

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

CWP No.1040 of 2016

Date of decision:16.2.2016

Rajinder Singh

... Petitioner

Versus

State of Punjab & anr.

... Respondents

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

Present: Mr. Vikas Singh, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner was the senior most Superintendent Grade-II serving in the Punjab Public Service Commission. There was a dispute in the Commission as to whether the vacancy in the cadre of Superintendent Grade-I was to be filled from amongst the reserved category candidates or not. The dispute took some time to resolve. The Legal Remembrancer of Punjab advised the Commission that the petitioner is entitled to promotion, the vacancy being general, and accordingly the petitioner asserts that he was assured by the Commission that his case for promotion would be shortly taken up but it was not till he retired from service on reaching the age of superannuation on August 31, 2015. His grievance remains that vacancy in the cadre of Superintendent Grade-I occurred on March 31, 2015 and being the senior most eligible candidate available, he would have been offered promotion in the normal course since his service record was clean.

2. After retirement, the petitioner was left with no option but to make a representation to the Commission reminding it that the vacancy which has occurred on March 31, 2015 was not a reserved roster point vacancy to be filled by candidates belonging to the Scheduled Caste category and thus the wrong can be corrected only if the petitioner is considered for retrospective promotion as Superintendent Grade-I from the date of occurrence of vacancy.

3. Mr. Vikas Singh, learned counsel appearing for the petitioner submits that date of occurrence of vacancy for promotion purposes is a well recognized principle even though the actual promotion comes subsequently but then it would relate back to the due date when the vacancy occurred. The petitioner was not at fault in the time misspent in resolving the dispute identifying the nature and character of the vacancy of whether it fell to the share of the reserved category candidates or a general candidate. However, since the view of the Commission is not known for this Court to exercise judicial review, the primary view it may take deserves to be left in the first instance to the competent authority and toward this end Mr. Vikas Singh submits that his client will be satisfied if a direction is issued to the respondents to consider and decide his pending representation dated October 21, 2015 [Annex P-6] by passing an appropriate order.

4. The request appears genuine and bona fide since it cannot be said that the petitioner has no legitimate grievance as he was senior most Superintendent Grade- II in line for promotion as per seniority and turn.

Consequently, a direction is issued to respondent No.1 to consider and

decide the representation Annex P-6 within one month from the date of receipt of a certified copy of this order. If the petitioner makes a request for personal hearing, it shall be granted to him for which an additional 15 days is granted from the time line fixed above. If the Commission is convinced that the petitioner has been wronged then they can promote the petitioner retrospectively without having to pass a detailed order or calling the petitioner for hearing.

5. In case, the petitioner is found fit for promotion with effect from the due date of occurrence of vacancy he may be promoted notionally but the monetary benefits of such promotion would go to him in the shape of arrears of difference of the salary between the posts of Superintendent Grade-I and Superintendent Grade-II including passing of an order rectifying the last pay certificate with consequential benefits enhancing accordingly pension and pensionary dues. If this is found admissible then the monetary benefits be computed and paid within the next one month.

6. With the above observations and directions, the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

16.2.2016
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