

CASE NO.:
Appeal (civil) 6467 of 2000

PETITIONER:
D. Boopalan & Ors

RESPONDENT:
Madras Metropolitan W.S.S. Board & Ors

DATE OF JUDGMENT: 02/11/2007

BENCH:
B.N.AGRAWAL & ALTAMAS KABIR & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

1. The Madras Metropolitan Water Supply & Sewerage Board (hereinafter referred to as 'the Board') was constituted by the Madras Metropolitan Water Supply & Sewerage Act, 1978 (hereinafter referred to as the '1978 Act') for exclusively attending to the growing needs of and for planned development and appropriate regulation of water supply and sewerage services in the Madras Metropolitan Area with particular reference to the protection of Public Health and for all matters connected therewith or incidental thereto.

2. Section 81 of the said Act empowered the Board to make Regulations, which were not inconsistent with the provisions of the Act for carrying out the objects for which it had been enacted. Sub-Section (2) of Section 81 sets out in detail the matters in respect of which such Regulations could be made. Clause (c) of Section 2 empowers the Board to make Regulations for the method of recruitment, the qualifications, the pay, the duties and other terms and conditions of service of officers and employees, and the constitution and management of Provident Fund and other Superannuation Funds.

3. In pursuance of the said powers the Board framed the Employees' Service Regulations 1978, and Leave Regulations, 1978, which were amended from time to time.

4. In these appeals, which arise from a common judgment of the Madras High Court in respect of two Writ Appeals, we will be required to consider the amendment to the Leave Regulations by Board Resolution No.86/93 dated 31st March 1993 and Resolution dated 27th February 1995 given effect to by proceedings No. HP/15/93 Personnel and Administration Department dated 20th April, 1993 and proceedings No. EP/05/95 Personnel and Administration Department dated 10th March, 1995.

5. Prior to the proceedings of 29th April, 1993, the Board by its Resolution No. 86/93 dated 31st March, 1993, approved the following amendments to the Service (Leave) Regulations :-

i. The existing Regulation 9 on Study Leave will be retained and shall be applicable to Employees of the Board other than Engineers.

Insert the words \023(I) for Board Personnel other than Engineers\024 below the words \021Study Leave.\024

ii. Insert the following as Clause II below the existing Regulation 9 numbered class I as above.

1. For Board\022s Engineers :-

1. Eligibility:-

- (i) A graduate degree in Engineering (in any discipline).
- (ii) Should have completed minimum 5 years of service.
- (iii) Should have at least 15 years of remaining service.

2. Facilities :-

- (i) Study Leave at half pay for a maximum of 30 months during the whole career for higher studies leading to Post Graduate degree from a University recognized by UGC.
- (ii) Seniority will be protected. However, no Earned Leave will accrue during the study leave period.

(C) Recognition of Post Graduate qualification acquired while in service.

Once a candidate acquires a First Class Post Graduate Engineering qualification, he will get two years extra weightage in terms of seniority which will be counted for elevation. If he acquires a second class Post Graduate Engineering qualification, he will get one year\022s extra weightage for this purpose. If he does not qualify (after availing study leave) the entire salary drawn during the study leave period will be recovered.

(Emphasis added)

b. Miscellaneous:-

An eligible candidate whose application has been sent with prior permission of the Board and has been accepted by the University should execute a Bond, before he joins the University to serve the Board for a minimum period of five years on his rejoining service after study leave. If he wants to quit within this period, he should refund the expenses incurred by the permitted to draw stipend or allowances granted by the institution in addition to the leave salary.

The amendments will be effective from 1.4.1993 and will not be made applicable to the past cases.

(BY ORDER)

Sd/- M.S. Srinivasan,

Mg. Director.\024

6. The aforesaid amendments were subsequently altered by the Board on 10th March, 1995 whereby some of the benefits which had been extended to the employees of the Board having a graduate Degree in Engineering for proceeding on study leave for acquiring a post graduate engineering qualification, particularly the one in clause (11)(c), were rendered nugatory.

7. The amendment of 1995 gave rise to disputes which resulted in the filing of writ petition No. 11053 of 1996 by the appellants in these appeals in the High Court of Judicature at Madras.

8. In order to appreciate the cause of dispute the provisions of Regulation 9 of the MMWSS Board Employees (Leave) Regulations, 1978, as amended by the Board in its Resolution dated 27th February, 1995, is reproduced hereinbelow:-

Existing Provision
(After amendment earlier)

Permanent provision

(i) The existing Regulation 9 on Study leave will be retained and shall be applicable to employees of the Board other than Engineers. Insert words \023(I) for Board Personnel \026 Other than Engineers \023below the words \023Study Leave\024.

(ii) Insert the following as Clause II below the existing Regulation 9 numbered Clause 1 as above.

(II) FOR BOARD\022S ENGINEERS:

(a) Eligibility.

(i) A graduate Degree in Engineering (in any discipline).

(ii) Should have completed minimum 5 years of service.

(iii) Should have at least 15 years of remaining service.

(b) Facilities:

i) Study leave at half pay for maximum of 30 months during the whole career for higher studies leading to a Post Graduate degree from a University recognised by UGC.

ii) Seniority will be protected. However, no Earned Leave will accrue during the study leave period.

(c) Recognition of Post Graduate qualification acquired while in Service. Once a candidate acquired a Ist Class Post Graduate to Engineering qualification he will get two years extra weightage in terms of Seniority which will be counted for elevation. If he acquire a second class post graduate Engineering qualification, he will get one year\022s extra weightage for this purpose if he does not qualify after availing study leave) the entire salary drawn during the study leave period will be recovered.

d) Miscellaneous:-

An eligible candidate whose application had been sent with prior permission of the Board and has been accepted by the University should execute a Board, before he joins the University to serve the Board for a minimum period of five years on his rejoining service after study leave. If he wants to quite within this period, he should refund the expenses incurred by Board on him during his study period. The candidates will be permitted to draw stipend or allowance granted by the institution in addition to the leave salary.

(9) STUDY LEAVE

Study leave on half pay may be granted at the discretion of the Board to staff in pay scales to minimum of which is Rs.2,000/- or more who desire to undergo a special course of higher studies or specialised training in a professional and technical subject having a direct and close connection with their duty,

Study leave is not admissible for pursuit of academic courses unrelated to the employees work. The maximum study leave admissible will be 24 months during the entire

service of an employees and it may be granted up to 18 months at any one time. Before proceeding on study leave, an employees must furnish and undertaking to the Board for not less than five years after his return from leave.

If the Board considers that the course of study or training for attending for which study leave is granted, is of particular relevance to an employee from his efficient functioning it may permit such employees to draw full pay for the entire period of his leave.

The amendment will also apply to those who are already undergoing the advance study.

(Emphasis supplied)

(BY ORDER)
R. Ramalingam
Secretary-cum-General Manager\024

9. The case as made out in the writ petition is that having made certain promises by the amendment effected in 1993, the Board was not competent to resile from such promises as far as the writ petitioners and other candidates who had acted on the basis of such promises were concerned. The relevant portion of the amendment made to Regulation 9 in 1993 is with regard to the inducement that a candidate who took advantage of the amended provisions and acquired First Class in Post Graduate Engineering Qualification would be given two years\022 extra weightage in terms of seniority, which would be counted for the purpose of promotion. If he acquired a second Class in Post Graduate Engineering qualification he would get one year\022s extra weightage for the same purpose. The said benefit was sought to be withdrawn by the subsequent amendment of 1995 and it was specifically stipulated that the amendment would also apply to those who were already undergoing the advance study, giving rise to the disputes, which resulted in the filing of the writ petition.

10. The writ petition was allowed by the learned Single Judge of the Madras High Court by his Judgment and Order dated 4th January, 1999 and the impugned order of 10th March, 1995, was quashed. The first respondent Board was directed to act in accordance with the proceedings dated 29th April, 1993, by giving the benefit of seniority and other benefits to the writ petitioners within a period of two months from the date of receipt of the copy of the order.

11. Two appeals were filed from the Judgment of the

learned Single Judge. Writ Appeal No. 104 of 1999 was filed by the additional respondent Nos. 2 and 3 and Writ Appeal No. 204 of 1999 was filed by a Post-Graduate Engineer who was affected by the decision of the learned Single Judge.

12. The Division Bench of the Madras High Court reversed the Judgment of the Learned Single Judge by its Judgment dated 19th January, 2000, against which two appeals were preferred by the appellants herein who were the writ petitioners before the learned Single Judge.

13. Appearing for the appellants, Mr.T.L.V. Iyer, senior advocate, submitted that since the appellants had acted on the basis of the promise held out by the amended Regulations and had applied for leave and had also obtained admission in various colleges to acquire a post graduate engineering qualification, the respondents were estopped from denying them the incentives which had been offered earlier by applying the amended Regulations of 1995 to them as well. Mr. Iyer also urged that the appellants, or at least some of them, may not have opted for going on leave to obtain higher qualifications if the benefit of additional weightage in terms of seniority had not been offered as an incentive. Since the appellants had already acted on the basis of the promise held out by the amended Leave Regulations of 1993, the subsequently amended Leave Regulations of 1995 could not be made applicable in their case as has been done by incorporating the following rider to the amendment of 1995, namely, "the amendment will also apply to those who are already undergoing the advance study".

14. Coupled with his aforesaid submission regarding promissory estoppel, Mr. Iyer urged that Rules generally operate prospectively and not retrospectively, as has been sought to be done in the instant case.

15. In support of his aforesaid contention Mr. Iyer, referred to the decision of this Court in T.R. Kapoor & ors. vs. State of Haryana 1986 (Suppl.) SCC 584, wherein this Court held that since right to be considered for promotion is a condition of service, benefits acquired under Rules made under the proviso to Article 309 regarding qualifications for promotion could not be taken away retrospectively by an amendment to the disadvantage of a Government servant. It was also emphasised that although under the proviso to Article 309 the Rules could be amended retrospectively, benefits already acquired under the existing Rules could not be taken away. Mr. Iyer also referred to the decision of this Court in P.D. Aggarwal and others vs. State of U.P. and others (1987) 3 SCC 622, where similar views were expressed and it was held that a vested right could not be taken away by retrospective amendment of statutory Rules arbitrarily and unreasonably. In addition it was observed that subordinate legislation in the nature of legislative instructions could not supersede or amend statutory Rules of service.

16. On his submission relating to the doctrine of promissory estoppel Mr. Iyer relied on the decision of this Court in Surya Narain Yadav and others vs. Bihar State Electricity Board and others, AIR 1985 SC 941, wherein while considering the said doctrine, the

consistent view of this Court from Union of India vs. M/s Indo-Afghan Agencies Ltd. (1968) 2 SCR 366 to the M.P. Sugar Mill Co. Ltd. v. State of Uttar Pradesh (1979) 2 SCC 409, was reiterated. Mr. Iyer emphasised the observations made in the M.P. Sugar Mill case (supra) to the effect that the doctrine of promissory estoppel is not really based on the principle of estoppel but it is a doctrine evolved by equity in order to prevent injustice and it can be the basis of a cause of action.

17. In this regard reference was also made to the decision of this Court in Sharma Transport vs. Government of A.P. (2002) 2 SCC 188, wherein it was reiterated that the doctrine of promissory estoppel had been evolved by the Courts on the principles of equity to avoid injustice and that it was neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law.

18. The last decision on this issue relied upon by Mr. Iyer was that of this Court in State of Punjab vs. Nestle India Ltd. and another (2004) 6 SCC 465, which has also dealt with the doctrine of promissory estoppel in extenso and the views expressed earlier, and in particular in the M.P. Sugar Mill case (supra) and the Century Spinning & Mfg. Co. Ltd. vs. Ulhasnagar Municipal Council (1970) 1 SCC 582, were re-emphasised.

19. Mr. Iyer submitted that whatever the circumstances which prompted the authorities to bring about the amendment of 1995 might have been, the same could only be given prospective effect and could not be made applicable with retrospective effect so as to prejudice the appellants and deprive them of the benefit which had accrued to them under the 1993 amendment.

20. Appearing for the respondent-Board, Mr. Krishnamurthy strongly opposed the submissions made on behalf of the appellants. He contended that there was no occasion to apply the doctrine of promissory estoppel to the facts of the instant case, since despite the promise held out in the amended Regulations of 1993, no actual benefit had accrued to the appellants who were yet to acquire the post-graduation degree which would entitle them to the benefits promised in the amended Regulation of 1993. According to Mr. Krishnamurthy, the benefit of accelerated promotion was to accrue only upon acquisition of the post-graduate qualification and the amendments effected by the 1993 Regulation were rendered null and void before such qualification could be acquired by the appellants. Mr. Krishnamurthy submitted that if any of the candidates had acquired the post-graduate qualification on the basis of the amended Regulations of 1993, prior to the amendment effected in 1995, such candidate would stand outside the operation of the amended Regulations of 1995.

21. Mr. Krishnamurthy contended that soon after the Regulations were amended in 1993 various objections were raised from officers within the cadre who had already acquired the post-graduate degree either at the time of entry into service or soon thereafter and who were senior to the appellants in service. It was their stand that since the amended Regulations of 1993 had no application to them the candidates who took advantage of

the promise of accelerated seniority would become senior to them despite the fact that they had acquired the post-graduate qualification long before those who acquired such qualification subsequently on the basis of the amended Regulations of 1993. It was urged that finding such objections to be reasonable and of considerable import, the respondents realised that the amendment effected in 1993 would prove to be inequitable and accordingly a decision was taken to restore the position prior to the 1993 amendment. Mr. Krishnamurthy submitted that giving effect to the amended Regulations of 1993 would be highly inequitable and would cause injustice to many employees for no fault of theirs. Mr. Krishnamurthy submitted that a similar problem as that in the instant case had arisen in the case of Bishun Narain Mishra vs. State of Uttar Pradesh and others (1965) 1 SCR 693, which was decided by a Constitution Bench. In the said case, this Court was dealing with a situation where owing to the upward revision of the age of retirement some Government servants continued to enjoy the benefit of the higher age limit of retirement depriving others of such opportunities as they had retired earlier. Considering the questions formulated for a decision in the said case this Court had to consider whether the change in the rule of retirement resulted in inequality between public servants in the matter of retirement, although it was ultimately held that the notification on which reliance had been placed to prove discrimination was not really discriminatory, as it had treated all public servants alike and fixed 31st December, 1961 as the date of retirement for those who had completed 55 years but not 58 years up to 31st December, 1961.

22 Mr. Krishnamurthy lastly contended that the 1978 Regulations were comprehensive in nature and separate provisions had been included therein with regard to promotion, seniority and leave. He pointed out that the General Service Regulations of 1978, inter alia, provided for recruitment, postings, seniority and promotion. Part IV of the said Regulations provided for seniority and promotion. It was urged that the said Regulations did not provide for leave for which separate regulations, namely, Leave Regulations were framed in 1978. In fact, in the instant appeals it is Rule 9 of the said Leave Regulations which is under consideration.

23. Mr. Krishnamurthy submitted that Rule 9 of the Leave Regulations make provision for \023study leave\024 only and had been mistakenly amended to alter the seniority and promotion rules for which provision had been made under the General Regulations. It was urged that the said amendment of the seniority and promotion rules, which adversely affected the seniority and promotional chances of others in the same cadre, that had given rise to serious objections and had caused a rethink on account of the apparent inequity and the subsequent amendment of the Leave Regulations in 1995.

24. Also referring to Rule 3 of the Leave Regulations, Mr. Krishnamurthy pointed that the said rule specifically dealt with \023Earned Leave\024, but Rules 3, 21 and 22 had not been amended though changes therein had been effected by amending Rule 9 that touched upon the said rules which was subsequently realised by the Board prompting the amendment of 1995.

25. Mr. Krishnamurthy urged that no cogent ground had been made out for interference by this Court with the order of the Division Bench of the High Court impugned in these appeals.

26. While adopting Mr. Krishnamurthy's submissions, Mr. Guru Krishna Kumar, learned advocate appearing for some of the respondents, added a new dimension to Mr. Krishnamurthy's submissions by urging that it had been well settled that a mere chance of promotion does not become a service condition and is neither a vested right nor an accrued right which could be enforced under the doctrine of promissory estoppel. He reiterated Mr. Krishnamurthy's contention that the amendments to the 1993 Regulations were effected at a point of time when the appellants could only hope to be promoted on the basis of the Regulations of 1993 but that no right had been vested in them so as to attract the law as laid down in this regard in the various decisions cited on behalf of the appellants. It was contended that except for the portion relating to elevated seniority, all the other portions of the Regulations of 1993, as amended, had been retained in the 1995 amendment. He also reiterated that such amendment had become necessary to prevent injustice between persons of the same cadre on account of the inequitable nature of accelerated promotion under the 1993 Regulations as amended.

27. Mr. Guru Krishna Kumar pointed out that in order to prevent injustice to those employees who had acted in terms of the promise contained in the 1993 Regulations as amended, the amendment of 1995 provided for full benefit of salary and allowances to such candidates even after they acquired the higher qualifications in terms of the 1993 Regulations. It was further urged that the Board took sufficient pains to balance the equities so that the persons in the same cadre were not treated as unequals.

28. Also relying on the decision of this Court in T.R. Kapoor's case (supra) Mr. Guru Krishna Kumar submitted that while considering the question of the Government's power to amend service rules retrospectively under the proviso to Article 309 it was also held that a vested right which had been conferred by the rules could not be taken away by retrospective amendment, but while any rule which affects the right of a person to be considered for promotion is a condition of service, mere chance of promotion may not be.

29. Mr. Guru Krishna Kumar then referred to the decision of this Court in State Bank's Staff Union (Madras Circle) vs. Union of India & Ors., (2005) 7 SCC 584, in support of his contention that even if in certain exigencies amendments had to be effected in the statutory enactments and rules with retrospective operation which affected the rights of some of the employees, the same could not be said to be violative either of Article 14 or Article 16 of the Constitution and was within the legislative competence of the legislature and the rule-making authorities.

30. Reliance was also placed on Bannari Amman Sugars Ltd. vs. Commercial Tax Officer & Ors. (2005) 1 SCC 625,

for the proposition that in dealing with the applicability of the doctrine of promissory estoppel relating to withdrawal of benefits, the Court has to consider all aspects including the result sought to be achieved and the public good at large keeping in mind the fundamental principles of equity. Once public interest was accepted as the superior equity, individual equity had to give way to such public equity.

31. Mr. Guru Krishna Kumar lastly referred to the decision of this Court in *Zile Singh vs. State of Haryana & Ors.* (2004) 8 SCC 1, wherein it had been observed that the general rule of retrospective operation of statutes was that every statute is prospective unless there is an express or implied intention to make it have retrospective operation. Mr. Guru Krishna Kumar urged that in the instant case such an intention had been expressly stated in the amended Regulations of 1995 itself.

32. Mr. Naveen R. Nath, learned advocate, who appeared for some of the other respondents, while adopting the submissions made by Mr. Krishnamurthy and Mr. Guru Krishna Kumar, submitted that since no right had vested in the appellants during the period of study for higher qualifications, their claims could not be based on the doctrine of promissory estoppel but could at best attract the doctrine of legitimate expectation which could be based only on validly existing rules and regulations and an existing right.

33. On the facts as disclosed and the submissions made on behalf of the respective parties the question which emerges for decision in these appeals is whether having held out certain benefits relating to grant of accelerated seniority to the appellants on their acquiring a post graduate qualification for which study leave was also granted subject to certain conditions, the respondents could withdraw the said benefits by amending the relevant leave regulations and applying the amended regulations to those who had already acted on the basis of the benefits offered to them.

34. As will be evident from what has been set out hereinbefore, one of the main submissions advanced on behalf of the respondents is that the amended resolutions had not been given retrospective effect but had been made applicable to those who were yet to acquire the higher qualification which would have entitled them to the benefits under the amended Leave Regulations of 1993. It has been contended that since no right had accrued in favour of the appellants and that they only had a mere chance of being given accelerated seniority, at best they could have a legitimate expectation of being given such accelerated seniority, but, in no event, would the doctrine of promissory estoppel apply to them.

35. The submission that the amended Regulations of 1995 have not been given retrospective effect but had been made applicable to those who were yet to acquire higher qualifications, though attractive, cannot be accepted, having regard to the fact that the appellants who had acted on the basis of the incentive held out by the amended 1993 Leave Regulations, would still be affected

adversely in view of the same. The question is when once the incentive had been extended could the same have been withdrawn in the light of the objections raised by other officers of the same cadre who had already acquired the higher qualification but would be at a disadvantage on account of the said incentive which would not apply in their case.

36. While the appellants have no doubt acquired a right of accelerated seniority, in our view, such right cannot be enforced against such persons who were senior to them in the cadre and had already acquired the higher qualification. Such officers or some of them may be rendered junior to the appellants once the benefit under the amended 1993 Leave Regulations was extended to the said juniors. The Respondent authorities possibly did not think of such a situation while amending the Leave Regulations in 1993. The situation that has now been reached on account of such amendment in the Leave Regulations of 1993 has created a wholly inequitable situation so far as the other officers in the cadre who were senior to the appellants and had also acquired the higher qualification earlier than the appellants are concerned. Since we cannot discard the claims of either of the affected parties, we will have to balance the equities between the two so that the amended Leave Regulations of 1993 and 1995 can be construed harmoniously so far as the two groups are concerned.

37. Having regard to the above, it is not really necessary for us to go into the question as to whether the doctrine of promissory estoppel or legitimate expectation would apply to the facts in issue in this case. We are not also required to decide the issue raised by Mr. Krishnamurthy as to whether the service conditions relating to seniority and promotion could have been altered by way of amendment of the leave rules. Having realized the above position, Mr. Iyer appearing for the appellants had, in fact, in his usual fairness, also conceded that a via-media may be arrived at whereby the appellants were not denied the benefits promised to them and at the same time the officers in the cadre who were senior to them and had already acquired the higher qualification, were not prejudiced thereby.

38. As was observed in the M.P. Sugar Mill case (supra) the doctrine of promissory estoppel is not really based on the principle of estoppel but it is a doctrine evolved by equity in order to prevent injustice. The aforesaid view has been subsequently reiterated in various other decisions of this Court such as Sharma Transport (supra). In our view, it would be in the fitness of things to follow the aforesaid principle as laid down by this Court in the facts and circumstances of the instant case.

39. In our view, the interest of justice will be amply served if, as submitted by Mr. Iyer, the balance in equity is maintained so as to not to affect both the aforesaid groups of officers in the same cadre. We, therefore, dispose of these appeals with the following directions :

(a) The respondent Board and its authorities

shall continue to apply the amended Leave Regulations of 1993 to the appellants and once the exercise under the said Regulations is completed the subsequently amended provisions would thereafter apply to the appellants.

(b) If the appellants, or any of them, obtain the benefit of accelerated seniority by acquiring the higher qualification, they will be placed immediately below the last person who is senior to them and have already acquired the higher qualification before the appellants and stand to be adversely affected by such accelerated seniority.

(c) Since by this order the provisions of the amended Regulations of 1993 are to apply to the appellants, they shall not be entitled to the benefit of full pay during the period of 'study leave' as provided for in the amended Regulations of 1995 and they will be entitled to only half pay as provided for in the amended Leave Regulations of 1993.

(d) These directions will not apply to other officers in the cadre to whom the amended Leave Rules of 1993 had application and whose individual cases have already been dealt with by the Board and its authorities and they will continue to be governed by such orders as may have been passed in their individual cases.

40. Having regard to the facts and circumstances of the case, the parties will bear their own costs.