

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.17244 of 1998 (O&M)
Date of Decision: 10.05.2016**

Baldev Singh

... Petitioner

Versus

The State of Punjab and others

... Respondents

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

Present: Mr. R.D. Bawa, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. The petitioner was promoted as Senior Radiographer and posted to Ferozepur but the Principal/Officer In-charge at Guru Gobind Singh Medical College, Faridkot kept the promotion order in his pocket and did not convey it to the petitioner. The fact not having been brought to the notice of the petitioner he kept working at Faridkot.

2. The petitioner learnt of the promotion order when he was conveyed a letter fixing his pay in the scale of Senior Radiographer vide order dated September 03, 1996 (Annex P-2). He then discovered that he had been promoted as Senior Radiographer on December 08, 1994 and the fact was kept from him. In terms of explanation for the withholding of the promotion order and its justification, an admission has come on record made by the then Principal of the College that the petitioner was not relieved or permitted to join the promotion post in another city because of shortage of

staff. The admission is found at page 26 of the paper-book. Thereafter, the case of promotion of the petitioner has been derailed. It has been wrongly assumed that the petitioner was not willing to avail his promotion and, therefore, he was debarred to claim it since the joining time given in the promotion order had expired. Hence the petitioner had relinquished his rights by his own act and conduct. In these circumstances, the impugned order was passed debarring the petitioner for promotion for two years. The promotion order has been cancelled. There could be no greater travesty of justice than to accept the stand of the State in the written statement. When the fact has come on record that the promotion order was not conveyed to the petitioner for him to have acted upon the offer and to have made an informed choice whether he wants the promotion or not, then the actions of the respondents and particularly of those in charge of affairs at Faridkot in 1994 deserve to be deprecated in the harshest terms. It violates the policy of the law that no one shall be allowed to profit by his own wrong: *nullus commondum capere protest de injuria sua propria*.

3. To make matters worse, the respondent-Department has cancelled the subsequent order fixing the pay of the petitioner in the pay scale of Senior Radiographer retrospectively and fixing his pay in the lower post of Radiographer from where he was promoted as Senior Radiographer.

4. Having heard the learned counsel for the parties at some length, this Court is of the view that the impugned order dated July 29, 1998 (Annex P-6) is not sustainable and, is therefore, liable to be quashed. The writ petition is allowed. The impugned orders will be treated as though they were never passed being *void ab initio* based on incorrect premises and

irrelevant considerations. A direction is issued to the respondents to give effect to the promotion order (Annex P-1) from the date of its issue and to treat the petitioner as Senior Radiographer for all intents and purposes together with all consequential benefits since 1994 including right of consideration for further promotions, if any, in case any junior was promoted in the interregnum and to re-fix pay and pension as a result of quashing of the impugned order with all consequential benefits flowing therefrom.

(RAJIV NARAIN RAINA)
JUDGE

10.05.2016
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