

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

CWP No.13683 of 2016 (O&M)

Date of decision : 14.07.2016

Anita Kadian

... Petitioner

Vs.

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Rajbir Sehrawat, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

The pleadings on record would indicate that the petitioner had qualified her five years B.F.A. (Bachelor of Fine Arts) degree from Punjab University as a regular student in the year 1988. Petitioner joined the respondent/School Education Department, State of Haryana as a Drawing Teacher on regular basis w.e.f. 30.05.1998. Promotion from the post of Drawing Teacher is to the post of Lecturer in Fine Arts. Petitioner's case of promotion to the post of Lecturer (School Cadre) in the subject of Fine Arts was considered but rejected by the respondent/department vide letter dated 30.01.2008. Aggrieved against the rejection of her claim for promotion to the post of Lecturer (Fine Arts), petitioner preferred CWP No.4539 of 2010 in this Court and which was allowed vide order and judgment dated 31.01.2011 (Annexure P-1). Respondents were directed to consider the case of the petitioner for promotion to the post of Lecturer (School Cadre) with effect from the date her juniors had been so promoted. The judgment rendered by this Court in CWP No.4539 of 2010 has since attained finality. In purported compliance of the directions of this Court, case of the petitioner for promotion was considered and vide order dated 23.07.2012,

petitioner was promoted as Lecturer in Fine Arts w.e.f. 24.10.2007 i.e. the date her juniors had been so promoted. Copy of such promotion order dated 23.07.2012 has been placed on record and appended at Annexure P-2. Perusal thereof would reveal that the benefit of promotion has been granted along with notional pay fixation and seniority. However, the financial benefits have been confined to the petitioner from the date she joins as Lecturer in Fine Arts.

Against the aforementioned brief factual backdrop, the present petition has been filed raising a claim for grant of arrears with effect from the date the petitioner had been granted retrospective promotion.

Learned counsel appearing for the petitioner would vehemently argue that once the issue of eligibility of the petitioner for consideration of promotion to the higher post of Lecturer (School Cadre) had been settled in her favour by this Court, the petitioner has to be necessarily granted the consequential relief as well which would include arrears of salary. It has further been argued that the action of the State Government is arbitrary inasmuch as on the one hand an employee has been denied promotion and without any justifiable reason and the rights of such employee having been vindicated upon seeking judicial redress, salary for the period that such employee had been denied the promotional post cannot be withheld. In support of the claim and prayer made in the present petition, reliance has also been placed upon a judgment of the Hon'ble Supreme Court in ***Prabhu Dayal Khandelwal Versus Chairman, UPSC and others, 2015 Supreme (SC) 753.***

Counsel for the petitioner has been heard at length and pleadings on record have been perused.

Even though, the submission and contention made by learned counsel in support of the prayer appears attractive at first blush, yet this Court is not inclined to accept the same.

The promotional post of Lecturer (School Cadre) in the subject of Fine Arts is governed by statutory rules, namely, the Haryana State School Education Lecturer School Cadre (Group 'C') Service Rules, 1998 (hereinafter to be referred to as “the 1998 Rules”). The essential eligibility condition contained in the 1998 Rules for consideration of an employee for purpose of promotion to the post in question was stipulated as under:

- “i) MA Fine Arts with at least 50% Marks from recognized University.*
- ii) 2 years teaching experience as Masters/Classical and Vernacular Teacher.”*

It is not a matter of dispute that the petitioner does not possess the qualification of M.A. Fine Arts. She, however, holds a degree of B.F.A. (Bachelor of Fine Arts). This Court while holding the petitioner to be eligible for consideration for promotion to the post of Lecturer (School Cadre) has taken notice of instructions that had been issued by the State of Haryana and in terms of which the qualification of B.F.A. (Bachelor of Fine Arts) had been treated as equivalent to that of M.A. Fine Arts.

Be that as it may, the statutory rules had confined the requisite eligibility condition/qualification to be that of M.A. Fine Arts with at least 50% marks from a recognized University. In the statutory rules, there was no recital with regard to consideration of any other qualification or degree which may be equivalent.

Under such circumstances, the issue with regard to eligibility of

the petitioner to be considered for the post of Lecturer (Fine Arts) was debatable. Even though, this Court has taken a view in favour of the petitioner based upon instructions that may have been issued by the State of Haryana by treating the qualification possessed by the petitioner to be equivalent to the one prescribed under the statutory rules, yet it cannot be held that the action of the State Government in having rejected the claim of the petitioner at that point of time when her juniors were so promoted was totally irrational or without any basis.

Under such circumstances, this Court is of the considered view that it is a case where the principle of “No Work No Pay” would apply. The petitioner has not worked on the post for which she is seeking benefit of arrears.

In the case of ***Prabhu Dayal Khandelwal (supra)*** on which reliance has been placed upon by learned counsel, it was a case where the applicant therein had been denied consideration for promotion from the post of Commissioner of Income Tax to that of Chief Commissioner of Income Tax on the basis of un-communicated Annual Confidential Reports. It was in the light of such facts that the Hon'ble Apex Court came to the conclusion that the action of the department was against settled law of the land i.e. the claim of an employee could not have been ignored by taking into consideration un-communicated Annual Confidential Reports. The action that had been frowned upon was against settled law and it is under such circumstances that while granting promotion that had earlier been withheld even benefit of arrears of salary had been granted. The facts of the case in ***Prabhu Dayal Khandelwal (supra)*** are clearly distinguishable and would have no bearing to the facts of the present case.

In view of the reasons recorded above, the claim of the petitioner seeking arrears on account of having been granted retrospective promotion is rejected.

Petition dismissed.

14.07.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note : To be referred to the Reporters? Yes/No