

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

**CWP No.20807 of 2011
Date of Decision: 15.10.2015**

Gopal Dass Science Master & ors. ... Petitioners

Versus

State of Punjab & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ranjiwan Singh, Advocate,
for the petitioners.

Mr. Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This entire case stands on the cornerstone of average Annual Confidential Reports (ACR) recorded against the petitioners. There are three of them in a common petition on a joint cause against a common order declining consideration for promotion to the post of Head Master on the ground that for the period of consideration of Annual Confidential Report (5 years), they have been reported for different years but within the 5 years required for consideration with “average” ACRs. Although they make the bench mark of 12 for promotion to the higher post of Head Master/Head Mistress, in each of the cases one average ACR is in question. This petition was filed in 2011 and the proceedings continued on the premise that adverse ACRs were communicated to the petitioners and they had knowledge of the same being adverse to them and thus they

had not the occasion to represent against them by filing objections against the grading of the marks in the ACRs praying for review. The petitioners argued that the ACRs were not conveyed to them; therefore, they could not be used against them at the time of promotion while relying on the principle that uncommunicated ACRs cannot be used against an employee to deprive him of the consideration for promotion. However, on an interim order passed by this Court, the State was called to furnish an additional affidavit explaining the position whether the disputed ACRs have been conveyed to the petitioners or not. In pursuant to those directions, an additional affidavit has been filed by Dharam Singh, Assistant Director (S.A.-1) in the office of the Director Public Instructions (SE), Punjab, on behalf of R-1 & R-2 which represents the State and are presently represented by Mr. Inqulab Nagpal, the learned law officer.

Learned counsel for the petitioners draws the attention of the Court towards para. 5 of the additional affidavit where the State admits that there is no record available with the authorities from where it can be found that the adverse ACRs were formally conveyed to them. While admitting that there is no record of communication of the ACRs on the official files of the department on the petitioners, the deponent tries to skirt around and save face by stating that “the facts indicate otherwise that the adverse ACRs were well within the notice of these petitioners”. When Government speaks they speak formally and in writing. In judicial review, where certiorari is sought, the writ goes to record and if the record is not available, the Court can only draw an adverse inference

against the State and accept the stand on the supplicant before the Court claiming that ACRs were not communicated and therefore, they cannot be used against them at the time of promotion.

In view of this factual position and the fact that the record is not available regarding the adverse ACRs of the three petitioners, then the only way to redress the grievance would be not leave the ACR year blank but to direct the State to make an average of the ACRs for the 4 years out of the 5 years required and accordingly average out the grading for the disputed year by the average of ACRs before and after the disputed year and to work out the bench mark by moderation on an average. In this case despite average ACRs, the petitioners still make the bench mark and that is another reason which persuades this Court to follow the course adopted since the petitioners in some of the years have received outstanding or very good grading and remarks. This is the only reasonable way out of the predicament, the mess created by the State by not keeping its house in order.

Consequently, the petition is allowed. The impugned order dated October 4, 2011 (Annexure P-4) is quashed. The State is directed to consider the petitioners for promotion from the retrospective dates as were due i.e. from the date when their juniors were promoted vide order dated October 4, 2011(Annexure P-3). Accordingly, promotion orders be passed after consideration of the cases of the petitioners by the formula adopted. The petitioners would be entitled to all consequential benefits flowing from the retrospective promotions including monetary benefits since they were wrongly denied promotion and were wrongfully passed

over and superseded by their juniors. The petitioners shall have costs of this petition assessed at Rs.10,000/- each. Let the fresh consideration take place by review DPC within three weeks from the date of receipt of a certified copy of this order. In case the necessity of review DPC is not felt necessary then fresh orders be passed within 2 weeks. The monetary benefits be computed and paid within the next three months thereafter.

(RAJIV NARAIN RAINA)
JUDGE

15.10.2015
monika