(2010) 12 AHC CK 0193

Allahabad High Court

Case No: Writ Petition No. 53695 of 2006

Dina Nath Tiwari		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: Dec. 1, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 15, 16, 16(4B), 335#Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 â€" Section 3(1), 3(5), 3(7)

Citation: (2010) 12 AHC CK 0193

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.
Heard Sri Ratnesh Kumar Pandey, learned Counsel for the Petitioner and perused the record.

2. The Petitioner is aggrieved by the order dated 16.06.2006 (Annexure8 to the writ petition) passed by the Joint Director of Education, I Vth

Region, Azamgarh rejecting the claim of Petitioner for filling the post in question, i.e., Lecturer (Geography) by promotion instead of direct

recruitment.

3. It is not in dispute that the post in question fell vacant on 01.07.2001. The management finding no person eligible for promotion to the said post

sent requisition to U.P. Secondary Education Service Selection Board and pursuant thereto the post was advertised in 2002 and after making

selection the Commission recommended the name of one Sri Ramesh Chandra for appointment to the post in question. Thereagainst the Petitioner

filed Writ Petition No. 34138 of 2002 claiming that he ought to have been appointed by promotion hence no direct recruitment is permissible

thereof. The said writ petition was disposed of by this Court on 19.08.2002 the Respondents were directed to consider his claim for promotion. It

is pursuant thereto, Petitioner''s claim for promotion has been considered and rejected by the Joint Director of Education by means of the

impugned order.

4. There are two grounds on which the claim of the Petitioner has been rejected. Firstly, there are five sanctioned posts of Lecturer in the institution

out of which four are already occupied.No person belong to Scheduled Caste is working though out of five 2 posts, one ought to have been

reserved for Scheduled Caste candiate, hence this post could have been filled in by promotion and secondly, the Petitioner passed M.A.

examination subsequent to the occurrence of vacancy.

5. So far as the first aspect is considered, in my view, the Joint Director of Education has totally misdirected himself inasmuch as out of five

sanctioned posts three can be filled in by promotion and two by direct recruitment. The reservation for Scheduled Caste being 21% under U.P.

Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (hereinafter referred to as the

Act, 1994''''), if out of three posts, one is kept reserved for Scheduled Caste and Scheduled Tribe, the reservation would go more than 21% which

is not permissible as held by the Apex Court in R.S. Garg Vs. State of U.P. and Others,

6. A similar controversy came to be considered before this Court in Smt. Pholpati Devi v. Smt. Asha Jaiswal and Ors. 2009(2) ADJ 90 where

there were 7 sanctioned posts of Lecturers and taking the same together the authorities decided to fill in one post from reserve category, i.e.,

scheduled castes. Casting it, this Court held :

In the case in hand, there were only seven sanctioned posts of Lecturers wherein 50% were to be filled in by direct recruitment and 50% by

promotion.

Therefore, at the best four posts would have been available for one source of recruitment, i.e., direct recruitment or promotion. The reservation for

scheduled castes is 21%. If we treat one of the vacancies in either of the source of recruitment in the institution as reserved for scheduled caste, it

would be more than 21%. The Apex Court in R.S. Garg Vs. State of U.P. and Others, has held as under :

40. We are not concerned with the reasonableness or otherwise of the percentage of reservation. 21% of the posts have been reserved for

Scheduled Tribe candidates by the State itself. It, thus, cannot exceed the quota. It is not disputed that in the event of any conflict between the

percentage of reservation and the roster, the former shall prevail. Thus, in the peculiar facts and circumstances of this case, the roster to fill up the

posts by reserved category candidates, after every four posts, in our considered opinion, does not meet the constitutional requirements.

Thus, it is clear that in no manner a vacancy can be filled in which would exceed the prescribed limit of reservation as the extent of reservation is

maximum and it cannot be exceeded thereto. In the case in hand, one of the vacancy if treated to be reserved for scheduled caste candidate out of

four vacancies, the reservation would come to 25%, which would exceed the maximum extent of reservation prescribed for scheduled caste

candidates under the Statute. That being so, such reservation could not have been upheld and the appointment and promotion of Respondent No.

1 treating one post of lecturer reserved for scheduled casts in promotion quota, therefore, was illegal and has rightly been set aside by Hon''ble

Single Judge.

7. In Vishwajeet Singh (Dr.) and Ors. v. State of U.P. and Ors. 2009(2) UPLBEC 1443 another Division Bench of this Court has considered the

question where there are more than one post in the cadre as to whether by applying roster also, the vacancy can be filled in by a reserved category

candidate or not, and dealing with this aspect in detail from para 75 to 86, the Division Bench has held that in any manner reservation cannot

exceed the prescribed percentage which includes the roster as well as even rounding of the percentage. The relevant part of the judgment is

extracted as under :

75. Although first point is reserved for Scheduled Castes 4 but there is no dispute that if there is a single post cadre that has to be treated to be

unreserved and in that context, the roster will be inapplicable. Now taking the example of two posts cadre, if out of 2 posts, even one post is

reserved for Scheduled Castes or Other Backward Class, there will be reservation of 50% either for Scheduled Castes or Other Backward Class.

The reservation for Scheduled Castes and Other Backward Class being respectively 21% and 27%, if one post is filled by Scheduled Castes, then

50% posts have to be treated to be filled by Scheduled Castes hence, out of 2 posts cadre one post can neither be reserved for Scheduled Castes

or Other Backward Classes since in either case, the reservation for that category be 50% which is contrary to Sub-section (1) of Section 3. A

Division Bench of our Court has occasion to consider the applicability of reservation when there are only two posts in a cadre in writ petition No.

1208 (S/B) of 2008 ;Dharam Pal Singh Chauhan and Anr. v. State of U.P. and Ors., decided on 19.11.2008. In the Irrigation Department there

were two posts of Engineersin Chief. The State took a decision to fill up one post of EngineerinChief (Designing and Planning) from the candidate

belonging to Scheduled Castes category. The promotion of Scheduled Castes category on second post was challenged in the writ petition by two

candidates claiming that second post cannot be reserved for Scheduled Castes category candidate. The submission raised on behalf of the

Petitioner has been noted in paragraph 3 of the judgment, which is quoted herein below :

According to the submission of Sri S.K. Kalia learned Senior Counsel appeared for the Petitioners, since there are only two posts of the

Engineerinchief, and though, one is occupied by a candidate of General category, the other cannot be reserved for the Scheduled Caste category

on the ground that reservation quota of the Scheduled Castes category is 21% and in case one post out of two, is provided to the candidate of

Scheduled Castes category, the reservation quota shall travel beyond the out limit of 21% provided by the statute.

76. Learned Advocate General, who defended the State 5 action contended before the Bench that even if out of 2 posts, one post is reserved for

Scheduled Castes, the reservation is well within 50%. The said contention was rejected by the Bench. Following was laid down in paragraph 56 :

Learned Advocate General submitted that by issuing the Government order dated 26.6.2002, the first point has been given to Scheduled Castes

and second point has been given to the general category and accordingly, even if there are two posts, one post can be reserved for SC candidates

as it will be within the outer limit of 50% provided by Hon''ble Supreme Court through various pronouncements ((supra)). The submission of the

learned Counsel seems to be misconceived. While reading Sub-section (5) of Section 3, we cannot overlook Sub-section (1) of Section 3.

Moreover, Sub-section (5) itself says that the Government shall "" for applying the reservation under Sub-section (1) by notified order, issue a

roster, ""meaning thereby Sub-section (5) has been inserted with reference to Sub-section (1) of Section 3. The aims and object of 1994 Act also

starts by reference to post, means the total number of posts available in a cadre and from such available post certain percentage is reserved for

Scheduled Castes and Schedule Tribes and OBC category candidates in view of the provisions contained in Sub-section (1) of Section 3.

77. The Division Bench held that reservation for Scheduled Castes which is prescribed as 21% u/s 3(1) of 1994 Act cannot exceed. Considering

the roster points as prescribed by notification dated 25.6.2002, the Division Bench held that following the Supreme Court judgment in R.S. Garg

case (supra) that in the event of conflict between reservation and roster, the former shall prevail. Paragraphs 86,94 and 121 being relevant are

quoted below :

86. Needless to say that keeping in view the letter and spirit of the Article 15 and 16, the reservation is to be provided to respective quotas of

various categories. The State does not have got right to travel beyond respective quotas of categories. No 6 reservation can be provided beyond

21% to SC candidates in view of Sub-section (1) of Section 3 of 1994 Act, hence it cannot be done by applying roster which is meant to enforce

the reservation within respective quota of various categories.

94. Moreover, since the reserved quota of Scheduled Castes is 21%, hence whether it is direct recruitment or promotion, State has no right to

travel beyond that under the garb of ""rostere"". It is settled law that what cannot be done directly, it cannot be done indirectly, vide Dayal Singh and

Others Vs. Union of India (UOI) and Others,

Abuse of Power and consequences.

121. Subject to above, we record our finding as under :

(1) In the event of conflict between the quota of reservation and roster, the former shall prevail over the later, as held by Hon''ble Supreme Court

in the case of R.S. Garg (supra). While applying quota for reservation and roster, the State have to confine the outer limit of reservation provided

by 1994 Act for SC, ST and OBC category.

(2) The extent of reservation provided by Sub-Section 1 of Section 3 of 1994 Act, is mandatory. In the matter of promotion or recruitment

reservation cannot exceed the outer limit of 21%, 2% and 27% for SC, ST and OBC.

(3) Under the garb of Sub-section (5) while applying roster or Sub-section (7) of Section 3 of 1994 Act, the State cannot travel beyond the outer

limit of reservation provided by Sub-section (1) of Section 3 of 1994 Act. Meaning thereby, even while applying roster for SC, ST or OBC , the

outer limit of 21% 2% or 27; should be adhered to.

(4) The outer limit of 50% provided by Article 16(4B) of the Constitution or by Hon''ble Supreme Court right from M.R. Balaji''s case 7 (supra)

till date, includes the reservation for all the categories or classes of employees. In case reservation is provided only for one category like in the

present case, 21% to SC category, then it does not mean that State has right to enhance reservation upto 50% suo motu exceeding the statutory

quota provided by the Act and statute. 50% rider is the outer limit permissible for all categories and in case under the Act or statutes lesser

percentage of reservation has been provided to any class, then that will be the outer limit for the respective classes as in the present case,

reservation for SC is 21% and it cannot be enhanced to 50%.

(5) While exercising power for purpose of reservation keeping in view the law laid down by the Hon''ble Supreme Court in M. Nagraj''s case

(supra) to find out the backwardness or inadequacy of representation keeping in view the necessity and efficiency provided by Article 335 of the

Constitution, the Government cannot travel beyond the outer limit of quota provided under Sub-section (1) of Section 3 of 1994 Act for SC,ST

and OBC i.e. 21%, 2; and 27% respectively in the manner of promotion.

(6) Any reservation made exceeding the outer limit provided under the 1994 Act or the statutes, shall be deemed to be excessive reservation and

the reservation so made, may be struck down by the court as it would amount to derogation of constitutional requirement as held in M.

Nagraj''s case (supra). In the present case since the sanctioned strength of the post of EngineerinChief is two and the quota of Scheduled Castes is

21% under Sub-section (1) of Section 3 of the 1994 Act, one out of two posts cannot be reserved for Scheduled Caste

78. Now example of 3 posts cadre is taken. If in 3 cadre posts, one post is reserved for Scheduled Castes that will 8 be 33% reservation or one

post is reserved for Other Backward Class that shall be again 33% reservation which is against the percentage prescribed under Sub-section (1)

of Section 3. Now, example of 4 cadre posts is taken. With regard to 4 posts in one stream recently, a Division Bench of this Court has

considered the question of applicability of reservation in the case of ;Smt. Pholpati Devi v. Smt. Asha Jaiswal and Ors. reported in 2009 (2)

A.D.J. 90.

79. In 4 cadre posts, if one post is reserved for Scheduled Castes then reservation for Scheduled Castes be 25% which is impermissible.

However, if one post is treated to be reserved for Other Backward Class then reservation for Other Backward Class shall be only 25; i.e. within

27% as prescribed under Sub-section (1) of Section 3. Thus, out of four posts, one post can be validly reserved for Other Backward Class. Now

an example of five posts cadre is taken. For five posts cadre, if one post is reserved for Scheduled Castes that will be 20% and will be within 21%

as prescribed under Sub-section (1) of Section 3. One post for Other Backward Class can also be very well reserved out of five cadre posts since

it shall be within the 27% as prescribed. Thus, for giving reservation to Scheduled Castes and Other Backward Class, it is clear that there has to

be five posts in a cadre. In the roster point, the first point which comes for Schedule Tribes is at serial No. 47. Thus, even according to roster,

Schedule Tribes can get reservation at the 47th post. The above view of ours is fully supported by the judgment of the Supreme Court in the case

of R.S. Garg v. State of U.P.and Ors. reported in (2006) 6 Supreme Court Cases 430. The facts of R.S. Garg case needs to be noted in some

detail. In the aforesaid judgment, both the Appellant and Respondents were working as Assistant Directors. The Appellant having been appointed

in the year 1972 whereas the third Respondent was appointed on 13.1.1987 on adhoc basis. There were six posts of Deputy Director of

Factories in the State of U.P. out of which four posts were designated of Deputy Director of Factories (Administration), one as Deputy Director of

Factories (Chemical) and one Deputy Director of Factories (Engineering). The post of Assistant Director of Factories 9 was the feeder post. The

Government converted the post of Deputy Director Factories (Chemical) to Dy. Director Factories (Administration). The third Respondents was

promoted as Deputy Director of Factories (Administration) as a reserved category candidate, which promotion was challenged in the Supreme

Court. One of the grounds of challenge was that reservation to the post of Scheduled Castes was illegal and unjust by reason thereof percentage of

reservation for promotion cannot be raised from 21 to 33%....

80. The apex Court also noticed the roster issued in 1994 Act and noticed that out of 6 posts, first and fourth posts shown to be reserved for

Scheduled Castes. The apex Court clearly held that such reservation was impermissible. The court further held that reservation could not have

exceeded 21% for Scheduled Castes.

Following was laid down in paragraphs 34 and 40 :

34. In terms of the 1994 Act, the reservation was to be confined to 21%. There were 6 posts. If the roster was to be followed, 2 posts would be

reserved for the Scheduled Caste candidates, which is impermissible.

40. We are not concerned with the reasonableness or otherwise of the percentage of reservation. 21; of the posts have been reserved for the

Schedule Tribes (sic Caste) candidates by the State itself. It, thus, cannot exceed the quota. It is not disputed that in the event of any conflict

between the peculiar facts and circumstances of this case, the roster to fill up the posts by reserved category candidates, after every four posts, in

our considered opinion, does not meet the constitutional requirements.

81. The apex Court thus, held that the promotion given to third Respondents was not in accordance with law. The appeal of the General Category

candidate was allowed.

82. In the above judgment, the apex Court has clearly held that in the event of conflict between percentage of reservation as prescribed u/s 3 of the

1994 Act and roster issued under Sub-section (5) of Section 3, the percentage of roster shall prevail. Another judgment, 10 which is relevant in

the present context is the judgment of the Supreme Court in the case of State of U.P. and Ors. v. Pawan Kumar Tiwari and Ors. reported in

(2005) 2 SCC 10. Pawan Kumar Tiwari, the Respondent in the appeal had appeared in the selection for the post of Civil Judge (Junior Division)

in U.P.Judicial Service. In the General Category candidate his merit position was 47. There were only 93 posts advertised. The Respondent was

not selected and 46 General Category candidates were selected. Rest 47 seats were distributed amongst Scheduled Castes 20 posts, Other

Backward Class 26 posts Schedule Tribes 1 post. The writ petition was filed by Pawan Kumar Tiwari, which was allowed, against which State of

U.P. filed an appeal. The apex Court affirmed the judgment of the High Court and took a view that reservation for Scheduled Castes, Other

Backward Classes and Schedule Tribes shall not exceed 50% and since 47 posts were given to the reserved category candidates out of 93, which

was more than 50%. Among General Category candidate 47 candidates ought to have been appointed. Paragraphs 2,8 and 9 of the judgment of

the apex Court is quoted herein below :

2. The percentages of reservation, as applicable and as was actually applied, are set out in the following table :

Category (prescribed) percentage percentage

Number of worked out to

reserved posts

General 50% 46.50 46

Scheduled Castes 21% 19.53 20

Other Backward Classes 27% 25.11 26

Schedule Tribes 2% 1.86 1

8. It was submitted by the learned Counsel for the Appellants that if this principle of rounding off is to be applied then the percentage of reservation

in Schedule Tribe category would come to 2 by rounding off 1.86, to the nearest higher value, and in that case a candidate from Schedule Tribe

category and not the Respondent would be entitled 11 to appointment. We cannot agree. No candidate in Schedule Tribe category has chosen to

lay challenge to the selection. We are also not aware if there is any Schedule Tribe category candidate available and qualified for appointment

consequent upon his having participated in the process of selection. This plea of the Appellants is without any foundation and hence does not

deserve to be taken note of.

9. There is yet another reason why the judgment of the High Court has to be maintained. The total number of vacancies was 93. Consequent upon

the allocation of reservation and calculation done by the Appellants, the number of reserved seats would be 47, leaving only 46 available for

general category candidates. Meaning thereby, the reservation would exceed 50% which would be unconstitutional . The total number of reserved

seats could not have been more than 46 out of 93.

83. The Supreme Court in the above case thus, laid down that reservation could not exceed 50%. One more principle which was noticed in the

above judgment was principle of rounding off. It is necessary to look into the above principles and examine with regard to applicability of above

principle with regard to application of 1994 Act.

84. The principles of rounding off is a principle for rounding a fraction to a nearest whole. The principle has been adopted in those cases, where

something cannot be expressed in fraction. The principle of rounding off has been adopted while computing the votes, while computing the posts or

vacancies for allocating the different categories. The issue can be looked into from another angle. Let us take an example of a cadre having two

posts only. As observed above, in a cadre having two posts, no vacancy can be reserved for Scheduled Castes , Schedule Tribes or Other

Backward Classes. Since reserving one vacancy in favour of either Scheduled Castes, Schedule Tribes or Other Backward Classes, there shall be

reservation for that category up to 50%, which is not permissible under Sub-section (1) of Section 3. It can further be contended on behalf of

reserved category candidates 12 that even when there are two posts 27% of 2 posts will be .54% which can be rounded of to one. Thus, one post

can be reserved for Other Backward Classes even in cadre of two posts. The contention appears to be attractive but on a closer scrutiny, it does

not commend us. There cannot be a dispute that principle of rounding of can be applicable with regard to computation of vacancies for reserved

for Scheduled Castes, Schedule Tribes and Other Backward Classes. We had occasion to consider the principle of rounding off in another context

in the context of percentage of votes in the case of ;North Central Railway Mens Union Allahabad v. North Central Railway Employees Sangh,

reported in 2008 (7) A.D.J. 390. Following was laid down in paragraph 15 of the aforesaid Judgment :

The principle of rounding off a fraction of a number to a whole number has been applied by the Courts and in some cases have also been provided

in statutory Rules under certain circumstances. There are certain factors which cannot be expressed in fraction hence, the Rule of rounding off has

been applied as a Rule of necessity. The most common example is with regard to number of seats or posts when are required to be filled by

different categories whose percentage is fixed like Rule of reservation for filling posts by candidates of Scheduled Castes, Schedule Tribes , Other

Backward Class and other categories. Certain percentage of seats are required to be filled up by Scheduled Castes candidates for example in the

State of U.P. by U.P. Public Services (Reservation for Scheduled Castes, Schedule Tribes and Other Backward Class) Act, 1994 provides that

21% posts are to be reserved at the stage of direct recruitment for the Scheduled Castes 2%, for Schedule Tribes 27% for Other Backward

Class. The percentage of reservation qua the number of posts is often expressed in fraction. For example, if the posts are ten, 21% will be 2.1 and

27% will be 2.7, applying the principle of rounding off 2.1 shall be treated as 2 and 2.7 shall be treated as 3. This is because the number of posts

cannot be expressed in fraction and as a necessity, it has to be expressed in 13 whole number. Contrary to above is the case with admission to a

course or for calculation of percentage of the minimum marks in an examination required under rule or advertisement. Percentage of marks can be

expressed in fraction hence, the rule of rounding off has not been held to be aplicable with regard to percentage of marks. The judgment of this

Court in the case of Vani Pati Tripathi v. Director General, Medical Education and Training, Jawahar Bhawan and Ors. reported 2003 (1)

UPLBEC 427 of which one of us (Justice Ashok Bhushan) was a member, had considered the principles and laid down following in paragraph 6

and 7 :

6. The second instance where the fraction is rounded up are the cases where seats have to be determined according to percentage of reservation

for appointment or for admission in an educational institution. When number of seats come into fraction, the said fraction is rounded up according

to the prescription of Rule or Statute. In those cases Rule or Statute always provides that fraction to be rounded up to whole or a fraction upto

some extent be ignored. The above principle has been applied since a seat or a post can not be expressed in a fraction because seats and posts

are always in whole number. For a competitive examination eligibility and the selection on the basis of merit sometimes depend on one mark. One

mark when expressed in percentage may generally come in fraction but the said fraction cannot be ignored nor it can be said that the said fraction

is insignificant.

7. Learned Counsel for the Appellant placed reliance on a Single Judge judgment of this Court in Rajan Seth V. State of U.P. and Ors. (1992) 1

UPLBEC 636. The aforesaid case arose out of admission in MBBS in Medical College, Jhansi. The writ Petitioner made an application to the

Principal, Medical College, Kanpur seeking his transfer to Medical College, Kanpur. From the facts of the case it appears that 5% vacancies were

to be filled up by transfer. Since 5% of 191 seats come to 9.55, for 14 working out the number of seats, the fraction less than .5 has to be ignored

and the figure has to be rounded up to make 10 seats. In the facts and circumstances of the aforesaid case this Court held that 9.55 should be

rounded up to 10 seats. The aforesaid decision does not help the Appellant in the present case. As observed above rounding up principle has been

applied while determining the quota of seats or while determining the majority of votes. The said case relates to seats. Seats and posts cannot be

expressed in fraction, hence, in this case fraction is rounded up but marks obtained by candidate in an examination can be expressed in fraction

and when a particular merit is required as eligibility the principle of rounding up of less marks to the next higher percentage cannot be accepted.

There is no principle that percentage of marks can only be expressed in round figure. Counsel for the Appellant could notable to show any

authority or Rule in support of his submission.

85. Thus, although principles of rounding off is applicable while computing the percentage of vacancies for allocation to reserve category

candidates but such rounding off is to be conform to the statutory requirement of percentage of reservation as contained in Sub-section (3) of

Section 1. In case rounding off exceed the percentage of reservation, the said rounding off cannot be resorted to. The percentage of reservation

being fixed by Sub-section (3) of Section 1, any method to give effect to said percentage including the application of roster has to be subservient to

the percentage of reservation as provided under Sub-section (1) of Section 3. The apex Court in R.S. Garg''s case (supra) has categorically laid

down that in event there is conflict between percentage provided u/s 3(1) and roster provided u/s 3(5), the percentage is to prevail.

86. The judgment of the apex court in State of U.P.and Anr. v. Pawan Kumar Tiwari and Ors. (supra) also supports our view that rounding off

cannot be resorted when reservation for Scheduled Castes, Schedule Tribes and Other Backward Classes 15 exceeds the percentage as provided

u/s 3(1). In paragraph 9 of the judgment, the said submission that the percentage worked out for Schedule Tribes comes to 1.86 and should be

rounded as 2 was rejected by the Supreme Court holding that accepting the said rounding off, the number of reserved vacancy will exceed 50%

ceiling which is unconstitutional hence, the rounding off vacancy of Schedule Tribes was not approved. Thus, it is held that if vacancies for reserved

category candidate comes to in fraction of figure, the same can be rounded off but rounding off can be resorted only when reservation is within

permissible limit as provided u/s 3(1).

8. Therefore, one of the ground taken by Joint Director of Education for rejecting Petitioner''s claim on the ground that the post was reserved for

Scheduled Caste and Scheduled Tribe is clearly illegal and untenable.

9. However, this reason by itself would not justify quashing of the impugned order for the reason that lack of educational qualification for

promotion is another reason. This aspect has not been disputed or challenged by the Petitioner in the present case. Despite of repeated query

made by learned Counsel for the Petitioner he could not tell that the aforesaid finding is incorrect or perverse. Once the incumbent claiming

promotion is ineligible on the date of occurrence of vacancy, i.e., 01.07.2001, the question of his/her promotion would not arise.

10. That being so, I find no reason to interfere with the impugned order though one of the reason given in the impugned order is clearly illegal.

11. Dismissed. No costs.