



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.5811-5814/2021
(ARISING OUT OF SLP(C) NOS.26435-26438/2019)

MEDINI. C & ORS. ETC. ETC.APPELLANT(S)

VS.

BHARAT SANCHAR NIGAM LIMITED
& ORS. ETC. ETC.RESPONDENT(S)

WITH

CIVIL APPEAL NO.5815-5816/2021
(ARISING OUT OF SLP(C) NO.14959-60/2021
@ DIARY NO.41354/2019)

B.H. SREELAAPPELLANT(S)

VS.

BHARAT SANCHAR NIGAM LIMITED & ORS. ...RESPONDENT(S)

J U D G M E N T

NAGARATHNA J.

Delay in filing the Special Leave Petition Diary
No.41354/2019 is condoned.

2. Leave granted.

3. These appeals by special leave have been filed by
the appellants against the judgment and order dated
07.08.2018 passed by the High Court of Kerala in R.P.
No.155/2018 filed in W.P.(C) No.29029/2010; R.P.
No.156/2018 in O.P.(CAT) No.20/2010; and order dated
10.10.2019 in W.P.(C) No.29029/2010 and O.P.(CAT)

No.20/2020; and order dated 07.08.2018 in R.P. No.145/2018 in O.P.(CAT) No.21 of 2010. By the said order dated 07.08.2018, the High Court allowed the review petitions, restored the original petitions and the writ petition on the file of the High Court and directed the parties to maintain status quo till the disposal of the original petitions. On restoration, by order dated 10.10.2019, the High Court dismissed the Original and Transferred Applications, set aside the order of the Tribunal and allowed the Original Petitions. Hence these appeals.

4. These appeals have a chequered history and therefore only the relevant facts are narrated in a nutshell.

5. In Civil Appeal @ SLP(C) No.26435/2019, appellant nos.1 and 2 viz., Medini C and B. Geetha Devi were appointed as Hindi Translators and petitioner no.3 viz., Sobhana Kumari was appointed as a Telecom Office Assistant in Bharat Sanchar Nigam Limited (for short, 'BSNL' for the sake of convenience). The appellant viz., C. Mridula in Civil Appeal @ SLP(C) No.26436/2019 was appointed as a Telecom Office Assistant. Their appointments were made in the years 1988-1989. The appellants in the civil appeal @ SLP(C) No.26435/2019 were promoted as Assistant Director (Official Language) ('OL' for short) on ad hoc basis during the years 1993-1995 and the appellant in the

civil appeal @ SLP(C) No.26436/2019 was promoted to General Central Service Group as Assistant Director (OL) on officiating basis during the year 2000.

6. On 24.12.2002, Assistant Director (Official Language) Recruitment Rules, 2002 (for short, the '2002 Rules') were notified. The said Rules superseded all previous instructions on the subject and came into effect immediately. Under the said Rules, as a "one-time measure", all vacancies in the grade of Assistant Director (OL) on officiating basis were to be filled up by Senior Hindi Translators/Junior Hindi Translators and Group C officials who were to be given ad hoc promotions to the grade of Assistant Director (OL) on officiating basis. The same was by promotion on seniority-cum-fitness basis as was the procedure followed for the above officials who had been officiating as Assistant Director (OL). A Corrigendum dated 01.10.2003 was issued revising eligibility criteria. Another Corrigendum was issued on 13.10.2003 for removing restriction of pay under FR-35 as per the 2002 Rules.

7. Subsequently, Rajabhasha Adhikari Recruitment Rules 2005 were notified on 05.08.2005 (for short, the '2005 Rules'). These Rules were in supersession of 2002 Rules. However, it was notified that the local officiating arrangements/promotions on ad hoc basis which had already been made may not be disturbed till

regular incumbents to such posts become available. The said Rules came into force with immediate effect.

8. Aggrieved by the inaction of the respondent-BSNL in promoting the appellants on regular basis, the appellants filed Writ Petitions bearing W.P. No.28185 of 2005 and WP No.29553 of 2005 before the Kerala High Court. The aforesaid writ petitions were transferred to the Central Administrative Tribunal (for short, the 'Tribunal') and were registered as Transfer Application Nos.44 and 46 of 2008. On 08.04.2010, the Tribunal allowed the Transfer Applications and directed the appellants to be promoted in accordance with the 2002 Rules, against which O.P. (CAT) No.20/2010 and W.P. No.29029/2010 were filed by the respondent No.1-BSNL. Their contention before the High Court was that the 2002 Rules were never in operation at any point of time and reliance was placed on the judgment of this Court in *BSNL vs. Mishri Lal & Ors.* - (2011) 14 SCC 739 (*Mishri Lal*) for the same. But the High Court found that there was no plea raised that the 2002 Rules had never come into force before the Tribunal and it was taken up first time before the High Court. It was found that the 2002 Rules were in fact given effect to and plea to the contrary was without any merit. The High Court dismissed the aforesaid matters by order dated 04.11.2011.

9. Being aggrieved, the respondent - BSNL filed special leave petition being SLP(C) No.8575/2012. This Court dismissed the said special leave petition along with SLP(C) No.8879/2012. The respondent - BSNL filed Review Petition (C) No.2451/2017 in SLP(C) No.8665/2017 and Review Petition (C) No.2452/2017 in SLP(C) No.8575/2012. The said review petitions were also dismissed by this Court on 16.11.2017.

10. Thereafter, Contempt Petition (C) No.151/2017 in TA Nos.44 and 46 of 2008 were filed before the Tribunal in which proceedings the Chief General Manager, BSNL was directed to appear before the Tribunal on 12.03.2018. At that stage, Review Petition No.155 and 156 of 2018 were filed in W.P. No.29029/2010 and OP (CAT) No.20/2010 respectively before the High Court seeking review of its judgment and order dated 04.11.2011 with a delay of 2225 days. It is pertinent to note that the said review petitions were filed after the dismissal of the special leave petitions and the review petitions filed against the order passed in the special leave petitions were dismissed by this Court. Delay of 2225 days was condoned by the High Court against which SLP(C) Nos.8009-8010/2010 were filed which were also dismissed by this Court vide order dated 06.04.2018.

11. Thereafter the High Court allowed the R.P. Nos.145, 155 and 156 of 2018 and other connected

matters recalling the judgment and order in OP(CAT) Nos.20, 21, 142 of 2010 and WP No.29029/2010 dated 04.11.2011 and restored the said matters on the file of the High Court vide order dated 07.08.2018. Further, on restoration of the aforesaid matters, the High Court by its order dated 10.10.2019 allowed the same. Hence, these appeals have been preferred before this Court.

12. During the pendency of these appeals before this Court, the appellants were reverted to the post of Junior Hindi Translators, the post to which they had joined earlier with effect from 16.05.2018.

13. Sri R. Basant, learned Senior Counsel appearing for the appellants, drew our attention to the orders passed in the earlier proceedings that had taken place in these cases and contended that the High Court was not right in concluding that there was an error apparent on the face of the record and therefore, the earlier order dated 04.11.2011 passed by it had to be reviewed and recalled. It was urged that the High Court was not correct in holding that it had made an apparent error in coming to the conclusion that the recruitment Rules 2002 was in operation by a misreading paragraph 9 of the judgment rendered by this Court in *Mishri Lal*; that the said judgment did not declare any law as to whether the recruitment Rules were in operation or not. Though emphasis was made by the second appellant that the 2002 Rules were never in operation, the High Court

was not right in upholding the contention of the review petitioners (respondents herein). The High Court, though at one point found that, there was no specific statement or a declaration of law on the operation or otherwise the recruitment Rules 2002, at the same time found that this Court had given a finding in *Mishri Lal* to the effect that the said Rules were never in operation at any point of time. It was contended that on a misreading of the judgment of this Court in *Mishri Lal*, the High Court allowed the review petitions and recalled the judgment dated 04.11.2011 passed in OP(CAT) Nos.20, 21 & 142 of 2010 and WP(C) No.29029 of 2010 and restored those matters on the file of the High Court. It was submitted that the High Court had misapplied *Mishri Lal* to the facts of these cases as the said judgment was not applicable to the instant cases having regard to the distinctive factual matrix in these cases. It was contended that the High Court erroneously reversed the earlier order passed by it on 04.11.2011, subsequent to the dismissal of the special leave petitions filed earlier against the original order as well as the review petitions filed against the dismissal of the special leave petitions.

14. It was further contended that the 2002 Rules were acted upon in the instant cases and the impugned order has proceeded on an erroneous premise that it was not implemented as the grant of enhanced pay scales was not

sufficient *per se* to establish that the said Rules have been acted upon.

15. Sri Basant, learned Senior Counsel for the appellants, submitted that the High Court failed to appreciate the applicability/ enforceability of the 2002 Rules, as there was no controversy about the same. It was further submitted that the vacancies which arose when the 2002 Rules were in operation and the persons drawing salary based on the earlier Rules had a vested right when the 2005 Rules were in force. In sum and substance, it was contended that the High Court was not right in reviewing its judgment dated 04.11.2011.

16. In elaboration of the aforesaid submission, it was reiterated that the 2002 Rules had been acted upon and enhanced pay scale was also credited. As the vacancies had arisen prior to the 2002 Rules being enforced, the promotions would be governed by the said Rules and appellants would have acquired a vested right when the said Rules were in force as the vacancies had arisen by then. Further, our attention was drawn to Corrigendum dated 01.10.2003 under which the respondent(s) revised eligibility criteria of Mridula C, with effect from 30.12.2002 on the basis of the 2002 Rules. Another corrigendum dated 13.10.2003 was issued removing the "restriction of pay under FR-35" given in the memos of local officiating promotion with effect from 30.12.2002

as per revised eligibility conditions as per the 2002 Rules.

17. It was lastly contended that the respondent(s) having implemented the 2002 Rules it could now not be contended that the rules were never given effect to nor implemented. In fact, the 2002 rules were in supersession of the earlier rules and therefore, between 2002 and 2005 there could not have been a vacuum, was the submission.

18. Sri V. Chitambaresh, learned Senior Counsel appearing for the other appellant(s), made similar submissions as recorded above.

19. Per contra, Sri R. D. Agrawala, learned Senior Counsel appearing for the respondents, at the outset, placed strong reliance on the impugned judgment being in accordance with the ratio of the judgment of this Court in *Mishri Lal* and therefore, the High Court was justified in reviewing its earlier order. It was contended that in *Mishri Lal*, it has been categorically held that the 2002 Rules were never in operation at any point of time; the same was fortified by the fact that no regular appointment was made under the said Rules. It was urged that the High Court was justified in reviewing its earlier order and hence, there is no merit in these appeals.

20. Having regard to the contentions raised by the respective counsel, the crux of the matter in these appeals is, whether, the 2002 Rules were given effect to by the respondents vis-a-vis the appellants herein or not.

21. There can be no cavil that these appellants were appointed as Hindi Translators and Telecom Office Assistants. The appellant viz., C. Mridula was promoted to General Central Service Group as Assistant Director (OL) on officiating basis while the appellants viz., Medini C., B. Geetha Devi and Sobhana Kumari were promoted to the post of Assistant Director (OL) on ad hoc basis. This was prior to the enforcement of the 2002 Rules.

22. On 24.12.2002, the respondent(s) issued a notification stating that the 2002 Rules would supersede all instructions on the subject including the instructions contained in DOT's Circular No.372-1/94-STG-III dated 28.04.1994 regarding filling up of the posts of Hindi Officers [Assistant Director (OL)] in field units on local officiating basis. That wherever local officiating arrangements/ad hoc promotions were required, they were to be made in accordance with the provisions of the 2002 Rules. Further local officiating arrangements/promotions on ad hoc basis having already been made were not to be disturbed until further orders.

23. A reading of the 2002 Rules would indicate that the said Rules came into force with immediate effect i.e. on 24.12.2002. Rule 10(iii) and (iv) of the said Rules are relevant and they read as under :

"10. Initial Constitution.

(i)

(ii)

(iii) There are many Sr. Hindi Translators/Jr. Hindi Translators and Group 'C' officials who have been given ad hoc promotions to the grade of AD (OL) in field formations of BSNL. In order to avoid legal and administrative complications as a one time measure, it is provided that all the vacancies in the grade of AD (OL) in the first year of recruitment, irrespective of vacancies earmarked for promotional quota or direct quota, shall be filled up by promotion on seniority-cum-fitness basis, by following due procedures, amongst those officials who have been officiating as AD(OL) in BSNL subject to their fulfilling the basis qualifications and experiences as prescribed in column 12 of the Schedule annexed to these Rules.

(iv) These rules will be subject to review after a period of three recruitment years.

A reading of the same would indicate that it was recognised that there were many promotions made on ad hoc basis in the grade of Assistant Director (OL), even prior to the enforcement of the 2002 Rules. In order to avoid legal and administrative complications as a "one time measure" which was more in the nature of a transitional measure, the vacancies were to be filled by promotions on seniority-cum-fitness basis from

amongst those officials who had been officiating as Assistant Director (OL) in BSNL subject to their fulfilling the basic qualifications and experiences as prescribed in column 12 of the Schedule annexed to the 2002 Rules. The Rules of course were subject to review after a period of three years.

24. Consequently, a corrigendum was issued on by the respondent(s) removing the clause "restriction of pay under FR-35" as given in the memos of local officiating promotion when the appellants in the first appeal viz., Medini C., B. Geetha Devi and Sobhana Kumari were promoted to the post of Assistant Director (OL) on ad hoc basis with effect from the dates notified against each of them as per the revised eligibility conditions given in the Recruitment Rules.

25. In respect of the following persons including appellant Mridula C, the eligible dates for removal of restriction under FR-35 were as under :

Sr. No.	Name of Officiating AD(OL) S/Sri/Smt.	Eligible date for removal of restriction under FR-35
1.	Jobi Joseph	30.12.2002
2.	Prasanna Kumari Amma	04.01.2003
3.	Mridula C	30.12.2002
4.	Sreekumar	30.12.2002

26. A specific reference was made to the revised eligibility conditions of the 2002 Rules while issuing

the aforesaid corrigendum. Another corrigendum was issued on 13.10.2003 in respect of Smt. Mridula C. Her pay scale was also regularised. The above were issued subsequent to the enforcement of the 2002 Rules. It is observed that when the restriction of officiating pay under FR-35 was removed, it would indicate that the respondent in substance regularised the promotions of the appellants herein, by issuance of the Corrigendum(s) referred to above as till then they were receiving pay on officiating basis. Further the removal of such restriction under FR-35 has the effect of recognising the appointment in substantive officiating capacity subject to fulfilment of eligibility conditions as prescribed in the relevant recruitment Rules and carrying on higher duties and responsibilities. For immediate reference FR-35 is extracted as under :

“FR-35. The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules”.

The effect of removal of the restriction of officiating pay under FR-35 implied that there was regular cadre promotion made as the employees became due for promotion and fell within the zone of consideration and fulfilled all qualifications prescribed for promotion.

27. As per communication dated 05.08.2005, the respondent - BSNL re-designated the post of Assistant Director (OL) as "Rajbhasha Adhikari". Further it is stated that the local officiating arrangements/promotions on ad hoc basis that have already been made may not be disturbed till the regular incumbents to such posts become available in accordance with the recruitment rules.

28. The 2005 Rules were issued in supersession of all instructions issued earlier. However, it was categorically stated that "the local officiating arrangements/promotions on ad hoc basis" that had already been made were not be disturbed till the regular incumbents to such posts available in accordance with recruitment rules. More pertinently clause 10 of the 2005 Rules reads as under :

"10. Power to Relax. - Where the BSNL is of opinion that it is necessary or expedient so to do it may by order for reasons to be recorded in writing and with the approval of Management Committee or BSNL relax any of the provisions of these Rules in respect of any class or category or persons."

Rule 11 of the 2005 Rules reads as under :

"11. Initial Constitution.

(i) All officials holding the post of Assistant Director (Official Language) on regular basis in erstwhile DOT/DTS/DTO before commencement of these Rules and those who have been absorbed in Bharat Sanchar Nigam Ltd shall be deemed to have been appointed as

Assistant Director (Official Language) with the same seniority.

(ii) The continuous regular service of officials referred to in the sub-rule 10(i) above before the commencement of these rules shall count for the purpose of probation, qualifying service for promotion, confirmation and pension.

29. It is not the case of the respondent-BSNL that the appellants were not eligible to be promoted on ad hoc basis and nor were they lacking in requisite qualification and merit when they were so promoted even prior to the 2002 Rules were enforced.

30. It is in the above scenario that the Tribunal by its order passed in TA No.44/2008 and connected matters observed that the 2002 Rules remained in force and were implemented for more than three years till the "Rajbhasha Adhikari Recruitment Rules, 2005" was issued in supersession of all the relevant Recruitment Rules in force; that the appointment/promotion of the employees are to be based on the existing rules and hence the directions for promotions were given under the 2002 Rules. Consequently, a direction was issued to the respondent - BSNL to promote the eligible candidates as Assistant Director (OL) against the vacancies which had arisen prior to the promulgation of the 2005 Rules. They were also to be re-designated as Rajabhasha Adhikari from 2005.

31. The High Court vide its judgment dated 04.11.2011 held that in *Mishri Lal*, this Court had made observations with regard to the implementation of the 2002 Rules vis-a-vis the facts of the said case and the said observations did not apply to the instant cases. The High Court held in favour of the appellants herein by observing that there were 120 vacancies of Assistant Director (OL) when the 2002 Rules were in force and the appointing authority had promoted in terms of the prevailing Rules and the 2005 Rules did not take away the vested right of the appellants herein as the 2005 Rules were prospective in operation. Citing the decision of this Court in *Y.V. Rangaiah & Ors. vs. J. Sreenivasa Rao* - AIR 1983 SC 852, it was observed that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules. Consequently, all the original petitions and writ petition filed by the respondents herein were dismissed by the High Court vide judgment dated 04.11.2011.

32. As noted above, the aforesaid judgment was assailed before this Court and the special leave petitions were dismissed by order dated 23.03.2017. The review petitions filed by the respondents herein were also dismissed by this Court vide order dated 16.11.2017. Thereafter, contempt petition was filed before the Central Administrative Tribunal (CAT) by the

appellants herein and by order dated 06.02.2018, the Tribunal directed the Chief General Manager of the respondent to appear in person and "explain the reasons for not complying with the earlier order of the Tribunal". It is at that stage that the review petitions were filed by the respondents before the High Court which have been allowed and which is the subject matter of controversy in the present appeals.

33. We have in detail narrated the facts and events that have occurred in these cases and also referred to the Rules of 2002 and 2005 and we have succinctly noted the earlier order dated 04.011.2011 passed by the High Court which were in favour of the appellants herein. The reason as to why the earlier order of the High Court was reviewed and recalled by the impugned judgment is mainly on the basis of the judgment of this Court in *Mishri Lal* in respect of which the High Court in the impugned judgment has stated that the 2002 Rules were not given effect to and hence the appellants had no right to be regularised subsequent to their ad hoc promotions.

34. Hence, we shall consider the judgment of this Court in *Mishri Lal*. In *Mishri Lal* respondent nos.1 to 9 therein assailed the 2005 Rules by which the writ petitioners were told to appear in the Limited Internal Competitive Examination for promotion to the post of Rajbhasha Adhikari [AD (OL)]. The said Rules were

quashed by the Allahabad High Court at the preliminary stage of admission, without service of notice to the respondent BSNL. In paragraphs 9 of *Mishri Lal*, this Court noted that there were some objections to the Recruitment Rules of 2002 as "allegedly" these rules were never in operation at any point of time. Thereafter, the revised 2005 Rules were formulated and issued on 05.08.2005 whereby 120 posts were classified as executive with the nomenclature of Rajbhasha Adhikari. While the educational qualifications remained the same as before, under the 2005 Rules, the entire cadre had to be filled by a limited internal competitive examination. These Rules had been struck down by the Allahabad High Court.

35. In paragraph 10 of *Mishri Lal*, it is noted that the respondents therein were never regularly promoted as Hindi Officer at any point of time. They were appointed on the basis of administrative instructions dated 28.04.1994, purely on officiating basis under the powers delegated to the Heads of Telecom Circles. They were never regular appointees and hence no vested rights for promotion to the post of Hindi Officer under the 2002 Rules inhered in them. Further, this Court observed that when the 2005 Rules were formulated 120 posts were classified as executive and the power of recruitment was changed and such posts were to be filled up by internal competitive examination, the said

posts could not be filled up by promotion by the persons working on officiating basis.

36. Thus, the aforesaid facts in *Mishri Lal* and on a consideration of the reasoning of the judgment(s) of the High Court of Judicature at Allahabad, this Court held in favour of the respondents herein by setting aside the judgment of the Allahabad High Court.

37. In our view the judgment in *Mishri Lal* cannot be applied to the present case as the facts that obtained in the said case are distinct. In *Mishri Lal* it was noted that the respondents therein were never regularly promoted as Hindi Officers at any point of time either under the 1984 Rules nor under the 2002 Rules subsequently. They were appointed purely on the local officiating basis under the administrative instructions dated 28.4.1994. Therefore, this Court held that the respondents in the said case were never regular appointees and hence had no vested right for promotion to the post of Hindi Officer under the 2002 Rules which were not given effect to vis-a-vis the respondents therein.

38. But in the instant case the facts are totally distinct inasmuch as these appellants were provisionally promoted while in the Telecom Department as Assistant Director (OL) as early as on 15.05.1994 but they were not regularised and hence they approached

the Tribunal seeking an order of regularisation. In fact, Rule 10(3) of 2002 Rules categorically stated that as a "one time measure" all the vacancies in the grade of Assistant Director (OL) in the first year of promotional quota or direct vacancies had to be filled by direct quota by following due procedure from amongst the officials who had been officiating as Assistant Director (OL) in the respondent-BSNL subject to their filling the basic qualifications and experience as prescribed. Despite promulgation of the 2002 Rules no order for regularisation of promotion was issued. Hence, the appellants herein approached the High Court for promotion. It is during the said period, the 2005 Rules were issued but by then the appellants herein had already enforced their vested rights regarding their regularisation in their respective posts as per the 2002 Rules on the bases of one time measure that was envisaged under the said Rules. The Tribunal therefore granted relief to them and the High Court by order dated 04.11.2011 dismissed the writ petitions filed by the respondent-BSNL was sustained by this Court in the special leave petitions as well as the review petitions filed by the respondent-BSNL.

39. When such being the factual and legal position, we find that the High Court has misread the ratio of the judgment of this Court in *Mishri Lal* and has applied it to the case of the appellants herein in a straight-

jacket manner without being mindful of the aforesaid crucial aspects of the case. It may be that in the region of Uttar Pradesh, the 2002 Rules may not have been given effect to as has been noted in *Mishri Lal* but that is not the case insofar as the appellants who are working in the Kerala region are concerned. This is because subsequent to the orders of promotions on ad hoc or officiating basis, the clause regarding 'restriction of pay under FR-35' was deleted by issuance of corrigendum and on the basis of the said factual developments, the High Court had rightly sustained the order of the Tribunal vide its Judgment dated 04.11.2011. Hence that order could not have been reviewed/recalled by the impugned judgment of the High Court and the case of the appellants being dismissed by subsequent order dated 10.10.2019.

40. In the circumstances, we find merit in these appeals. Consequently, we allow these appeals, set aside the impugned judgment(s) and order(s) passed by the High Court referred to above and direct the respondent(s) to give effect to the judgment of the High Court dated 04.11.2011 which had affirmed the order of the Tribunal dated 08.04.2010 by recalling orders of reversion, if any, and extending monetary benefits to the appellants herein and thereafter, to consider their cases under the Voluntary Retirement

Scheme (VRS) if they have so applied and if their applications are in order. No costs.

41. In view of the above, all pending interlocutory applications stand disposed.

.....J
[L. NAGESWARA RAO]

.....J
[B.R. GAVAI]

.....J
[B.V. NAGARATHNA]

NEW DELHI;
SEPTEMBER 21, 2021.