
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.13392 of 2012
Date of decision:01.04.2015**

Jagdish Kumar Jindal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Jatin Salwan, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The petitioner joined Government Brijindra College, Faridkot as Lecturer (Political Science) on 12.04.1980 and after serving continuously till 29.02.2012, superannuated from the post of Associate Professor. His services were regulated by the Punjab Education Service (College Cadre) (Class I) Rules, 1976 (here-in-after referred to as the “service rules”). He was at Sr. No.35 in the tentative seniority list of the Punjab Educational Services Officers (College Cadre) as on 30.06.2008. The Government of Punjab, vide its circular letter dated 29.12.2000, issued instructions for setting up Departmental Promotion Committee (DPC) for considering cases of promotions to Class I and II under Group A and Group B posts which were further clarified on 06.09.2011. It is alleged that the petitioner had

worked with utmost efficiency and was assigned following jobs in the College:-

- “i) Vice Principal
- ii) Time Table Incharge
- iii) Senior Tutor (for the redressal of students problems)
- iv) Convener of college Advisory Council
- v) Head of the Department
- vi) Disciplinary duty
- vii) Drawing and Disbursing Officer of two colleges, namely, Government Brijendra College, Faridkot and Government College of Education, Faridkot
- viii) Vice President of Parents Teachers Association”

The State Government convened the meeting of the DPC on 24.08.2011 for considering the promotion to the post of Principal and on 29.09.2011, the promotion list along with new place of posting was published. The petitioner had found that except for the persons at Sr. No.1, 2 and 3, all other incumbents were junior to him. The petitioner represented to the authorities on 03.10.2011 and since his representation did not materealise, CWP No.19674 of 2011 was filed for seeking quashing of the order dated 29.11.2011. The said writ petition was disposed of on 13.10.2011 with a direction to the respondents therein to take a decision on his representation expeditiously, preferably within a period of 2 months. Apropos, the respondents passed the impugned order on 16.04.2012,

rejecting the representation of the petitioner on the ground that he was not meeting the requisite benchmark of 12 marks as prescribed under the Government instructions. The petitioner has, thus, prayed for a writ in the nature of *certiorari* for quashing the order dated 16.04.2012 and a writ in the nature of *mandamus* seeking direction to the respondents to promote him as Principal of the Government College as per his service record from the date his juniors were promoted.

The petitioner has, *inter alia*, averred that his case for promotion was declined from consideration on the ground that he could not meet the benchmark of 12 marks as he had secured only 11 marks after appraisal of all his previous Annual Confidential Reports (ACRs), though as per his information, collected under the Right to Information Act, 2005, his Reporting Authority has recorded his ACR as “Very Good” for the years 2005-2006 and 2006-2007 and “Outstanding” for the year 2007-2008. All the three ACRs are also made part of the writ petition as Annexures P-7, P-8 and P-9.

After the notice was issued, reply has been filed on behalf of respondents no.1 and 2 in which it is averred that the Government had issued instructions on 06.09.2001 in respect of promotion to the post of Group A, B and C as per which for the purpose of promotion to Group A, the minimum 12 marks is the benchmark considering the last 5 years' ACR and it was also provided that there should not be any adverse remarks, in any of the five ACRs, involved in the considering zone. It is also provided that if the incumbent is not having minimum 12 marks, his name would not

be considered for promotion even if he is senior to the other incumbents.

The evaluation of ACRs is as under:-

Excellent	4 Marks
Very Good	3 Marks
Good	2 Marks
Average	1 Mark

It is further averred that the Government had already issued a circular letter dated 03.05.1960 as per which the work and conduct of an officer working under a Head of Department, whether in the office or field, should be reported by at least two officers and the reports which are initiated by the Heads of the Department himself should be put up to the Administrative Secretary for recording of his remarks. It is averred that the ACR reported by two officers is liable to be considered as a complete report and, thus, the report without second opinion cannot be considered as final report. Rule 6.2.1 (titled as confidential reports) of the Departmental Promotion Committee provides the procedure as to how the ACRs are to be considered in promotion cases. The relevant sub-para (b) and (c) of Rule 6.2.1 are reproduced as under:-

“(b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular

reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year).

- (c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the case of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.”

The respondents have reproduced the ACRs of the petitioner which were inserted in the agenda for promotion and graded by the DPC, which reads as under:-

Sr. No.	Year	Grading/Marks	Remarks
1	1996-97	Good – 2	-
2	1997-98	Good – 2	-
3	1998-99	No Report	-
4	1999-2000	Good – 2	-
5	2000-01	No Report	-
6	2001-02	Good – 2	-
7	2002-03	No Report	-
8	2003-04	No Report	-
9	2004-05	Very Good – 3	-

Sr. No.	Year	Grading/Marks	Remarks
10	2005-06	No Report	Sh. Kanwarjit Singh, Principal assumed the additional charge of the post of DPI(C), Punjab on 02.02.2006 and he was not eligible to give his second opinion on the annual confidential reports because he did not see the work/conduct of lecturers upto the last three months. Therefore, the reports for the year 2005-06 were considered as no report certificates.
11	2006-07	No Report	The college authority sent the no report certificate to all the lecturers of the college.
12	2007-08	No Report	Sh. Kanwarjit Singh, who was officiating as DPI(C), Punjab retired on 30.09.2008, the reports for the year 2007-08, which were received after 30.09.2008 were considered as no report certificates because the reports could not have attained the approval of the then said DPI(C).
13	2008-09	No Report	Sh. Kanwarjit Singh, who was officiating as DPI(C), Punjab retired on 30.09.2008, thereafter, the period of three months could not be completed by two other officers (Sh. Jaspal Singh, IAS, Special Secretary and Smt. Maninder Kaur Dhillon, Deputy Director (C&P) O/o DPI(C), Punjab) who were given additional charge of the post of DPI(C), Punjab. Therefore, the reports were considered as no report certificates.
14	2009-10	No Report	Sh. Sohan Lal joined on 06.10.2009 as DPI(C), Punjab and retired on 31.03.2010 in view of the courts order which was implemented upon all the Govt. employees who were due for retiring January 2010 to 31.03.2010. Therefore, reports for the year 2009-10 were considered as no report certificates. “

At the same time, the ACRs of other two lecturers, who were junior to the petitioner, have also been reproduced for the purpose of comparative study as in their cases, they crossed the benchmark of 12 marks. The relevant portion thereof is as under:-

“Sh. Anil Kumar, Lecturer Sh. Sukhjinder Singh, Lecturer

Year	Grading	Marks		Year	Grading	Marks
1996-97	Good	2		1996-97	Very Good	3
1997-98	Very Good	3		1997-98	Very Good	3
1998-99	No Report	-		1998-99	No Report	-
1999-2000	Good	2		1999-2000	Good	2
2000-01	No Report	-		2000-01	No Report	-
2001-02	Very Good	3		2001-02	Very Good	3
2002-03	No Report	-		2002-03	No Report	-
2003-04	No Report	-		2003-04	No Report	-
2004-05	Outstanding	4		2004-05	Very Good	3
2005-06	No Report	-		2005-06	No Report	-
2006-07	No Report	-		2006-07	No Report	-
2007-08	No Report	-		2007-08	No Report	-
2008-09	No Report	-		2008-09	No Report	-
2009-10	No Report	-		2009-10	No Report	-

While replying to para no.18 of the writ petition wherein the petitioner has alleged about the ACRs for the years 2004-2005, 2005-2006 and 2007-2008 in which his Reporting Authority had reported as “Very Good” and “Outstanding”, the following averments have been made:-

“18. That with regard to contents of para 18 of Civil Writ Petition, it is stated that the detailed reply has been given in para 7 of this counter affidavit and the reasons for considering the ACRs as no report certificates for the years 2005-06 to 2009-10 have been mentioned in column of remarks. The ACR report for the year 2004-05 has been accepted by the second authority and the same was incorporated in the Agenda for promotions.

The petitioner was rated very good in this ACR and three marks were granted to him. Therefore, the said report for the year 2004-05 cannot be termed as controversial as asserted by the petitioner.”

The petitioner has filed the rejoinder to the reply and alleged that the inaction on the part of the Reviewing Authority i.e. DPI(C), Punjab is a reflection on his inefficiency and callous attitude as from the year 1996-97 to 2009-2010, as many as 9 ACRs of the petitioner have been mentioned as “No Report” which has adversely affected the career and future prospects of promotion of the petitioner to the post of Principal which he has missed only by one mark.

From the perusal of the aforesaid facts and circumstances, it is apparent that the petitioner was rated as “Very Good” for the year 2005-2006 and 2006-07 and “Outstanding” for the year 2007-2008 by his Reporting Authority. However, these reports, which were to be reviewed by the DPI(C), Punjab by his second opinion, could not be appreciated for the reasons mentioned against each report, which are as under:-

2005-06	No Report	Sh. Kanwarjit Singh, Principal assumed the additional charge of the post of DPI(C), Punjab on 02.02.2006 and he was not eligible to give his second opinion on the annual confidential reports because he did not see the work/conduct of lecturers upto the last three months. Therefore, the reports for the year 2005-06 were considered as no report certificates.
2006-07	No Report	The college authority sent the no report certificate to all the lecturers of the college.
2007-08	No Report	Sh. Kanwarjit Singh, who was officiating as DPI (C), Punjab retired on 30.09.2008, the reports for the year 2007-08, which were received after 30.09.2008 were considered as no report certificates because the reports could not have attained the approval of the then said DPI(C).

Now the question would be as to whether the said reasons are justified in the eyes of law.

The petitioner, who could not be considered for promotion as Principal because he was lacking only 1 mark to complete the benchmark of 12 marks, has suffered only because of the reason that despite being rated as “Very Good” for the years 2005-06 and 2006-07 and “Outstanding” for the year 2007-08 by his Reporting Authority, the Reviewing Authority i.e. DPI(C), Punjab did not record his second opinion because he assumed the additional charge of the post of DPI(C), Punjab on 02.02.2006.

It is pertinent to mention here that the “No Report” for the years 2005-06, 2006-07 and 2007-08 were not communicated to the petitioner. Had it been communicated, the petitioner would have made a representation for its upgradation and he could not be put to disadvantage because of the reason that the 2nd opinion could not be obtained on the report of the reporting authority because had the 2nd opinion been granted, in the absence of any departmental inquiry or complaint pending against the petitioner, his ACR would have been accepted as it is or even if it had to be downgraded from “Outstanding” to “Good”, he would have at least got 1 mark which would complete his benchmark of 12 marks, enabling him for being considered for promotion as Principal at the time when his juniors were promoted.

Thus, in view of the aforesaid facts and circumstances, the action on the part of the respondents in not considering the reports of the Reporting Authority for the years 2005-06, 2006-07 and 2007-08 in which

he has been rated as “Very Good” and “Outstanding” is patently illegal and, thus, the impugned order 16.04.2012 passed by the respondents is hereby quashed and the respondents are directed to consider the ACRs of the petitioner for the years 2005-06, 2006-07 and 2007-08 objectively for the purpose of consideration of his case for promotion to the post of Principal.

Let this exercise be completed by the respondents within a period of 3 months from the date of receipt of certified copy of this order.

April 01, 2015
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(Rakesh Kumar Jain)
Judge