

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

CWP No.21872 of 2012

Date of Decision: 13.12.2016

Jarnail Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sukhdev Kamboj, Advocate
for the petitioner.

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

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* quashing the impugned order dated 28.08.2012 (Annexure P-8), whereby, the claim of the petitioner for promotion to the post of *Principal* has been rejected. A further prayer has also been made for issuance of a writ in the nature of *mandamus* directing the respondents to consider and promote the petitioner against the post of Principal being fully qualified and by considering that his case is squarely covered by judgment of this Court in case ***CWP No.12679 of 2010*** titled as ***Chandigarh Administration vs Vipin Gupta*** decided on ***25.10.2010***.

The grievance of the petitioner, as made out in the present petition, is that his claim for promotion to the post of Principal has wrongly been rejected, whereas, he was having requisite experience as per relevant

rules and Davinder Singh, who was not having experience of seven years as Head Master as per Punjab Educational Service (School and Inspection) Rules, has been promoted to the post of Principal.

Learned counsel for the petitioner submits that for promotion to the post of Principal, experience of seven years on the post of Head Master was required. Petitioner belongs to handicapped category and his disability had been assessed at 60%. Learned counsel also submits that the post of Head Master fell vacant due to non-availability of the cadre of Head Masters and the petitioner, being the senior most, was given the charge against the post of Head Master vide order dated 01.10.1992 and he continued to work till 14.05.1997. Thereafter also, the petitioner was given charge of Head Master along with powers of Drawing and Disbursement Officer on 01.12.2001 and continued there till 04.08.2008. Even after that also, the petitioner worked as Head Master from 24.10.2008 till 08.07.2010 and thereafter, up to 06.10.2011. Learned counsel also submits that in view of order passed in Public Interest Litigation by way of filing **CWP No.11467 of 2010** titled as **Disabled Person Association vs State of Punjab**, decided on **06.09.2010**, a policy was framed by the State Government and thereafter, the instructions were issued on 05.07.2011, whereby, the State Government has decided to give 3% reservation to the disabled persons in Group-A, B, C and D of the Government Services in promotion. In **Balwinder Kaur and another vs State of Punjab (CWP No.7138 of 2005)** filed by the petitioner and one Balwinder Kaur, the directions were issued to keep 3% posts reserved for promotion for the disabled in Group A and B posts and to pass necessary order of promotion within a period of six months. The directions were also issued to the

respondents to consider the case of the petitioners for promotion in view of instructions dated 05.07.2011. Petitioner made a representation and ultimately, he was promoted to the post of Head Master. Continuing on regular substantial post of Headmaster for long, he is entitled for promotion against the post of Principal. Learned counsel further submits that the petitioner is also entitled for promotion by considering the backlog of the post of Principal reserved for handicapped category. The claim of the petitioner was wrongly rejected by the respondents stating that he did not fulfil the requirement of experience of seven years, whereas, he was having more than 15 years' of experience on the post of Head Master. At the end, learned counsel for the petitioner submits that the case of the petitioner is squarely covered by decision rendered in ***Sukhminder Singh and others vs State of Punjab and another (CWP No.26621 of 2013)*** and some other connected matters decided on ***10.11.2016***.

Learned State counsel has not disputed the facts but opposes the submissions made by learned counsel for the petitioner by re-iterating the reasons mentioned in the impugned order that the petitioner has not gained seven years' experience as Head Master and as such, he is not entitled for promotion to the post of Principal. He also submits that the petitioner was working as Drawing and Disbursement Officer in different schools during his tenure as Math master and he was paid for the said period. Petitioner has no right to claim experience while he was having the powers of Drawing and Disbursement powers of the school.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

In addition to earlier arguments, learned counsel for the

petitioner submits that the petitioner would be satisfied, in case, the directions are issued by this Court to consider the claim of the petitioner in view of order passed in ***Sukhminder Singh's*** case (supra) as therein, the directions were issued to the respondents to re-consider the case of the petitioners for promotion to the post of Principal against 30% reserved quota for promotion amongst Headmasters/Mistresses, which are lying vacant.

Even as on today, 20 vacancies are still lying vacant. The issue in the present case is as to whether the current duty charge service towards experience is to be counted for promotion or not. Similar issue was raised in ***Vipin Gupta's*** case (supra). It was held in the said case that the working experience counted for promotion to the post of Executive Engineer will include experience gained on current duty charge as well. The Court, while relying upon different judgments of this Court, has held that once an employee has gained experience whether working on *ad hoc* or regular basis then the requirement of the Rule stands satisfied and promotion of the employee cannot be withheld on the ground that the experience is not gained as a substantive holder of the post.

Similar view has been taken by this Court in judgments rendered in ***Ashok Kumar, Clerk vs State of Haryana 2003(5) SLR 773, Dharam Singh, Superintending Engineer vs The State of Punjab and others 1985(1) SLR 358, Balbir Singh Yadav and others vs State of Haryana and others 1983(1) SLR 466, B.S. Jain and another vs The State of Haryana and others 1981(1) SLR 233 and Dr. Ravinder Paul Kaur vs State of Punjab and others 1979(2) SLR 645.***

The case of the present petitioner is squarely covered by

decision in *Sukhminder Singh's* case (supra). Even in the impugned order, it has not been mentioned that the requirement of experience should be of the regular post. The only requirement is that there should be the experience of seven years. The claim of the petitioner has been rejected only on the ground that he has not worked on regular basis on the post of Headmaster.

In view of the above, the present petition is allowed and the impugned order dated 28.08.2012 (Annexure P-8) is hereby set aside. Respondents are directed to reconsider the case of the petitioner for promotion to the post of Principal against 30% reserved quota for promotion amongst Headmaster/Mistresses, which are lying vacant. The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.

13.12.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes