

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 3327 of 1993 (O&M)

Date of decision : March 12, 2015

Radhey Shyam,

..... Petitioner

v.

State of Haryana and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. J.N Gupta, Advocate
for the petitioner.

Mr. GS Wasu, Addl. AG Haryana
for the respondents.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

By this writ petition, the petitioner claims the benefit of the deemed date of promotion as Assistant.

The petitioner joined as a Clerk in the joint State of Punjab in 1957. After some time, the State of Punjab introduced Assistant Grade Examination. This requirement was challenged and ultimately struck down by the Hon'ble Supreme Court of India in State of Haryana vs Shamsher Jang Bahadur and others, AIR 1972 SC 1546, and consequently, the petitioner was given deemed date of promotion from 16.11.1966 by order dated 14.3.1985. Condition No.2 of that order was to the following effect:-

“ 2. Where assumed date of promotion is earlier than the actual dates of promotion no benefit of pay etc. will be paid for the intervening period but this period will qualify for purpose of increment and seniority.”

This condition was challenged by different persons, who were similarly situated as the petitioner. Ultimately, one of such writ petition bearing CWP No.462 of 1987 was allowed by this Court by judgment dated 13.8.1989 to the following effect :-

“ As petitioners were denied promotion on the basis of instructions which were struck down by Hon'ble the Supreme Court and were also withdrawn and it was provided in the letter withdrawing the instructions that they will be entitled to the benefits of promotion according to the above instructions, it is not understandable how the respondents are denying the petitioners the benefit they are entitled to get. The respondents should have fixed their revised pay with the increments due and should have fixed the amount which they are entitled to draw as their pay if these instructions had not been there. In the situation when the petitioners were denied promotion on the basis of instructions which were struck down and also withdrawn, they will be entitled to all the benefits from the due date of promotion in their pay, increments and all other consequential benefits. The respondents were not entitled to deny them their arrears of pay which they would have got if these instructions had not been there.

Consequently, this writ petition is allowed and it is ordered that the petitioners shall get arrears of pay from the date when they were due for promotion on the basis of record and seniority to the post of Assistant, Deputy Superintendent and Superintendent and shall also be entitled to all consequential benefits. The respondents should fix their pay taking note of the revised instructions and should pay them the arrears of pay which were denied to them as they were not promoted on the basis of instructions which were struck down. There shall be no order as to costs.”

It is not disputed that necessary relief was granted to the petitioners therein, and when the petitioner represented that he being in the same boat, the same relief be also granted to him, the same was declined on

the ground that the relief was restricted to the petitioners in the aforesaid writ petition. It is thereafter that the petitioner has filed the present writ petition.

Counsel for the respondents has argued that in the written statement filed to the present writ petition, a copy of the letter dated 27.3.1986 has been annexed as Annexure R-2, as per which the Chief Secretary had issued certain instructions which were not before the Court in the previous case and have not been challenged by the petitioner even now.

Counsel for the petitioner points out that the letter (Annexure R-2) is the re-iteration of earlier instructions dated 1.6.1983 and those instructions were specifically challenged in the earlier writ petition. This fact is clear from the record.

In the circumstances, the defence sought to be raised by counsel for the respondents cannot be accepted and it has to be held that there is no difference between the case of the petitioner and those of similarly situated employees who had earlier filed writ petition. Consequently, this writ petition is allowed in the same terms as in CWP No.462 of 1987.

Counsel for the petitioner further states that the petitioner has since retired and is an extremely senior citizen and, therefore, some time limit be fixed for the respondents to give him the benefits.

I find this to be a fair request. From the record, it is clear that the petitioner had joined service almost 58 years ago and, therefore, must be in the evening of his life. Consequently, it is directed that the benefits which are now due to the petitioner be worked out and released to him within two months from the date of receipt of a certified copy of this order

failing which the petitioner would be entitled to claim the same with interest
@ 8% pa from the date/s the same fell due till the date/s of actual payment.

March 12, 2015
`kk'

(AJAY TEWARI)
JUDGE