

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 1390 of 2021

With

W.P.(S) No. 1422 of 2021

With

W.P.(S) No. 3405 of 2021

With

W.P.(S) No. 3843 of 2021

In W.P. (S) No. 1390 of 2021

1. Ashok Kumar Singh
2. Anil Kumar Singh
3. Uday Pratap Singh
4. Rabindra Prasad Singh
5. Prabhat Kumar Singh
6. Ajay Kumar

... .. PETITIONERS

- V E R S U S -

1. State of Jharkhand
2. Chief Secretary, Govt. of Jharkhand, having its office at Project Building, Dhurwa, Ranchi
3. Principal Secretary, Home, Prison and Disaster Management Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, Ranchi.
4. Principal Secretary, Personnel, Administrative Reforms and Rajbhasa Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, Ranchi
5. Secretary, Home, Govt. of Jharkhand, having its office at Project Building, Dhurwa, Ranchi
6. Jharkhand Public Service Commission, through its Secretary, having office at Circular Road, P.O. & P.S. – Lalpur, District – Ranchi

... .. RESPONDENTS

In W.P. (S) No. 1422 of 2021

1. Ram Sagar Tiwari
2. Madan Mohan Singh
3. Satyendra Narayan Singh
4. Jitendra Singh
5. Akhilesh Kumar

6. Ram Chandra Singh
7. Arun Kumar
8. Pradip Kumar Sinha
9. Jitendra Kumar Thakur

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3. Principal Secretary, Home, Prison and Disaster Management Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, Ranchi.
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5. Secretary, Home, Govt. of Jharkhand, having its office at Project Building, Dhurwa, Ranchi
6. Jharkhand Public Service Commission, through its Secretary, having office at Circular Road, P.O. & P.S. – Lalpur, District – Ranchi

... .. **RESPONDENTS**

In W.P. (S) No. 3405 of 2021

1. Rashmi Lakra
2. Om Prakash Mandal
3. Rajesh Kumar
4. Manindra Bhagat
5. Md. Abid Hussain
6. Atul Kumar
7. Shailesh Kumar
8. Avinash Purnendu
9. Binod Prajapati
10. Girija Shankar Mahato
11. Sadanand Mahto
12. Shailesh Kumar Priyadarshi
13. Kumar Abhinav Swarup
14. Ram Naresh Soni
15. Jai Prakash Karmali

... .. **PETITIONERS**

- V E R S U S -

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Project Building, P.O. and P.S. – Dhurwa, District – Ranchi.
2. Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa Department, Project Building, P.O. and P.S. - Dhurwa, Dsitric - Ranchi
3. The Joint Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Govt. of Jharkhand, Project Building, P.O. and P.S. – Dhurwa, District – Ranchi.
4. The Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Govt. of Jharkhand, Project Building, P.O. and P.S. – Dhurwa, District – Ranchi.

... .. **RESPONDENTS**

In W.P. (S) No. 3843 of 2021

1. Raj Kishor Prasad.
2. Rohit Singh
3. Anant Kumar
4. Gyan Shanker Jaiswal
5. Manoj Kumar
6. Pradeep Kumar Shukla
7. Manisha Vats
8. Purnima Kumari
9. Anurag Kumar Tiwary
10. Ruby Kumari
11. Kiran Soreng
12. Kapil Kumar
13. Vandana Shejwalkar
14. Parmesh Kushwaha
15. Inder Kumar
16. Jaiwanti Devgam
17. Nivedita Niyati
18. Sandeep Anurag Topno
19. Mithilesh Kumar Choudhary

... .. **PETITIONERS**

- V E R S U S -

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Project Building, P.O. and P.S. – Dhurwa, District – Ranchi.

2. The Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha Department, Project Building, P.O. and P.S. - Dhurwa, District - Ranchi
3. The Joint Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Govt. of Jharkhand, Project Building, P.O. and P.S. – Dhurwa, District – Ranchi.
4. The Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Govt. of Jharkhand, Project Building, P.O. and P.S. – Dhurwa, District – Ranchi.

... .. **RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK

For the Petitioners	:Mr. Ajit Kumar, Sr. Advocate [In W.P. (S) No. 3843 of 2021] Mr. M.A. Niyazi, Advocate Mr. Anil Kumar, Advocate [In W.P. (S) No. 3405 of 2021] Mr. Rajendra Krishna, Advocate [In W.P. (S) No. 1390 of 2021] Mr. Saurav Shekhar, Advocate. [In W.P. (S) No. 1422 of 2021]
For the Respondents	: Mr. Rajiv Ranjan, Advocate General Mr. Gaurav Abhishek, AC to AG Mr. Piyush Chitresh, AC to AG
For the JPSC	: Mr. Abdul Allam, Sr. Advocate

C.A.V. ON 20.12.2021

Pronounced on 13.01.2022

Dr. S.N. Pathak, J The issues involved in all the writ petitions are same, similar and identical and as such they have been tagged and heard together on various dates and are being disposed of by this common order.

PRAYER

2. The writ petitioners in all these writ petitions are mainly aggrieved by the Memo No. 6752, dated 24.12.2020, issued by the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, whereby it has been

informed to the Principal Secretaries/ Secretaries and Heads of all the Departments about the blanket decision taken by the State Government for not granting any promotion to the employees of the State Government till further decision taken by the State Government in this regard. Further prayer of the petitioners is for a direction upon the respondents to grant them promotion.

3. In first set of cases i.e. W.P. (S) No. 3843 of 2021 and W.P. (S) No. 3405 of 2021, petitioners, who are the appointee in the State Services after they have been declared successful by the Jharkhand Public Service Commission in the 3rd Combined Civil Services Examination, 2010, have prayed for a direction upon the respondents to notify their promotion to the post of Sub-Divisional Officer and equivalent posts in view of recommendations made by the Departmental Promotion Committee vide its meeting dated 24.12.2020 wherein petitioners have been found to be eligible and fit for promotion. Further prayer has been made for a direction upon the respondents to pay all consequential benefits which would have accrued if petitioners were timely promoted to the post of Sub-Divisional Officer or equivalent posts.
4. In another set of cases i.e. W.P. (S) No. 1390 of 2021 and W.P. (S) No. 1422 of 2021, petitioners have prayed for a direction upon the respondents to notify order of promotion to the post of Dy. S.P. in view of the fact that Board of Director General of Police has already recommended their case on 28.09.2020 to the State Government for notification of order of promotion.

FACTS OF THE CASE IN W.P. (S) No. 3843 of 2021 and W.P. (S) No. 3405 of 2021

5. According to petitioners, they appeared and declared successful in the 3rd Combined Civil Service Examination, 2010 and accordingly, pursuant to the Notification no. 4836, dated 11.08.2010, they were appointed to the post of Deputy Collector in Jharkhand

Administrative Services. After completion of training, petitioners were variously posted for discharging their duties and on completion of probation period, their services were confirmed. Pursuant to the Resolution No. 3286, dated 04.04.2014, State came up with the minimum Kalawdhi (period of service) required for promotion in different posts/ cadre. For promotion from the Grade Pay of 5,400 to 6,600, the Kalawdhi required is 5 years and at present petitioners have completed 11 years of unblemished service. Petitioners are governed by the Jharkhand Administrative Service Rules, 2015, which is contained in Notification No. 3747, dated 23.04.2015. In terms of Rule 22 of the 2015 Rules, the Departmental Promotion Committee held its meeting on 24.12.2020 and considered case of the petitioners for promotion from the Basic Grade of Jharkhand Administrative Services Pay Matrix Level 9 to the post of Sub-Divisional Officer and equivalent post Pay Matrix level 11 and upon being found fully eligible, petitioners were declared fit for promotion. However, in view of letter no. 6752, dated 24.12.2020, issued by the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, whereby it has been informed that a decision has been taken to stop promotion with immediate effect in all services and posts until further order, the recommendation of the Departmental Promotion Committee for their promotion could not be notified and as such, they have knocked door of this Court.

FACTS OF THE CASE IN W.P. (S) No. 1390 of 2021 and W.P. (S) No. 1422 of 2021

6. According to the petitioners, they were initially appointed to the post of Sub-Inspector of Police and subsequently promoted to the post of Inspector of Police on various dates. Their services have been confirmed and some of them have already retired and others are at verge of their retirement without getting fruits of promotion for long period. Seniority list of the Inspector of Police was circulated vide forwarding letter, contained in Memo No. 655, dated 17.06.2020 and

names of the petitioners are variously placed in the said seniority list. The process of promotion of the Inspectors to the post of Dy. S.P. was started in the year 2020 and petitioners were also in the zone of consideration for such promotion. Roster clearance was duly taken and widely circulated vide letter no. 1953, dated 05.06.2020 by the Department of Home, Prison and disaster Management which categorically states that the roster clearance had been obtained for giving promotion on total 36 posts of Dy. S.P.. Out of said posts, 28 posts were unreserved and 4 each were reserved for ST and SC categories respectively. Vigilance clearance was also obtained. The Meeting of Board of Director General of Police was finally held on 23.09.2020 for consideration of promotion of petitioners and others to the post of Dy. S.P. and the Board, vide its recommendation dated 28.09.2020, recommended names of selected candidates including names of the petitioners, along with all relevant records which includes seniority list, vigilance clearance and details of other relevant facts. After recommendation of the Board, the Department of Home has to notify the same but they are sitting tight over the matter. It has further come to knowledge of the petitioners that now in the garb of Memo No. 6752, dated 24.12.2020, respondents are not notifying the promotion order and some of the petitioners have already retired and some of them are at the verge of retirement without getting fruits of promotion. Being aggrieved, petitioners have knocked door of this Court.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONERS IN W.P. (S) No. 3843 of 2021 and W.P. (S) No. 3405 of 2021

7. Mr. Ajit Kumar, learned Sr. Counsel and Mr. M.A. Niyazi, learned counsel submitted that State has come up with the minimum Kalawdhi (period of service) required for promotion in different posts and in case of the petitioners, for promotion from the Grade pay of

Rs.5,400 to 6,600, the Kalawdhi required is 5 years only but surprisingly even after completion of 11 years of unblemished service and even after recommendation of the Departmental Promotion Committee held on 24.12.2020, case of the petitioners are not being considered whereas sufficient number of posts are lying vacant. Learned Sr. Counsel further argued that Rule 22 of the Jharkhand Administrative Service Rules, 2015 clearly stipulates that promotion will be given by the State Government on the basis of recommendations made by the Departmental Promotion Committee and the basis of consideration shall be Kalawdhi, seniority-cum-merit and reservation policy. In terms of Rule 22 of the 2015 Rules, the Departmental Promotion Committee held its meeting on 24.12.2020 and considered cases of the petitioners for promotion from the post of Basic Grade of Jharkhand Administrative Services Pay Matrix Level 9 to the post of Sub-Divisional Officer and equivalent post Pay Matrix Level 11 and upon being found fully eligible, petitioners have been declared fit for promotion. Learned counsel further argued that from perusal of Minutes of Meeting dated 24.12.2020, it would transpire that before recommendation for promotion, the Committee has duly considered Kalawdhi, seniority, roaster clearance, vigilance clearance, details of movable-immovable properties and the status of department/ criminal proceeding against the incumbent as per different orders/ notifications of the State Government. Learned Sr. Counsel argued that it is very surprising that in spite of recommendations, in the garb of letter no. 6752, dated 24.12.2020 purported to be blanket order of stay of any promotion, respondents are sitting tight over the matter and petitioners are unnecessarily being harassed though sufficient number of seats are lying vacant. The said decision of the State is not an order in terms of Articles 162 and 166 of the Constitution of India rather it is merely a departmental instruction of the respondents. In the garb of such departmental instruction, promotion of the employees of the entire State cannot be stopped by way of blanket stay and such

departmental instruction which is against the statutory rules and is fit to be quashed and set aside. Learned Sr. Counsel further argued that 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 right to be promoted cannot be restricted by executive instruction and the same would be hit by Article 16 of the Constitution of India.

8. Learned Sr. Counsel further argued that the State is acting in pick and choose manner. In the garb of blanket order of stay on any further promotion issued vide letter no. 6752, dated 24.12.2020, petitioners have been denied promotion even after recommendations of the Departmental Promotion Committee but to utter surprise, pursuant to Memo No. 163, dated 27.01.2021, twenty eight Child Development Project Officers were promoted to the post of District Social Welfare Officer or equivalent posts. Learned Senior Counsel further argued that again pursuant to Memo No. 1619, dated 12.03.2021, one Nagendra Paswan was promoted to the post of Additional Collector. The action of the respondents is discriminatory, arbitrary and in teeth of Articles 14 and 16 of the Constitution of India. State cannot be allowed to act in such arbitrary and discriminatory manner.
9. Learned Sr. Counsel further argued that though promotion is not a right but employees have the right to be considered to be promoted. Case of the petitioners are fit to be allowed in a situation when they have already been recommended for promotion by the meeting of the Departmental Promotion Committee held on 24.12.2020 and now there is mere formality of notifying the same. There is no fault of the petitioner and for last 11 years i.e. since the date of their joining, they are holding the same post.
10. Drawing attention towards counter affidavit filed by the respondents, learned Sr. Counsel argued that the reasons which have not been assigned in the impugned order/ letter, cannot be supplemented by way of affidavits filed before the Hon'ble Court.

Relying upon Judgment passed in the case of ***Mohinder Singh Gill and Another Vs. The Chief Election Commissioner*** reported in ***(1978) 1 SCC 405, Para-8***, learned Sr. Counsel argued that *the reasons cannot be supplemented to a decision by way of affidavits*. Learned Sr. Counsel further argued that the importance of assigning reason in a decision has been well explained in the case of ***Kranti Associates*** reported in ***(2010) 9 SCC 496 (Para-48 to 51)*** and as such, impugned order is a non-reasoned and non-competent decision and the same is not sustainable in the eyes of law.

11. Mr. M.A. Niyazi, learned counsel supporting contention of Mr. Ajit Kumar, learned Sr. Counsel vociferously argued that action of the State is unconstitutional, discriminatory and unreasonable and fit to be struck down. Action of the respondents have snatched constitutional rights of the petitioners to be considered for promotion. Being conscious of the facts that promotion is not the fundamental right but there is right of consideration and once the employees have been considered for promotion and their names have been recommended, it has to come to a logical end. The promotion orders have to be notified and cannot be crystalised in the garb of blanket order of stay. The Constitutional rights given to the employees have been infringed by the respondents, which warrants interference by this Court and as such the same is fit to be quashed and set aside.
12. Mr. M.A. Niyazi, learned counsel has further placed reliance upon the Judgment passed by the Hon'ble Supreme Court in the case of ***J. Jayalalithaa v. State of Karnataka*** reported in ***(2014) 2 SCC 401 (Para-24 to 27)*** wherein the Hon'ble Court, while referring other Judgments held that *the Government has to rise above the nexus of vested interest and nepotism and that the principles of Governance has to be tested on the touchstone of justice, equity and fair play*. Learned Sr. Counsel further placed reliance upon the Judgment passed in the case of ***M.S. Nally Bharat Engineering Vs. State of Bihar*** reported in ***(1990) 2 SCC 48 (Para-12 to 17 and 20)*** and submitted

that Hon'ble Apex Court held that *fairness is a fundamental principle of good administration and it is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant considerations.*

13. Learned counsel further argued that right of promotion is Fundamental Right if an incumbent is found fit for promotion by the Departmental Promotion Committee and fulfils all necessary and statutory criteria for promotion. If an incumbent is found fit for promotion, a vested right is created in his/ her favour and the same is protected under Articles 14 and 16 of the Constitution of India. Same and similar issue was dealt by the Hon'ble Supreme Court of India in the case of ***H.M. Singh Vs. Union of India*** reported in (2014) 3 SCC 670.
14. Countering the arguments of learned Advocate General, learned counsel argued that the State respondents cannot justify withholding of notifications in the name that they are contemplating to bring some enactment. When the impugned order cannot be held to be a conscious decision of the State Government disclosing any purpose or what has been indicated in the affidavits filed by the State, in light of Judgments of the Hon'ble Supreme Court passed in the case of ***Y.V. Rangaiah and others*** reported in (1983) 3 SCC 284, ***State of Rajasthan Vs. R. Dayal*** reported in (1997) 10 SCC 419, ***B.L. Gupta and another*** reported in (1998) 9 SCC 223, ***A. Manoharan and others*** reported in (2015) 3 SCC 177. Learned counsel emphatically argued that case of the petitioners shall be considered in view of the law and rules applicable as on the date of consideration of their cases before the Departmental Promotion Committee and in view of the fact that their names have already been recommended, the State cannot be permitted to withhold notification of promotion.
15. Lastly learned counsel further drew attention of this Court towards the promotion order granted to Fifty Three Sub-Divisional

Officers to the post of Additional Collector vide Notification No. 6137, dated 28.09.2021 after the harsh decision taken by this Court in the W.P.(S) No. 3795 of 2003, W.P.(S) No. 3792 of 2016 and W.P.(S) No. 4357 of 2020. Learned Sr. Counsel further argued that it is very surprising state of affairs where even after assurances placed before this Court by the learned Advocate General on various dates regarding withdrawal of impugned blanket order and bringing notification regarding promotion of petitioners, the same could not be brought on record and the petitioners have been denied from availing fruits of promotion, as they fulfil all the requisite criteria from the date of recommendation of Departmental Promotion Committee.

16. It has lastly been argued by learned counsel that the affidavit filed by the respondents is contemptuous in view of the orders and directions passed by this Court and harsh orders may be passed against the erring officers.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONERS IN W.P. (S) No. 1390 of 2021 and W.P. (S) No. 1422 of 2021

17. Mr. Rajendra Krishna and Mr. Saurabh Shekhar, learned Counsel representing petitioners argued that the impugned blanket order staying promotion to any person against any services under the State Government is an administrative order exceeding the jurisdiction beyond the parameters as defined under the Rules of executive business framed under Article 166(3) of the Constitution of India and the same is illegal, arbitrary and not in consonance with law. The Rule of Executive Business framed under Article 166(3) of the Constitution of India is mandatory and therefore, the same is to be followed in letter and spirit. The impugned order could have been made applicable in the Department of Personnel, Administrative Reforms and Rajbhasha in light of power and jurisdiction vested to the aforesaid Department under the Rules of Executive Business. The impugned order has not been passed in the name of Hon'ble Governor and as

such, under Rule 9 of the Executive Business, the Council of Minister shall not be equitably responsible for the advice tendered to the Hon'ble Governor. Learned counsel further argued that the impugned order dated 24.12.2020 is not sustainable in the eyes of law since the same is against the statutory provision for consideration of promotion of the petitioners as well as the aforesaid impugned administrative order is contrary to the Constitutional right since Article 16 of the Constitution of India also guarantees for consideration of promotion which now has been precluded by the impugned order. Petitioners have right for consideration of their cases for promotion under Article 16 of the Constitution of India as well as under the Police Manual. Learned counsel further argued that case of the petitioners have duly been considered by the Board of Director General of Police for their promotion to the post of Dy.S.P. and after promotional issue is deliberated at the different level of DIG etc., the final stage is the decision of the Board of Director General of Police and said Board has also taken a decision way back in the month of September, 2020 and recommended case of the petitioners and others for promotion but unfortunately till date promotion could not be notified and some of the petitioners have either retired or are likely to retire without getting fruits of promotion. Learned counsel further argued that once Departmental Promotion Committee has recommended case of the petitioners for promotion, the respondent authorities cannot withheld the same for longer period without having any valid reason. Only further requirement is obtaining approval of Jharkhand Public Service Commission. The Selection Board has already recommended name of the petitioners and others in the month of September, 2020 and as such, Jharkhand Public Service Commission should have approved name of petitioners by now and thereafter, the Home Department has to notify. Only before notification, the process of promotion has been put to stand still in the garb of impugned blanket order staying promotion, which is fit to be quashed and set aside and respondents

may be directed to move ahead granting promotion to the petitioners with effect from the date of recommendations.

18. Learned counsel further argued that though in the garb of impugned order promotion of the petitioners has been withheld but the other Departments like Department of Social Welfare has issued chain of promotion orders in January, 2021 vide Notification contained in Memo No. 163, dated 27.01.2021, which shows that impugned order has been given go-bye. Learned counsel further argued that for the sake of brevity, they adopts the arguments placed by learned Senior Counsel.
19. Mr. Saurabh Shekhar, learned counsel appearing for the petitioner draws attention of this Court towards the constitutional provisions as enshrined in Rule 354 (Emergency Powers) and further placed reliance in the Judgment passed by the Hon'ble Apex Court in the case of *H.M. Singh v. Union of India* reported in (2014) 3 SCC 670. Learned counsel further argued that the blanket order passed by the respondents staying any promotion is in teeth of the Judgment passed by the Hon'ble Supreme Court. The respondents cannot have two parameters. Despite blanket stay, they have given promotion to others. It is not the whims and fancy of the State to come up with such discriminatory decisions and the same is fit to be deprecated and necessary orders may be passed by this Court.
20. Mr. Saurabh Shekhar, learned counsel further argued that State has taken recourse to Articles 16(1) and 359 of the Constitution of India. Article 16(1) and 16(4) are enabling provisions and they are not contrary and as such action of the State is not praiseworthy and is rather unconstitutional. The impugned order is fit to be quashed and set aside. Respondents may be directed to come up with the order of promotion

**ARGUMENTS ADVANCED ON BEHALF OF THE
RESPONDENTS – STATE**

21. Mr. Rajiv Ranjan, learned Advocate General assisted by Mr. Gaurav Abhishek and Mr. Piyush Chitresh very fairly submitted that in view of Judgment of the Hon'ble Supreme Court, the State is likely to take a decision regarding promotion as also on the letter as contained in Memo No. 6752, dated 24.12.2020, issued by the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand. In the circumstances, learned Advocate General very fairly submitted that State Government is likely to withdraw the blanket order staying any promotion but for said purpose, enactment has to be made. Learned Advocate General submitted that awaiting said enactment, at present the recall order could not be issued. It is only after enactment, said order shall be withdrawn and for that further time was prayed, which has been turned down in view of the earlier orders passed by this Court.
22. . Learned Advocate General emphatically argued that in view of request made by the Assembly Committee, constituted by order of the Hon'ble Speaker, Jharkhand Assembly to examine irregularities and discrepancies in promotions granted in the State Services, the State Government, vide its order dated 24.12.2020, decided to defer further promotions in the services of the State Government. Learned Advocate General further argued that after the decision of the Hon'ble Supreme Court dated 26.09.2018, passed in S.L.P.(Civil) No. 30621 of 2011 and analogous matter, the State Government is required to undertake a comprehensive and holistic exercise of identifying people under the creamy layer in a particular class as well as to collect quantifiable data relatable to the concerned cadre and as such, a Three Members High Level Committee has been constituted vide Notification No. 2955, dated 05.07.2021 for

collecting quantifiable data on inadequate representation, efficiency of administration and creamy layer.

23. Learned Advocate General emphatically argued that recommendations of the Departmental Promotion Committee is not binding at all and till date the same has not been accepted and as such, petitioners cannot claim promotion merely on the basis of such recommendations.

FINDINGS OF THE COURT

24. From the arguments advanced by counsel for the parties and after perusing records of the case, this Court is of the considered opinion that the impugned order of blanket stay on promotion is out and out illegal, arbitrary, discriminatory, cryptic and mechanical and malafide on part of the State respondents. The counter affidavits filed by the State is self contradictory which does not justify the impugned decision. The grounds taken in the counter affidavits do not disclose any valid ground to justify blanket order of stay on promotion. The respondents have further sought time to bring an enactment with respect to the promotions, but any new enactment would not affect case of the petitioners, particularly when the Departmental Promotion Committee has already found them fit for promotion and has cleared their name and now it is the Government to merely notify the promotion under the provisions of the present applicable law. The promotion of the petitioners ought to have been notified by the respondents after recommendations of the Departmental Promotion Committee after putting necessary rider, as has been done in the matters of the other persons of Administrative Services, who have been granted promotion vide Notification No. 6137, dated 28.09.2021. But the same has not been done in the case of the petitioners herein and some of the petitioners have either retired or are likely to retire in the case of Inspectors.
25. The arguments advanced by learned Sr. Counsel for the petitioners that right of promotion is Fundamental Right if an

incumbent is found fit for promotion by the Departmental Promotion Committee and fulfils all necessary and statutory criteria for promotion, has been dealt by the Hon'ble Supreme Court of India in the case of ***H.M. Singh Vs. Union of India*** reported in (2014) 3 SCC 670. Para-28 of the said Judgment reads as under:

“28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the seniormost serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.”

26. In the case of *Virendra Kumar v. Union of India* reported in (1981) 3 SCC 30, it has clearly been held in para-2 as under:

"2. Our attention has been invited by learned counsel for both the sides to the relevant rules which govern promotion to the post of Chargeman Grade II. It appears that a large number of persons have been promoted to those posts though they have completed only two years of service. The government now appears to insist that insofar as the appellants are concerned they cannot be considered for promotion unless they complete three years of service. We see no justification for any such differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman Grade II after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service. We are not suggesting that the appellants are entitled to be promoted to the aforesaid posts even if they are found unfit to be promoted."

27. The contention of learned Advocate General that State is coming with an enactment and as such it would not be proper to recall blanket order staying any promotion, is totally misconceived and is not accepted by this Court in view of the fact that any future enactment cannot take away right of employees whose cases have already been considered and recommended for promotion. Any retrospective operation cannot crystallise right to be considered for promotion. Similar view fell for consideration before the Hon'ble Apex Court in the case of *Chairman Railway Board and others v. C.R. Rangadhamaiah and others* reported in (1997) 6 SCC 623, it has been held at para-20 and 24 **as under:**

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

24. In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon [AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 LLJ 576] , B.S. Vadera [AIR 1969 SC 118 : (1968) 3 SCR 575 : (1970) 1 LLJ 499] and Raman Lal Keshav Lal Soni [(1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287] .

Any amendment can have its prospective effects and not retrospective effect. The said issue fell for consideration before the Hon’ble Apex Court in the case of **A. Manoharan v. Union of India** reported in **(2008) 3 SCC 641** has held in **para-22 to 25 as under:**

“22. The legal principle that an administrative act must yield to a statute is no longer res integra. Once a regulation has been framed, in terms of the provisions of the General Clauses Act, the same must be amended in accordance with the procedures laid down under the principal enactment. Even assuming that the Central Government had the jurisdiction to direct the authority to amend the Regulations, it was required to be carried out in accordance with law, and, thus all requisite procedures laid down therefor were required to be fulfilled. (See Sant Ram Sharma v. State of Rajasthan [AIR 1967 SC 1910] , DDA v. Joginder S. Monga [(2004) 2 SCC 297] , Vasu Dev Singh v. Union of India [(2006) 12 SCC 753 : (2006) 11 Scale 108] , Kerala Samsthana Chethu Thozhilali Union v. State of Kerala [(2006) 4 SCC 327 : 2006 SCC (L&S) 796] and State of Kerala v. Unni [(2007) 2 SCC 365] .)

23. *Recently in Union of India v. Central Electrical & Mechanical Engg. Service (CE&MES) Group 'A' (Direct Recruits) Assn., CPWD [(2008) 1 SCC 354 : (2008) 1 SCC (L&S) 173 : (2007) 13 Scale 23] this Court held: (SCC p. 358, para 10)*

“10. It is now a well-settled principle of law that an executive order must be passed in conformity with the rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing Rules. (See Sant Ram Sharma v. State of Rajasthan [AIR 1967 SC 1910] and DDA v. Joginder S. Monga [(2004) 2 SCC 297] .) Such office orders must be subservient to the statutory rules.”

24. *The power of the Central Government to issue directions as contained in Section 111 of the 1963 Act cannot be stretched to amend the Regulations. Power must be exercised by the Central Government only in regard to the administration of the Trust. Such a power to issue direction must be construed strictly. (See Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : AIR 1979 SC 1628] , Harjit Singh v. State of Punjab [(2007) 9 SCC 582 : (2007) 2 SCC (L&S) 997] , Ashoka Smokeless Coal India (P) Ltd. v. Union of India [(2007) 2 SCC 640] and Poonam Verma v. DDA [(2007) 13 SCC 154 : (2007) 14 Scale 485].)*

25. *Furthermore, the Regulations have been amended only with effect from 11-8-2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing prior thereto. (State of Rajasthan v. R. Dayal [(1997) 10 SCC 419 : 1997 SCC (L&S) 1631] , SCC para 8.)”*

28. From the records and arguments advanced before this Court, it appears that cases of similarly situated persons in other Departmental have already been considered and they have been granted promotion and in their cases, the blanket order staying any promotions did not come in the way. This amounts to a total discrimination, nepotism and favouritism which has no scope in a welfare State. The Hon'ble Apex Court in the case of **Virendra**

Kumar v. Union of India reported in (1981) 3 SCC 30 has been pleased to hold that *discrimination when others promoted after completion of two years' service, held that appellants being similarly situated, cannot be denied of that benefits if they are otherwise fit for promotion.* Para-2 of the said Judgment reads as under:

“2. Our attention has been invited by learned counsel for both the sides to the relevant rules which govern promotion to the post of Chargeman Grade II. It appears that a large number of persons have been promoted to those posts though they have completed only two years of service. The government now appears to insist that insofar as the appellants are concerned they cannot be considered for promotion unless they complete three years of service. We see no justification for any such differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman Grade II after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service. We are not suggesting that the appellants are entitled to be promoted to the aforesaid posts even if they are found unfit to be promoted.

29. The action of the respondents passing blanket order of stay in any promotion without assigning any reason and depriving the petitioners from the fruits of promotion even after fulfilling all requirements and even after recommendations of the Department Promotion Committee, is not acceptable to this Court. The arguments advanced by Mr. M.A. Niyazi, learned counsel appearing for the petitioners that authority is under legal obligation to record reasons in support of its decision, finds support from the decision rendered in the case of ***M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar*** reported in (1990) 2 SCC 48. Para-7 of the said decision reads as under:

“7. Section 33-B provides power to the appropriate government to withdraw any proceedings pending before a Labour Court or Tribunal and transfer it for disposal to another Labour Court or Tribunal. It could be exercised suo moto or on representations of the parties. The

expression ‘may’ in sub-section (1) of Section 33-B only makes it discretionary insofar as the appropriate government taking a decision as to whether the powers conferred thereunder has to be exercised or not. But when once a decision is taken to transfer a pending case then the requirement of giving reasons becomes mandatory. The authority is under legal obligation to record reasons in support of its decision. Reasons would be life of the decision. Failure to give reasons or giving reasons not germane would be fatal to the decision.”

The impugned blanket order is not couched with any reasoning. It is only the counter affidavit which reveals action of the State, which is also not tenable in the eyes of law in view of celebrated Judgment of the Hon’ble Apex Court rendered in the case of ***Commissioner of Police Vs. Gordhandas Bhanji*** reported in ***AIR 1952 SC 16*** wherein it has categorically been held that the ***reasons cannot be supplemented by way of counter affidavit, the same has to be reflected in the order itself.***

It is requirement of law that in support of its decision, the authorities are required to assign reasons. In the instant case, no reason has been assigned while passing the impugned order restraining any promotion and withholding the recommendations of the Departmental Promotion Committee.

In the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan*** reported in **(2010) 9 SCC 496**, the Hon’ble Apex Court has held in **paras-12, 14 and 15 as under**

“12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150].

14. The expression “speaking order” was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the

writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the “inscrutable face of a sphinx”.

30. In the case of ***J. Jayalalithaa v. State of Karnataka*** reported in (2014) 2 SCC 401, it has been held in paragraph-34 as under:

“34. There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim expressio unius est exclusio alterius, meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.”

31. As regards duties performed by the State, the issue fell for consideration in the case of ***State of Jharkhand and others Vs. Harihar Yadav*** reported in (2014) 2 SCC 114. Paras-15 and 16 of the said Judgment reads as under:

“15. We have referred to the aforesaid authorities to highlight the concept of social justice, dignity of living and the role of the judiciary. The court is bound to respond within the constitutional framework. In this context, the Preamble of the Constitution becomes extremely significant. The Preamble uses the words “social justice” while speaking of “Justice—social, economic and political”. Thus, social facet and the economic aspect are the ideal goal of the welfare State. The Constitution casts a responsibility on the State to sustain social and economic security, for the Preamble is the floodlight illuminating the path to be persuaded by the State to set up a sovereign, socialist, secular, democratic republic. (See D.S.

Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] .)

16. *It is the duty of the Court to see that the philosophy which is ingrained in our Constitution is not atrophied by the State paving a path of deviancy. The employer, within the meaning of Article 12 of the Constitution has a sacrosanct duty to act in terms of the sacred objectives of social and economic justice. In this context, we may fruitfully reproduce a passage from Balbir Kaur v. SAIL [(2000) 6 SCC 493 : 2000 SCC (L&S) 767] : (SCC p. 504, para 19)*

“19. ... The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

32. The arguments advanced by learned Advocate General that the matter regarding reservation in promotion is pending before the Hon’ble Apex Court and hence awaiting the said decision, the impugned order has been passed, also does not carries weight and is not well founded. The further arguments advanced by learned Advocate General that recommendations of the Departmental Promotion Committee is not binding at all is also totally misconceived and the same is rejected. When the Departmental Promotion Committee has already considered and recommended case of the petitioners for promotion, what stopped the respondents to consider the same, has not been explained.

33. From the arguments advanced by counsel for the parties and documents placed on record, it is crystal clear that in several other departments matter regarding promotions were already considered and granted even after blanket order staying any promotions whereas in case of the petitioners, the ground of blanket order of stay has been taken for granting promotion even after recommendations of the

Departmental Promotion Committee. The discriminatory and callous approach of the respondents – State is not praiseworthy rather it is not accepted in a welfare State. Pick and choose methods adopted by the State is hereby deprecated. On several occasions these cases were adjourned on the ground that the State is going to withdraw blanket order of stay but even after granting several adjournment, no such affidavit was filed which itself is clear and speaks volume about action of the State.

34. As a sequitur of the aforesaid rules, guidelines and judicial pronouncements, I find impugned order issued vide Memo No. 6752, dated 24.12.2020, by the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, is not tenable in the eyes of law and the same is hereby quashed and set aside. As a result of quashment of the blanket order of stay, I, hereby, direct the concerned head of the departments to grant promotion to the petitioners whose cases were considered for promotion by the Departmental Promotion Committee, within a period of four weeks from today. State is further directed to come out with Notification regarding promotion to all such petitioners who have knocked door of this Court with all consequential benefits irrespective of the fact that they have retired. Their cases will be considered from retrospective effect i.e. the date on which they have been found fit for promotion. Since blanket order of stay has been quashed, it is further directed to all head of the departments to consider case of employees for promotion who are otherwise found fit for promotion and if there is no any other legal impediment.
35. With the aforesaid observations and directions, these writ petitions stand allowed.
36. As a sequel thereof, all pending Interlocutory Applications also stand disposed of.

(Dr. S.N. Pathak, J.)