

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

CWP No.13225 of 2011
Date of Decision: 26.07.2016

Sikander SinghPetitioner

Versus

State of Punjab and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

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 of order dated 14.10.2010 (Annexure P-7) passed by respondent No.2, whereby, the claim of the petitioner for his promotion as Superintendent Grade-II has been rejected on the ground that he has already retired from service.

Briefly the facts of the case, as made out in the petition, are that the petitioner was appointed as Clerk in the Department of Education, Punjab on 01.04.1977 on regular basis. He was further promoted as Senior Assistant w.e.f 21.10.1992 and had retired as such on 30.06.2010 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 and the petitioner was promoted as Senior Assistant w.e.f 06.06.1997. Thereafter, the names of eligible candidates were called for promotion to the post of Superintendent Grade-II. The petitioner submitted his requisite documents by considering himself to be qualified and eligible for the post of Superintendent Grade-II but he was not considered, whereas, he was recommended by respondent No.4. Thereafter, the petitioner along with other Senior Assistants submitted a representation but no action was taken thereupon. Ultimately, the petitioner along with one Daljit Singh Kohli filed **CWP No.5642 of 2010** before this Court and the same was disposed of with a direction to respondents No.1 and 2 to consider the claim of the petitioner for his promotion to the post of Superintendent Grade-II. In case, he was found to be entitled then to pass appropriate orders in accordance with law within a period of four 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 petitioner was considered and rejected vide order dated 14.10.2010 on the ground that he had already retired from service.

Learned counsel for the petitioner has challenged the order of rejection of claim of the petitioner on the ground that number of posts of Superintendent Grade-II were lying vacant at that time but claim of the petitioner was rejected in an illegal and arbitrary manner, whereas, he was eligible and his 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 is violative to Article 14 of the Constitution of India.

Learned counsel for the respondent-State submits that the petitioner cannot claim promotion as a matter of right as he had retired prior to consideration of his case for promotion to the post of Superintendent Grade-II and no junior to the petitioner was promoted. Learned State counsel also submits that merely on the basis of recommendation, the name of the petitioner was forwarded, no legal right has been accrued. The case of the petitioner for promotion was to be considered by the Departmental Selection Committee but before taking any final decision, the petitioner had retired.

Heard the arguments of learned counsel for the parties and have also perused the impugned order dated 14.10.2010, whereby, the claim of the petitioner for his promotion to the post of Superintendent Grade-II has been rejected.

Admittedly, the name of the petitioner for promotion from Senior Assistant to Superintendent Grade-II of District Sangrur was sent along with other eligible candidates but he was not promoted. The petitioner filed **CWP No.5642 of 2010** and the said petition was disposed of with a direction to respondents No.1 and 2 to consider the claim of the petitioner for promotion to the post of Superintendent Grade-II and in case, he is found to be entitled, then appropriate orders be passed as expeditiously as possible preferably within a period of four months from the date of receipt of certified copy of the order.

In pursuance to the aforesaid directions issued by this Court on 30.03.2010, the claim of the petitioner was considered and the same was rejected on the ground that he had already retired on 30.06.2010 whereas the promotion to the post of Superintendent Grade-II was made on

19.08.2010, much later to the date of his retirement. It has also been mentioned in the impugned order that the name of the petitioner was 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 petitioner had already retired much before the date of consideration by the Screening Committee, he could not be promoted. It is also mentioned in the impugned order that no junior to the petitioner has been promoted before the date of retirement of the petitioner. Neither any instance has been mentioned in the petition nor it has been argued by learned counsel for the petitioner that any person junior to the petitioner was promoted and the case of the present petitioner was not considered. The promotion to the post cannot be claimed as a matter of right as during the process of selection, the petitioner retired and hence, he 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.

In ***Lakhwinder Singh vs Union of India and others 2008(4) SCT 734***, the name of the petitioner was recommended for promotion successively by two Special Selection Boards but the promotion was refused. It was held in the said judgment that the promotion is not a fundamental right. Even after recommendation, no right has accrued to the employee.

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 and 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 by the Public Service Commission, unless the Government sanctions 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 name of the petitioner was recommended but it was considered when he had already retired and hence he 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 petitioner and as such, the petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

26.07.2016
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes