

C.W.P No. 23430 of 2013

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 23430 of 2013

DATE OF DECISION:07.10.2016

Nirmal Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Mr. Avinit Avasthi, AAG, Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order/letter dated 24.9.2013 (Annexure P-5), vide which, the petitioner has not been promoted as Panchayat Officer and also denied pension and other pensionary benefits only on the ground that he had already retired and cannot be given benefit of promotion.

A further prayer has also been made for issuing directions to the respondents to implement order dated 2.9.2008, whereby, the petitioner has been promoted as Panchayat Officer and to grant him deemed promotion as Panchayat Officer as vacancy was lying vacant when his case for promotion was considered.

Briefly, the facts of the case as made out in the present petition are that the petitioner was initially appointed as Panchayat Secretary on 20.8.1974 and joined on 23.8.1974 at Panchayat Samiti, Nadala, District Kapurthala and retired on 30.6.2008. Thereafter he was promoted as Panchayat Officer on 2.9.2008 but the said order was not implemented on the ground that he had already retired on 30.6.2008. An information was sought by the petitioner under RTI regarding his ACRs/ Bench Marks, which were considered at the time of promotion and according to the information supplied under RTI, the petitioner has achieved 15 bench marks, whereas, only 12 bench Marks were required for promotion.

Learned counsel for the petitioner contends that the petitioner was entitled for deemed promotion as Panchayat Officer as vacancies were available. His case for promotion was considered against the vacant post and it was also recommended in the meeting held before his date of retirement i.e. 30.6.2008. Learned counsel further submits that the petitioner is not only entitled for promotion but for revised pension and other pensionary benefits along with interest. Learned counsel also contends that case of the petitioner is squarely covered by the judgment of this Court in C.W.P. No. 14526 of 1998 titled as **Chamal Lal Lakhanpal Vs. UPSC** decided on 23.11.1998. It is also the argument of learned counsel that case of the petitioner was considered for promotion but he was not promoted only on the ground that election code of conduct was imposed vide order dated 7.3.2008, whereas, deemed promotion could have been granted to the petitioner.

Learned counsel for respondent-State opposes the submissions made by learned counsel for the petitioner. He has raised a preliminary

objection that the case of the petitioner was finalized after the date of his retirement i.e. 2.9.2008 issued vide endorsement dated 8.9.2008. The petitioner was also conveyed that as he had already retired on 30.6.2008, therefore, he was not entitled for promotion. Learned State counsel also submits that pension and other benefits cannot be granted to the petitioner on the promoted post as his order of promotion was made after his date of retirement.

Heard the arguments advanced by learned counsel for the parties and have also gone through other documents available on the file.

Admittedly, the case of the petitioner was considered for promotion to the post of Panchayat Officer but order of promotion was not passed because of imposition of election code of conduct. The petitioner retired on 30.6.2008, whereas, the order of promotion was passed on 2.9.2008 but said order was not implemented only on the ground that order of promotion was passed after the date of his retirement. It is also not disputed that the ACRs which were considered at the time of promotion were Good/Very Good/Excellent and by considering the marks for the ACRs for the period 2002-2003 to 2006-2007, he achieved 15 Bench Marks, whereas, only 12 Bench Marks were required for promotion. The seniority number for promotion is also not disputed. The claim of promotion was declined only on the ground that the petitioner had already retired when his order of promotion was passed.

Now the question for consideration before this Court is whether the petitioner is entitled for benefit of deemed promotion even after retirement along with all consequential benefits or not.

In Chaman Lal Lakhanpal's case (supra), it was held that all

eligible candidates were to be considered for promotion from the date of their eligibility in accordance with Rules. It was also held that in case the Departmental Promotion Committee did not meet for number of years for any reason, the eligible candidates could not be made to suffer because of inaction on the part of DPC. The Departmental Promotion Committee was even directed to consider the case of candidate who had retired and was found fit during that period. The petitioner in that case was held entitled to be promoted alongwith all the benefits from the date he was entitled. The relevant portion of the said judgment is reproduced as under:-

“We are unable to accept this contention. The respondent cannot be permitted to take advantage of its own wrong. It is the Commission's own case that the committee could not meet during the years 1994-95, 1995-96 and 1996-97 on account of the interim order of stay granted by the Tribunal in S.P. Gupta's case. After the stay was vacated on December 3, 1996, the Commissioner took no steps for the meeting of the committee immediately. If it had performed its duty and nominated a member for the Committee as constituted under the regulations, the petitioner's rights as guaranteed to him under the rules would not have been violated. By merely failing to nominate a member and not allowing the committee to meet, the Commission cannot be permitted to defeat the rights of the petitioner.

It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year

1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. Directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules.”

Hon’ble the Apex Court in the case of **MP Singh Bargoti Vs. State of Madhya Pradesh and another** 2015 AIR (SC) 556 has held that the petitioner in that case was entitled to notional promotion to the post of DSP as junior to him was promoted. The petitioner was also held entitled to the retiral benefits deeming to be superannuated on the post of DSP. The relevant portion of the said judgment is reproduced as under:-

“We have carefully considered the rival contentions, the relevant facts and the prevailing rules governing promotion at the relevant time. There is no dispute that despite directions passed since 15.06.1993 by the Tribunal and lastly reiterated in the case of the appellant on 11.03.1998, a Combined Gradation List was not prepared at the appropriate time and ultimately when it was prepared to show compliance with the order of the Tribunal, it was never acted upon because the subsequent directions of the Tribunal for amendment of rules was preferred by the State and the claim of the appellant was never

considered by the Departmental Promotion Committee till he was in service or even thereafter when person like Mr. V.N. Dubey who was junior to the appellant in the Combined Gradation List was considered allegedly on the basis of another subsequent gradation list and promoted with effect from a date when the appellant was still in service.

In the aforesaid circumstances, in our considered view, the Tribunal and the High Court erred in law as well as on facts in denying relief to the appellant. The position would have been different if appellant's junior had been promoted from a date subsequent to his superannuation. Then appellant would have suffered only on account of passage of time or innocuous delay but in the present facts he has suffered hostile and arbitrary discrimination vis-à-vis a junior. The order under appeal is therefore set aside. Since the appellant was in service only till 31.03.1998, he is held entitled to notional promotion to the post of Deputy Superintendent of Police w.e.f. 29.05.1997 till 31.03.1998. He will be deemed to have superannuated on that post and shall be given all the post retirement benefits by recalculating the same on the premise that he held the post of Deputy Superintendent of Police from 29.05.1997 till his superannuation on 31.03.1998. The revised pensionary benefits as well as arrears on that account should be made available to the appellant at the earliest and in any case within three months from the date of this order. The appellant is held entitled to a consolidated cost of Rs.50,000/- which should also be paid

along with other benefits within the time indicated above. The appeal is allowed to the aforesaid extent.”

Similarly, in the case of **Sudesh Kumar Vs. Haryana Power Generation Corpn. Ltd. and another** 2015 (3) SCT 692, the person junior to the petitioner was promoted and the petitioner retired on attaining the age of superannuation on 30.9.2000. The petitioner was given benefit of promotion on the next higher post w.e.f. the date when benefit was given to his junior. The respondents in that case was directed to consider the claim of the petitioner at par with his junior from the date of his entitlement and release the salary and consequential benefits within specified period.

In the present case also, the case of the petitioner was considered for promotion by taking into consideration his service record. The vacancy was also there but the petitioner could not be promoted due to imposition of election code of conduct. Meanwhile, the petitioner retired and benefit of promotion was declined only on the ground that he had already retired. The petitioner could not be made to suffer because of imposition of election code of conduct as his promotion was already approved but order of promotion could not be implemented, which cannot be a ground to refuse the claim of the petitioner. Had there not been election code of conduct, he could have been promoted prior to date of his retirement.

In view of the facts as well as law position explained above, the present petition is allowed and the petitioner is held entitled for deemed promotion along with all consequential benefits as per law. The respondents are directed to consider the case of the petitioner against the vacancy on which he was promoted by giving benefit of deemed promotion.

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The needful to be done within a period of three months from the date of receipt of copy of the order. The petitioner is also held entitled for refixation of his pensionary benefits on the basis of deemed promotion.

October 07, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes