

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

CWP No.20491 of 2016(O&M)

Date of Decision:-03.12.2016

Mrs. Komal Broca.

.....Petitioner.

Versus

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. G.S. Bal, Senior Advocate assisted by
Mr. ADS Bal, Advocate for the Petitioner.

Mz. Sudeepti Sharma, Deputy Advocate General, Punjab
assisted by Mr. Jaspal Singh, Senior Assistant.

JASWANT SINGH, J.(ORAL)

Petitioner was appointed as a Lecturer in English on regular basis with the Directorate of Education (Colleges), Punjab in the year 1984. She is stated to be on sanctioned leave from the year 2002 to the early 2010. She is stated to be working as Associate Professor and Head of Department of Post Graduate, Department of English since 16.12.2011 at Government College, Mohali.

By filing the present writ petition she has made a grievance that her juniors have been promoted as Principals (College Cadre) vide order dated 27.5.2016 (P-8) on the recommendations of the Departmental Promotion Committee meeting held on 12.5.2016. It is averred that as per

post of Principal, the criteria is seniority-cum-merit. The ACRs for the preceding five years are to be taken into consideration for determining the merit and different marks have been assigned for different grading in the ACRs concerned. The qualifying benchmark as stipulated is 12 marks. It is asserted that the petitioner fulfills the said benchmark as per ACR earned. Thus the prayer is for a direction for reconvening of the DPC meeting and considering the case of the petitioner in proper perspective as the posts in her quota are still available.

Upon notice, department has filed reply. It is averred that the petitioner does not fulfill the benchmark and the complete position has been detailed in para 6 and 7 of the preliminary submissions which reads as under:-

“Para 6 *That it is submitted for promotion to next higher posts, five ACRs have to be considered. The detail position of annual ACRs of the petitioner is given below:-*

<i>Sr. No.</i>	<i>Period</i>	<i>Remarks</i>	<i>Marks</i>
<i>1</i>	<i>2011-12</i>	<i>Outstanding</i>	<i>4</i>
<i>2</i>	<i>2012-13</i>	<i>Very Good</i>	<i>3</i>
<i>3</i>	<i>2013-14</i>	<i>Very Good</i>	<i>3</i>
<i>4</i>	<i>2014-15</i>	<i>Very Good</i>	<i>3</i>
<i>5</i>	<i>2015-16</i>	<i>Outstanding</i>	<i>4</i>

- (i) *The ACR for the year 2011-12 was not taken into consideration as second opinion of DPI (Colleges) (Reviewing Authority) was not recorded in the said year annual confidential report.*
- (ii) *The ACR for the year 2012-13 was considered for promotion.*
- (iii) *The ACR of 2013-14 was not considered as second*

opinion was not recorded in the ACR.

- (iv) *The ACR of 2014-15 was also not considered as it also lacked the second opinion of DPI (Colleges) Punjab.*
- (v) *The ACR of 2015-16 was received with the office of respondent no.2 from Govt. College, Mohali vide memo no.332 dated 31.05.2016, whilst the DPC meeting was held on 12.05.2016. Therefore, ACR for the year 2015-16 could not be considered.*

Para 7 *That ACR of four preceding years were considered i.e. 1997-98, 1999-2000, 2000-2001 and 2001-2002. Notably, the petitioner had remained on leave during the period effective from 2002 to 2010, therefore for the said years no Annual Confidential Report was recorded (copy of status report of ACRs are appended as annexure R-1).* ”

Learned Counsel for the petitioner submits that the ACRs for the years 2011-12, 2013-14 and 2014-15 were graded as “Very Good” and the fact that reviewing Authority has not given its opinion does not render the grading invalid. He next submits that even if the ACR for the year 2015-16 is to be ignored as having been received on 31.05.2016 i.e. after the DPC had been convening on 12.5.2016, and the 5th ACR is to be assumed for the year 2001-02, which is graded as “Average” and, therefore, entitling one mark only, even then the petitioner would secure 14 marks and thus fulfills the benchmark of 12.

Learned State Counsel does not dispute the aforesaid factual contention, however, insists upon ignoring the ACRs for the year 2011-12, 2013-14 and 2014-15 due to lack of second opinion by the Reviewing

Authority. She however has not been able to show any instructions which provides that in the absence of the second opinion by the Reviewing Authority or acceptance by the Final Authority, are to be ignored for consideration for promotion at the relevant time. If the said ACRs are ignored, then as per the ACRs for the preceding years of 1997-98, 1999-2000 and 2000-2001, the petitioner was graded as “Average” and, therefore, entitled to one mark each and coupled with the remaining ACRs, does not fulfill the benchmark of 12.

After hearing learned Counsel for the parties and perusing the paper book with their able assistance, it is apparent that the case of the petitioner is meritorious.

It is not in dispute that as per the Executive Instructions dated 6.9.2001 (P-1) the evaluation of ACRs for the purpose of ascertaining the benchmarks, the following has been provided:-

<i>Outstanding</i>	<i>4 Marks</i>
<i>Very Good</i>	<i>3 Marks</i>
<i>Good</i>	<i>2 Marks</i>
<i>Average</i>	<i>1 Marks</i>

It is not the case of the respondents that the ACRs for the years 2011-12, 2013-14 and 2014-15 were recorded late by the reporting officer. It is also the conceded position that no instructions have been shown at the hearing or annexed with the written statement, which provide that in the absence of the second opinion by the Reviewing Authority would render the grading non existent. For the fault of the Reviewing Authority or the accepting Authority employee cannot be made to suffer, therefore, in the opinion of this Court, the grading of the ACRs for the aforesaid three years have to be accepted as recorded by the reporting officer at the relevant time

on 12.5.2016 when the meeting of the DPC was convened for considering the case of Lecturers for promotion. It is also to be acknowledged that the grading in the ACR of the petitioner for the year 2015-16 is received on 31.5.2016 and, therefore, cannot be taken into account on the date of DPC meeting and hence the 5th ACR to be considered would be of the year 2001-02 which is graded as “Average”. That being so it is the conceded position that for the preceding 05 years the total of marks earned on the basis of the ACRs would come to 14 i.e. above the benchmark of 12, therefore, petitioner cannot be denied promotion on the criteria of seniority-cum-merit. It is also conceded that there is no charge sheet pending or any punishment order passed against the petitioner and her case for promotion was rejected only on the ground of non fulfillment of benchmark. It is also apparent that the petitioner has shown more improvement in the last/preceding years the years as a teacher in her career.

In view of the above, present petition is allowed. A direction is issued to the respondents to promote the petitioner as a Principal w.e.f. the date her juniors were promoted in the promotion quota vide the order dated 27.05.2016 with all consequential benefits except monetary benefits which shall be notionally fixed. Needful shall be done within two weeks from the date of receipt of certified copy of this order.

(JASWANT SINGH)
JUDGE

December 03, 2016

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>