

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

CWP No.19080 of 2016 (O&M)

Date of decision:15.09.2016

Ishwar Singh

... Petitioner

Vs.

State of Haryana & another

... Respondents

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

Present: Mr. Aman Dhir, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

The petitioner who was serving on the post of Superintendent under the Board of School Education, Haryana retired on 30.07.2016 upon attaining the age of superannuation.

Claim raised in the instant petition is for directing the respondent/authorities to promote the petitioner to the post of Assistant Secretary i.e. the promotional post from that of Superintendent.

Counsel appearing for the petitioner has adverted to the document placed on record at Annexure P-6 i.e. information supplied under the provisions of Right to Information Act, 2005 to assert that 19 vacancies in the cadre of Assistant Secretary were available and to be filled up by way of promotion and from amongst Superintendents having five years experience on the basis of seniority-cum-merit. It is asserted that as per seniority list, the name of the present petitioner falls at Sr. No.4 in the cadre of Superintendent and having been regularized on the post of Superintendent w.e.f. 22.02.2011, the petitioner was eligible to be considered for promotion to the post of Assistant Secretary on 22.02.2016 itself. Counsel argues that a representation dated 18.07.2016 (Annexure

P-4) had been submitted before the respondent/board staking his claim for promotion to the post of Assistant Secretary i.e. prior to the date of retirement and as such the petitioner had a legitimate expectation for his claim to be considered during his tenure of service and to hold a promotional post. It is argued that the action of the respondent/board having not taken a decision on the representation is arbitrary and violative of Articles 14 & 16 of the Constitution of India. In furtherance of such submission, it is contended that the petitioner fulfilled the criteria and was eligible for promotion to the post of Assistant Secretary and inspite of vacancies being available in the cadre of Assistant Secretary, petitioner has been denied his legitimate right to be considered for promotion and that too, without any justifiable basis.

Having heard counsel for the petitioner at length and having perused the pleadings on record, I am of the considered view that the prayer made in the instant petition cannot be accepted.

There can be quarrel with the basic proposition that the petitioner is vested with a right for consideration for promotion to a higher post if he is otherwise eligible under the statutory rules governing the conditions of service of such promotional post. Even if the assertion made by counsel as regards vacancies being available in the cadre of promotional post of Assistant Secretary is taken as correct at its face value, it would be the prerogative of the employer to choose the timing as regards filling up such promotional post. No mandamus can be issued for directing the employer/respondent-board to fill up any vacancy that is available. It is not the case of the petitioner that the available vacancies in the cadre of Assistant Secretary have been kept vacant and had not been filled up on

account of some oblique motive/consideration. It is also not the case of the petitioner that any other counter-part, who is junior to him in the cadre of Superintendent has been promoted to the post of Assistant Secretary. It can at best be termed as unfortunate that the petitioner acquired eligibility for consideration for promotion to the post of Assistant Secretary in February, 2016 and has retired soon thereafter i.e. on 30.07.2016 upon attaining the age of superannuation. On the basis of pleadings on record and submissions advanced by counsel during the course of hearing, no findings as regards arbitrariness on the part of respondent/board can be recorded.

For the reasons recorded above, no merit is found in the present petition and the same is dismissed.

15.09.2016*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether reasoned/speaking? | Yes |
| ii) | Whether reportable? | No |