

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

**CWP No.9193 of 2012 (O&M)
Date of decision: 20.03.2015**

Sarvodaya Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vikas Chatrath, Advocate and
Mr. Deepak Kumar, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

AMIT RAWAL J. (ORAL)

Claim in the present writ petition is to promote petitioner to the post of Lecturer (Chemistry) from the date of his junior, namely, Mahesh Chander Aggarwal, was promoted i.e. 19.08.1994.

In pursuance to the notice issued, the State had filed reply stating that the name of the petitioner was not considered for promotion at relevant point of time, owing to the fact that the petitioner did not have 70% good record of his annual confidential reports. However, subsequently in the year 1994-95, his ACR was

found to be good and, thereafter, the petitioner was promoted to the post of Lecturer w.e.f. 25.10.1995. The State was further directed to file an affidavit in this regard and the short reply by way of an affidavit of Harminder Singh Saini, Deputy Director (Lecturer), office of the Director Secondary Education, Haryana, Panchkula, dated 10.01.2015 has been filed and in para No.3 of the reply, it has been stated that adverse remarks in the ACR had not been communicated to the petitioner, therefore, the petitioner's case could not put up for promotion and the department is contemplating to take against the defaulting/error official/officer to the fact that junior to the petitioner had been promoted.

For the sake of brevity, paragraphs No.3 and 4 of the affidavit dated 10.01.2015 are extracted herein below.

"3. That so far as conveying of the ACR to the petitioner for the year 1991-92 to 1993-94 is concerned as per record, the adverse remarks in the ACR's of the petitioner did not convey to him. At that time Sh. P.L.Babar was working as Sub Divisional Education Officer, Yamuna Nagar and being accepting authority it was his duty to convey the adverse remarks to the petitioner. Sh. P.L.Babar has been retired from service on 31.12.2000.

It is further necessary to bring to the notice of this Hon'ble Court here that from the facts on file it appears that the

then Assistant Sh. Dharambir Singh Dhanda who was dealing with promotional matter of Lecturers, failed to put up the promotion case of the petitioner as per record and accordingly, the petitioner could not be promoted, action is being initiated against the defaulting official/officer.

4. That so far as the promotion of Sh. Mahesh Chander and Sh. Mahinder Partap Singh is concerned, it is correct that they are junior to the petitioner but they were promoted on the basis of good service record and the petitioner could not be promoted with Sh. Mahesh Chander and Sh. Mahinder Partap Singh because of not having 70% good service record at that time. This fact is proved in the office record that his service record was poor at that time.”

Mr. Ravi Pratap Singh, Assistant Advocate General, Haryana, contends that the petitioner thus, entitled to be promoted when his juniors have been promoted. He further submits that claim of the petitioner is hit by the principles of doctrine of 'delay and latches'.

I have heard learned counsel for the parties and appraised the paper book as well as affidavit dated 10.01.2015 and am of the view that though the petitioner has approached this Court belatedly but the fact remains that the petitioner can be granted notional promotion from the date of his juniors promoted and thus,

would be entitled to the consequential benefits. In support of aforementioned, I draw support from the judgment of this Court rendered in **Ragbir Singh, Sub-Inspector (81/A), Police Lines, Karnal vs. State of Haryana, through the Director General of Police, Haryana, Chandigarh 2012 (1) SCT 205**. The ratio descendi culled out in para Nos.3 to 5 would be relevant and the same is extracted herein below:-

“3. This fits with a logic that if a particular appraisal and a grading have a bearing on promotion prospects, then any relative grading which denies eligibility for consideration must be taken as adverse and hence, ought to be communicated. An ‘Average’ entry normally may not be taken as adverse, but in a situation where a mere ‘Average’ entry would be taken as not fulfilling a benchmark for promotion, it has an immediate ramification for promotion and hence, no such appraisal could be taken into reckoning if it is not communicated. Consequently, the decision not to promote the petitioners on the basis of ‘Average’ reports is vitiated by the fact that they were not communicated and hence, the petitioners were bound to be favourably considered for promotion from the date when the respective juniors were

promoted.

4. It is learnt that all the petitioners have retired from service. The petitioners would, therefore, be treated as notionally promoted to the posts when their respective juniors were promoted and the terminal benefits shall be calculated on such a basis. Since the case was instituted immediately after denial of promotion, I find no reason to deny to them the monetary benefits that would accrue to them in the respective promotion post for the entire period i.e. from the dates when promotions were due till the respective dates of retirement.

5. All the writ petitions are allowed and the respondents are directed to make a proper reckoning of the monetary entitlements and grant the same to them within a period of 12 weeks. If the amounts are not paid as directed, they shall also attract interest at 7.5% from today.”

In view of the settled law, the petitioner would, therefore, be treated as notionally promoted to the post of Lecturer (Chemistry) when their respective juniors were promoted and the terminal benefits shall be calculated on such a basis. The respondents are directed to make a proper reckoning of the monetary entitlements and grant the same to him within a period of twelve weeks. If the

amounts are not paid as directed, he shall also attract interest @ 7.5% from today.

With the aforementioned directions, the writ petition is disposed of.

(AMIT RAWAL)
JUDGE

March 20, 2015
savita