

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1555 of 2015 (O&M)

Date of Order: 08.12.2015

State of Punjab and another

..Appellants

Versus

Jagdish Kumar Jindal

..Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE REKHA MITTAL**

**Present: Ms. Munisha Gandhi, Addl.A.G.,Punjab
for the appellants.**

RAJIVE BHALLA, J (Oral)

C.M.No.3335-LPA of 2015

Prayer in this application is to condone delay of 174 days
in filing the appeal.

We have heard counsel for the appellants and as
sufficient cause has been shown, allow the application and condone
the delay of 174 days in filing the appeal.

C.M.No.3336-LPA of 2015

Allowed as prayed for.

Annexures A-1 and A-2 are taken on record.

LPA No.1555 of 2015 (O&M)

The State of Punjab and another have filed this appeal,
challenging order dated 01.04.2015, allowing the writ petition filed by the
respondent and holding that the action of the respondents in not
considering annual confidential reports for the years 2005-06, 2006-07 and
2007-08, is illegal and as a consequence, directing the respondents to

consider annual confidential reports for the years 2005-06, 2006-07 and 2007-08, objectively, for promotion to the post of Principal.

Counsel for the appellants submits that Civil Writ Petition No.19674 of 2011, filed by the respondent claiming promotion to the post of Principal, from the date his juniors were promoted, was disposed of by directing the department to take a decision on the petitioner's representation. The representation was rejected on the ground that as the respondent has been awarded 11 marks, he does not meet the bench mark of 12 marks, prescribed by Punjab Government Instructions, dated 06.09.2001, guidelines issued by the Departmental Promotion Committee and Rule 6.2.1. Counsel for the State of Punjab further submits that circular No.2334, dated 03.05.1960, provides that no reporting officer shall record remarks in annual confidential reports, unless he has appraised the work and conduct for at least three months. The ACR for the year 2005-06 was not considered as the competent authority had not appraised the work and conduct of the respondent for the last three months. The other annual confidential reports were similarly ruled out of consideration but the writ petition has been allowed by holding that as reports for the years 2005-06, 2006-07 and 2007-08 were not communicated to the respondent, it has adversely effected his right to promotion and, therefore, requires reconsideration. The reasons assigned, while allowing the writ petition, are contrary to the rules as promotion can only be made in accordance with the guidelines issued by the Departmental Promotion Committee and the circular issued by the State of Punjab.

We have heard counsel for the appellants, perused the impugned order but are not inclined to entertain the appeal.

A perusal of the impugned order reveals that for promotion to the post of Principal, the respondent was only one mark short of the criteria

of 12 marks. The performance of the respondent recorded for the years 2005-06, 2006-07 and 2007-08 was "Very Good" and "Outstanding". However, these reports could not be reviewed by the DPI(C), Punjab, for reasons that the DPI(C) was not eligible to record a report, the college authorities had not forwarded a report and the DPI(C) had retired before he could record his approval, respectively. Admittedly these reports were never communicated to the respondent. The writ petition has been allowed by holding as follows:-

"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 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 up-gradation 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 complain ending 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.”

We find no reason to differ with the opinion recorded, as admittedly, the “no reports” which operate to adversely affect the rights of the respondent were not communicated, at any stage. The writ petition has been rightly allowed by directing the respondents to reconsider the matter.

Dismissed.

(RAJIVE BHALLA)
JUDGE

December 08, 2015
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(REKHA MITTAL)
JUDGE