contending that the appellants had committed to absorb the respondent in service as far back as on 15.01.1999 and the High Court rightly directed so.

4. Facts relevant for considering the challenge as raised to the aforesaid direction are that pursuant to a requisition made by the All India Radio, Eastern Zone for making appointment on the post of Technician, names of various candidates maintained by the Employment Exchange came to be forwarded. Three posts of Technician were reserved for candidates belonging to the SC category. The Selection Committee interviewed eleven candidates and finally selected three candidates in the order of merit against the existing vacancies. The name of the respondent was placed at Serial No.1 in the Reserved Panel. It was stated that the candidates placed in the Reserved Panel would be appointed only in case any of the three selected candidates did not join the said post for any reason. The respondent being aggrieved by the decision of the Selection Committee

approached the Central Administrative Tribunal (for short, "the Tribunal") by filing Original Application No.989 of 1997 challenging its decision and seeking his appointment on the post of Technician. On 25.08.1997, the Tribunal passed an interim order and directed that any appointment made of the selected candidates would abide by the result of the Original Application. In the said proceedings, the respondent moved an interim application praying that no further appointment be made on the post of Technician without considering his name pursuant to the earlier recruitment process. During the course of the hearing of the said application, a statement was made on behalf of the appellants which was recorded in the order dated 15.01.1999 as under:

> "3. Mrs. Banerjee, Ld. Counsel for the respondents submits that till the filling up of post of technician from the reserved quota viz. 1 OBC and 1 ST is taken by the respondent authorities, the applicant's case would not be considered. She further submits as soon as vacancy would arise against the SC quota, the applicant would be absorbed."

On the basis of the said statement, no further orders were passed on the interim application.

5. Original Application No.989 of 1997 came to be decided by the Tribunal on 09.12.2004. The Tribunal recorded various

findings, *inter alia,* holding that there did not appear to be any departure from the procedure and instructions that were required to be followed while undertaking selection. It further held that the allegation of bias as made by the respondent against the members of the Selection Committee was without any basis. It also referred to the clear stipulation in the records of the Selection Committee that the right of the respondent to be appointed was only if any of the selected candidates did not join the post on which they were appointed. It also held that a candidate in the wait list had no vested right to be appointed except when the selected candidate did not join the post and the wait list was operative. All grounds of challenge raised by the respondent on merits were turned down. However, in view of the statement made on behalf of the appellants as recorded on 15.01.1999 that the case of the respondent would not be considered till the reserved quota of candidates from the Other Backward Classes (OBC) category and Scheduled Tribes (ST) category were filled in, the appellants were directed to consider the case of the respondent in terms of the assurance given to the Tribunal and take steps to absorb him against the available

vacancy in accordance with law within a period of three months from the date of communication of the order.

6. The appellants being aggrieved by the aforesaid directions issued by the Tribunal approached the High Court by filing WPCT No.276 of 2005. The Division Bench of the High Court by its order dated 23.02.2009 found that the various findings recorded by the Tribunal against the respondent as regards the right of a waitlisted candidate as well as the manner of conduct of the selection proceedings by the Selection Committee had not been challenged by him. It, however, observed that the direction to consider the case of the respondent came to be made in view of the concession recorded in the order dated 15.01.1999. The High Court, without interfering with the said direction issued by the Tribunal, modified the said order to the extent that the outer limit of consideration of six months was not to be applicable, in case no vacancy arose within that period.

7. In the meanwhile, on 23.02.2013, a fresh notice of recruitment for various posts including that of Technician came to be published at the instance of Prasar Bharti. The respondent again approached the Tribunal by filing Original Application No.739 of 2013 seeking a direction that he be absorbed on the

post of Technician in the SC category as per the advertisement dated 23.02.2013. By an interim order dated 19.07.2013, the appellants were directed to keep one post of Technician vacant under the SC category in the East Zone till the next date of the proceedings. The aforesaid Original Application came to be decided on 27.11.2015. While referring to the right of a waitlisted candidate to seek appointment, the Tribunal noted that the appellants in the year 1999 had stated that the case of the respondent would be considered against any available vacancy in the SC category. The Original Application was disposed of with a direction to the appellants to act in accordance with the earlier orders. An appropriate order in that regard was directed to be passed within a period of three months.

The Deputy Director General (P) passed a speaking order on 19.02.2016 stating therein that all the three vacancies that were to be filled up in 1997 had been so filled up as per the select list. The respondent was at Serial No.4 and he could not be absorbed. The general assurance for absorption against future available vacancies was subject to fulfilment of conditions of the Recruitment Rules. In absence of any vacancy in the SC category, absorption was not possible. It was also noted that the

respondent had crossed the maximum age limit prescribed under the Recruitment Rules and there was no direction to absorb him by relaxing the Recruitment Rules. It was, thus, stated that in absence of any vacant post being available, the respondent could not be absorbed against the vacancies notified in the advertisement dated 23.02.2013, more so, as he was not eligible for appointment as per the Recruitment Rules.

8. The respondent being aggrieved by the aforesaid speaking order again approached the Tribunal by filing Original Application No.436 of 2016. The Tribunal on 09.01.2020 observed that the earlier Original Application No.739 of 2013 was decided on 27.11.2015. The documents placed on record, however, indicated the vacancy position prior to that date. The Tribunal, therefore, directed the appellants to issue a fresh speaking order indicating the number of vacancies on the post of Technician that occurred after its earlier order dated 27.11.2015 and also indicate whether the respondent was entitled to be considered in accordance with the directions of the Tribunal. The respondent, being aggrieved by the said order, preferred WPCT No.24 of 2021 before the High Court. Besides challenging the order of the Tribunal dated 09.01.2020, the respondent also sought a

direction for being appointed on the post of Technician. The High Court passed interim orders on 21.06.2021 and 06.09.2021 directing that an affidavit to be filed indicating if any vacancy on the post of Technician had arisen from 2009 onwards. The Deputy Director General (P), All India Radio filed an affidavit dated 09.09.2021 stating therein that there was no vacancy on the post of Technician at the All India Radio, Calcutta since 2009 till date. The Division Bench thereafter on 25.06.2024 decided the said writ petition. It was of the view that the appellants on 15.01.1999 had given an assurance before the Tribunal that the respondent would be considered in the next available vacancy. However, that statement was not honoured despite a vacancy being available. It further held that the rejection of the respondent's claim on the ground that he was age barred was illegal. The Division Bench accordingly set-aside the order dated 09.01.2020 passed by the Tribunal and directed the appellants to absorb the respondent on the post of Technician in any vacancy under the SC category in the Eastern Zone within a period of four weeks. The respondent's absorption was directed to be given effect from 19.07.2013 onwards on a notional basis. Being

aggrieved by this decision, the appellants have come up in appeal.

9. Ms. Madhusmita Bora, learned Advocate appearing for the appellants submitted that the High Court committed an error in directing the appellants to absorb the respondent on the post of Technician. The vacancy in question was of the year 1997 and admittedly the respondent was placed at Serial No.1 in the Reserved Panel. He was entitled to be considered for appointment only in the event any of the three selected candidates failed to join the post of Technician. Since all the three candidates had joined their posts, there was no occasion for the respondent to claim any entitlement to be appointed by virtue of his placement in the Reserved Panel. The respondent was merely a waitlisted candidate and had no vested right to seek appointment. The direction issued by the High Court, if implemented, would result in a waitlisted candidate of the year 1997 being absorbed in service after more than twenty five years. In that regard, the learned counsel referred to the decision in ***Sri Sanjoy Bhattacharjee Vs. Union of India & Ors.***[1] It was then submitted that the only basis for the High Court to have issued

[1] 1997 INSC 250

the impugned direction was the statement made on behalf of the appellants on 15.01.1999 that the respondent would be considered against any vacancy in the SC category in future. The said statement amounted to a concession in law which was contrary to the statutory Rules of Recruitment. The said statement, therefore, would not bind the appellants as the appellants would be required to disregard the Recruitment Rules for absorbing the services of the respondent. It was permissible for the appellants to place the correct position in law while not proceeding in accordance with such statement. To substantiate this contention, the learned counsel referred to the decisions in ***Director of Elementary Education, Odisha Vs. Pramod Kumar Sahoo***[2] and ***The Employees' State Insurance Corporation Vs. Union of India and others***[3]. It was, thus, submitted that the impugned judgment of the High Court was liable to be set aside and the respondent was not entitled to any relief whatsoever.

10. On the other hand, Mr. Rakesh Kumar learned Advocate appearing for the respondent supported the impugned direction issued by the High Court. He submitted that it was not

[2] 2019 INSC 1092
[3] 2022 INSC 77

permissible for the appellants to disregard the statement made on their behalf on 15.01.1999 before the Tribunal. As such statement was made on behalf of the appellants, no further relief was granted to the respondent by the Tribunal. Despite availability of various vacancies since then, the appellants failed to absorb the respondent on the post of Technician. It was also not permissible for the appellants to now change their stand by stating that the respondent had crossed the age limit for being appointed. In that regard, the learned counsel placed reliance on the decisions in ***Prem Prakash Vs. Union of India***[4]***, H.P. ST Employees Federation Vs. H.P.S.V.K.K.***[5] and ***Rameshwar Prasad Goyal, Advocate, In Re***[6]. It was then submitted that the High Court had rightly found that on 19.07.2013, the respondent's right was crystalized as a vacancy had arisen and hence, the Tribunal had directed one post to be kept vacant. It was not in dispute that vacancies in the SC category were available and the respondent could not be deprived of the relief of absorption. As a model employer, the Union of India ought to honour its assurance and it could not take a stand contrary to the

[4] 1984 INSC 150
[5] [2013] 10 SCC 308
[6] 2013 INSC 550

statement as made. Denying relief to the respondent would result in the appellants taking advantage of their own wrong. The learned counsel referred to the decision in ***Union of India and others Vs. Hindustan Development Corporation and others***[7] in that regard. It was, thus, submitted that the High Court having rightly found that as the respondent was being deprived of the benefit of absorption, no interference with the directions issued by it was called for. The appeal was, thus, liable to be dismissed.

11. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documents on record. It is not in dispute between the parties that in the year 1997, three vacancies for the post of Technician from the SC category were sought to be filled in. The respondent along with ten other candidates came to be interviewed by the Selection Committee. Three candidates were chosen and placed serially in the order of merit. The respondent was placed at Serial No.1 in the Reserved Panel by noting that if any of the three selected candidates did not join the post of Technician, the candidates placed in the Reserved Panel would be appointed. All the three selected candidates did join the post of Technician as a result of

[7] 1993 INSC 154

which the respondent remained at Serial No.1 in the Reserved Panel.

12. While considering the entitlement of the respondent to any relief on the basis of his placement in the Reserved Panel, it would be necessary to bear in mind the settled position that mere placement in the wait list does not create any vested right for being so appointed. The right to be considered for appointment would spring only in the contingency of a selected candidate not joining on his post. The wait list operates for a limited period. It cannot extend for an indefinite period and in any event after a fresh process of recruitment has commenced. This legal position is well settled and reference can be made to the decision of a three Judge Bench in ***Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and others***[8]. In paragraph 9, it has been held as under:

> "9. *A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list.* But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This

[8] 1994 INSC 199

> practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. *If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.*"
>
> (emphasis supplied by us).

From the aforesaid, it is clear that any right that the respondent could claim as a waitlisted candidate extinguished when all the selected candidates joined on their respective posts.

13. The sole basis for the claim of the respondent of seeking appointment/absorption on the post of Technician is the statement made on behalf of the appellants as recorded in the order dated 15.01.1999. As per the said statement, on a vacancy arising against the SC quota, the respondent was to be absorbed. According to the appellants, such statement cannot bind them since its compliance would result in breach of the Recruitment Rules. The respondent, however, relies upon the said statement as it was given in all solemnity before the Tribunal.

For considering the binding nature of such statement made before the Tribunal, certain factual aspects would have to be

borne in mind. Though the placement of the respondent was at Serial No.1 in the Reserved Panel, all the selected candidates had joined on the post of Technician and, thus, there was no occasion to operate the wait list is an admitted position. No vacancy from 1997 was carried forward and a vacancy, if any, that was to arise in the future would have been a fresh vacancy. The entitlement of the respondent, if any, was as a waitlisted candidate qua the select list of 1997. There was no vested right in favour of the respondent to urge that he was entitled to be considered and appointed on any fresh vacancy arising in the future. Secondly, the statement as recorded on 15.01.1999 would have a limited operation to the extent that only if any of the selected candidates for the post of Technician in the SC category failed to join on the said post, the respondent could be appointed on such vacant post being the candidate at Serial No.1 in the Reserved Panel. The statement as recorded that the claim of the respondent, a waitlisted candidate, would be considered as and when any vacancy would arise against the SC quota cannot operate in eternity contrary to the Recruitment Rules. Thirdly, it is necessary to note that the respondent's challenge to his placement in the Reserved Panel and the selection of three other

candidates on merit was not disturbed either by the Tribunal or by the High Court. This is clear on a perusal of the judgment of the Tribunal dated 09.12.2004 in Original Application No.989 of 1997. The High Court in WPCT No.276 of 2005 decided on 23.02.2009 affirmed the findings of the Tribunal that a waitlisted candidate did not have any legal right to claim appointment and noted that the said finding recorded by the Tribunal was not under challenge by the respondent. These material aspects would be relevant while considering the legal effect of the statement recorded on 15.01.1999 by the High Court.

14. It is, thus, clear that having failed to assail the success of the selected candidates, the only string for the respondent to cling on was the statement recorded on 15.01.1999. The effect of such statement cannot result in wiping out the adjudication of the respondent's claim on merits. In other words, the respondent cannot claim any higher right especially when it was found by the Tribunal and affirmed by the High Court that his placement in the Reserved Panel was correct and requiring no interference. The appellants are justified in contending that such statement as made on 15.01.1999 cannot have the effect of requiring them to act in violation of the Recruitment Rules.

15. At this stage, it would be necessary to refer to a few decisions of this Court on the binding effect of a concession made by counsel on a question of law in the field of service jurisprudence. In ***Uptron India Limited Vs. Shammi Bhan and another***[9], the issue pertained to the legality of a Standing Order permitting automatic termination of the services of a permanent employee on account of overstaying leave without permission for more than seven days. The employer sought to support the relevant Standing Order on the basis of the concession of the employee's counsel that the Standing Order was not invalid. In paragraphs 22 and 23, this Court observed as under:

> "22. Learned counsel for the petitioner has placed strong reliance upon a decision of this Court in Civil Appeal No.3486 of 1992, Scooters India & Ors. vs. Vijay E.V. Eldred, decided on 03.10.1996, in support of his contention that any stipulation for automatic termination of Services made in the Standing Orders could not have been declared to be invalid. We have been referred to a stray sentence in that judgment, which is to the following effect:
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> > "It is also extraordinary for the High Court to have held clause 9.3.12 of the standing orders as invalid."
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> This sentence in the judgment cannot be read in isolation and we must refer to the subsequent sentences which run as under:
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> > "Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside

[9] 1998 INSC 74

the High Court's judgment, we need not deal with this aspect in detail."

23. In view of this observation, the question whether the stipulation for automatic termination of services for overstaying the leave would be legally bad or not, was not decided by this Court in the judgment relied upon by Mr. Manoj Swarup. In that judgment the grounds on which the interference was made were different. The judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in a writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further, the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay. Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that "Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order." This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj on this judgment, therefore, is wholly out of place."

16. In ***Central Council for Research in Ayurveda & Siddha & another Vs. Dr. K. Santhakumari***[10]***,*** the issue pertained to promotion on a selection post. Though the principle of merit-cum-seniority was prescribed, the employer in its affidavit before the High Court stated that the principle of seniority-cum-merit was applicable. On that basis, the employee was held entitled to be

[10] 2001 INSC 259

promoted. Before this Court, the relevant rules indicating the principle of merit-cum-seniority were placed. In that context, it was held :

> "In the instant case, the selection was made by Departmental Promotion Committee. The Committee must have considered all relevant facts including the inter-se merit and ability of the candidates and prepared the select list on that basis. The respondent though senior in comparison to other candidates, secured a lower place in the select list, evidently because the principle of "merit-cum-seniority" had been applied by the Departmental Promotion Committee. The respondent has no grievance that there was any malafides on the part of the Departmental Promotion Committee. The only contention urged by the respondent is that the Departmental Promotion Committee did not follow the principle of "seniority-cum-fitness". In the High Court, the appellants herein failed to point out that the promotion is in respect of a 'selection post' and the principle to be applied is "merit-cum-seniority". Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent. If the learned Counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party.
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> This Court in Uptron India Ltd. Vs. Shammi Bhan and Another AIR 1998 SC 1681 pointed out that a wrong concession on question of law made by counsel is not binding on his client and such concession cannot constitute a just ground for a binding precedent.
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> Therefore, even if the appellants had mistakenly contended in the High Court that the principle of seniority-cum-fitness was to be followed for promotion to the post of Research Officer, the departmental rules clearly show that the promotion was in respect of a 'selection post' and the promotion was to be made on the basis of the inter-se merit of the eligible candidates. In that view of the matter, the respondent was not entitled to get promotion to the post of Research Officer on the strength of her seniority alone. The seniority list prepared by the Departmental Promotion Committee was not challenged by the respondent on other grounds and we

> also do not find any ground to assail that select list. Thus, the Writ Petition is liable to be dismissed by setting aside the orders made therein and in the writ appeal arising therefrom. Therefore, the appeal succeeds and is allowed, however, without costs."

Reliance placed on the decisions in ***Director of Elementary Education*** and ***The Employees' State Insurance Corporation*** (supra) by the learned counsel for the appellants is also apposite. The appellants are, thus, within their right in canvassing the correct position of law by urging that the absorption of the respondent at this stage would result in violation of the Recruitment Rules. In this factual and legal backdrop, the ratio of the decisions relied upon by the learned counsel for the respondent cannot further the case of the respondent.

17. It appears that the High Court was much impressed by the fact that the statement made on 15.01.1999 on behalf of the appellants was not being honoured. It is true that a statement made before the Court has its solemnity and the party making such statement is bound to comply with the same. At the same time, it has to be seen as to whether such statement in the form of a concession, if given effect to would result in violation of any statutory rules or regulations. If such consequence is likely to flow, it would be open for the affected party on whose behalf such

concession in law was made to place before the Court the correct position of law and urge that it may not be compelled to give effect to an erroneous concession made on law. In the present case, giving effect to such statement made on 15.01.1999 would result in a waitlisted candidate being given an appointment notwithstanding the fact that all selected candidates in the said recruitment process had duly joined their posts and there was no occasion to operate the wait list. It would amount to filling in one post in the subsequent recruitment on the basis of an exercise carried out in the previous recruitment. This would definitely cause prejudice to the candidates seeking recruitment in the subsequent process as the vacancies would stand reduced. Moreover, it would also extend the life of the wait list though all vacancies stand filled in, which would be impermissible.

In these facts therefore, we find that the appellants are justified in contending that the statement dated 15.01.1999 cannot be acted upon as it would result in conferring benefit on a waitlisted candidate to which he otherwise in law is not entitled to. The same is also not shown to be permissible under the Recruitment Rules. It appears that the High Court glossed over these vital aspects while directing the appellants to absorb the

services of the respondent. The available vacancies having been filled up in 1997 resulted in exhaustion of the wait list and the said process of recruitment had come to an end. The High Court has, therefore, erred in directing the absorption of the respondent.

18. For all these reasons, the judgment of the High Court dated 25.06.2024 in WPCT No.24 of 2021 is found to be unsustainable in law. It is accordingly set-aside and the writ petition preferred by the respondent stands dismissed. The civil appeal is allowed in the aforesaid terms with no order as to costs. Pending applications stand disposed of accordingly.

……..J.
[PAMIDIGHANTAM SRI NARASIMHA]

…….……..J.
[ATUL S. CHANDURKAR]

NEW DELHI,
OCTOBER 15, 2025.