

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

CWP No.13212 of 2011
Date of Decision: 26.07.2016

Gurcharan Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.K. Arora, Advocate
for the petitioners.

Mr. L.S. Virk, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing order dated 01.11.2010 (Annexure P-8) passed by respondent No.2, whereby, the claim of the petitioners for their promotion as Superintendent Grade-II has been rejected on the ground that they had already retired from service.

Briefly the facts of the case, as made out in the petition, are that the petitioners were appointed as Clerks in the Department of Education, Punjab on 01.04.1977 and 23.07.1979, respectively on regular basis. They were further promoted as Senior Assistants w.e.f 30.11.1994 and 30.04.1997, respectively and ultimately retired as such on 31.03.2010 on attaining the age of superannuation. The seniority of the Clerks working in the Sub Office of the Education Department Punjab was maintained at State

level. The Director Public Instructions (SE), Punjab was the appointing and controlling authority. The next avenue of promotion from the post of Clerk was to that of Assistant. The petitioners were also promoted as Senior Assistants w.e.f 12.05.1997 and 10.06.1997. The names of eligible candidates were called for promotion to the post of Superintendent Grade-II. Both the petitioners submitted their requisite documents by considering themselves to be qualified and eligible for the post of Superintendent Grade-II but they were not considered, whereas, they were recommended by respondents No.3 and 4. Thereafter, the petitioners submitted the representations but no action was taken thereupon. Ultimately, they filed **CWP No.5178 of 2010** before this Court and the same was disposed of with a direction to respondent No.2 to consider the claim of the petitioners for promotion as Superintendent Grade-II and in case, they were found to be entitled and then appropriate orders be passed as expeditiously as possible preferably within a period of three months from the date of receipt of certified copy of the order.

In pursuance to aforesaid directions issued by this Court, the claim of the petitioners was rejected vide order dated 01.11.2010 on the ground that they had already retired from service.

Learned counsel for the petitioners has challenged the order of rejection of claim of the petitioners on the ground that number of posts of Superintendent Grade-II were lying vacant at that time but claim of the petitioners was rejected in an illegal and arbitrary manner, whereas, they were eligible and their case was also recommended. Learned counsel also submits that the respondents have adopted pick and choose policy and as such, the action of the respondents was violative of Article 14 of the

Constitution of India.

Learned counsel for the respondent-State submits that the petitioners cannot claim promotion as a matter of right as both the petitioners retired prior to consideration of their case for promotion to the post of Superintendent Grade-II and no junior to the petitioners was promoted. Learned State counsel also submits that merely the names of the petitioners were forwarded does not confer any legal right upon the petitioners to be promoted. The case of the petitioners for promotion was to be considered by the Departmental Selection Committee but before taking any final decision, the petitioners retired.

Heard the arguments of learned counsel for the parties and have also perused the impugned order dated 01.11.2010, whereby, the claim of the petitioners for their promotion to the post of Superintendent Grade-II has been rejected.

Admittedly, the cases for promotion from Senior Assistant to Superintendent Grade-II of District Sangrur were asked and names of eligible candidates were sent. The petitioners filed **CWP No.5178 of 2010** and the said petition was disposed of with a direction to respondent No.2 to consider the claim of the petitioners for promotion as Superintendent Grade-II and in case, they were found to be entitled then appropriate orders be passed as expeditiously as possible preferably within a period of three months from the date of receipt of certified copy of the order.

In pursuance to the aforesaid directions issued by this Court on 22.03.2010, the claim of the petitioners was considered but the same was rejected on the ground that they had already retired on 31.03.2010 and promotion to the post of Superintendent Grade-II was made on 27.09.2010,

much later to the date of their retirement. It has also been mentioned in the impugned order that the names of the petitioners were initially included in the list of candidates, which was sent to Screening Committee for promotion to the said posts. The Screening Committee met on 19.08.2010 for finalizing the promotion but since the petitioners had already retired much before the date the Screening Committee met, they could not be promoted. No junior to the petitioners has been promoted before the date of retirement of the petitioners. Neither any instance has been mentioned in the petition nor it has been argued by learned counsel for the petitioners that any person junior to the petitioners was promoted and the case of the present petitioners was not considered. The promotion to the post cannot be claimed as a matter of right as during the process of selection, both the petitioners retired and hence, they could not be promoted.

This view has been held in the judgment of Hon'ble the Apex Court in cases ***Union of India and others vs Sangram Keshari Nayak 2007 (3) SCT 512*** wherein the DPC recommended the case of the employee for promotion but no decision was taken by the employer and accordingly, the employee was not promoted. It was also held in the said judgment that the promotion is not a fundamental right. Even after recommendation, no right has accrued to the employee. In ***Lakhwinder Singh vs Union of India and others 2008(4) SCT 734***, the name of the petitioner, in that case, was recommended for promotion successively by two Special Selection Boards but the promotion was refused.

Similarly, in the judgment of this Court in case ***Faqir Chand Chawla vs State of Punjab 2013(4) SCT 659***, the recommendation was made by the Departmental Promotion Committee in the meeting, the

competent authority, approved the proceedings of the Departmental Promotion Committee but the employee in that case had already retired on superannuation prior to the date of taking decision. It was held in said judgment that there cannot be any automatic promotion or appointment to any post on the recommendation of the Public Service Commission, unless the Government sanction such promotion and appointment in accordance with proceedings prescribed for the time being as per statutory rules or in their absence as per the executive instructions issued by the Government.

Same view has been taken in the judgment of Delhi High Court in case ***Union of India vs Col. Shyam Kumar 1982(3) DRJ 225.***

In the present case also, only the names of the petitioners were recommended and considered but both the petitioners had already retired and hence they could not be considered for promotion.

In view of the facts and law position as discussed above, I find no merit in the contentions raised by learned counsel for the petitioners and as such, the petition, being devoid of any merit, is hereby dismissed.

26.07.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No