

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

(104)

RSA-5119-2013 (O&M)

DATE OF DECISION: 16.09.2015

HARNEK SINGH

.....Appellant

VERSUS

STATE OF PUNJAB & OTHERS

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Shubham Kaushik, Advocate
for Mr. Naveen Bharadwaj, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-13373-2015

Prayer in this application for condonation of delay of 22 days in refiling the appeal. For the reasons mentioned in the application which is supported by an affidavit the present application is allowed. The delay of 22 days in refiling the appeal stands condoned.

RSA-5119-2013

Challenge in this appeal is to the judgment and decree passed by the Courts below vide which the suit of the appellant-plaintiff has been partly decreed by granting him the benefit of his ACP increment on completion of 24 years of service and quashing of the charge-sheet dated 05.04.2002 which resulted in the order of punishment 'Censure' dated 08.01.2009 but his claim for promotion

to the post of Superintendent Gr.II stands declined.

It is the contention of the counsel for the appellant-plaintiff that the appellant-plaintiff belongs to the reserved category and was working on the post of a Senior Assistant. The cadre of Superintendent Gr.II was 18 although in the reply which has been filed by the respondent-department, it has been asserted that it was 15 posts, be that as it may, the fact remains that there was certain posts of Superintendent Gr.II lying vacant on which the appellant-plaintiff was seeking promotion. An argument has been put forth by the counsel for the appellant that a post of Superintendent Gr.II belonging to the reserve category became available on retirement of one Sh. Mohinder Singh on 30.04.2004 and the appellant being the senior most reserved category candidate, his case for promotion should have been considered against this post which has not been done by the respondent till the date of his retirement i.e. 31.07.2004. He has placed reliance upon the judgment of the Division Bench of this Court in **Jagjit Singh Randhawa Vs. State of Haryana 1998 Volume 4 SCT 622** where a direction has been issued in the case of retired petitioner (Headmaster) that his case be considered for promotion to the post of Principal from the date it became available. Thus, he contends that the judgments passed by the Courts below cannot be sustained.

I have considered the submissions made by the counsel for the appellant and with his assistance, have gone through the judgments passed by the Courts below. The Courts below have

rightly relied upon the judgment of the Supreme Court in the case of **Union of India and Another Vs. Hemraj Chauhan and Others, 2010(2) RSJ 728**, where it has been held that an eligible employee has no fundamental right to be considered for promotion and his right will only accrue if he has been discriminated against where any person junior to him has been considered and promoted. In the present case, it is an admitted case that no person junior to the appellant-plaintiff, has been promoted to the post of Superintendent Gr.II till the date of his retirement. The principle is that mere eligibility for consideration for promotion does not confer any fundamental right upon an employee for being promoted to the said post. An employee has a right to consideration for promotion but it is the discretion of the employer to determine as to when such consideration will take place and the date on and from which such promotion has to be given effect to.

On a categorical question put by this Court as to whether there is any statutory rule mandating filling up of the post of Superintendent Gr.II on the date it becomes vacant or if some time has been specified for making promotion, the counsel for the appellant very fairly stated that there is no such rule. If there being no mandate of the statute fixing the time frame within which the promotion against the post which has become available for consideration and promotion then it has to be left to the discretion of the employer who is the best judge with regard to the filling up of such promotional post.

The judgment on which reliance has been placed by the learned counsel for the appellant-plaintiff i.e. **Jagjit Singh Randhawa's case (supra)** is not based on any statutory rules nor any principle of law has been laid down therein. The directions issued are contrary to the law as settled by the Supreme Court in various judgments including **Hemraj Chauhan's case (supra)**.

In view of the above, the assertion of the counsel for the appellant-plaintiff cannot be accepted.

There are concurrent findings recorded by the Courts below which is based on proper appreciation of evidence led by the parties and rules, and correct interpretation of the rules and laws settled by the Hon'ble Supreme Court.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 16, 2015

SwarnjitS

**(AUGUSTINE GEORGE MASIH)
JUDGE**