

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

CWP No.26789 of 2015

Date of Decision: 06.12.2016

Mukesh Aggarwal

....Petitioner

Versus

State of Punjab through its Secretary of
Higher Education Department, Punjab
at Chandigarh and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Neeraj Madaan, Advocate
for the petitioner.

Mr. Avinit Avasthi, A.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 *mandamus* directing the official respondents to promote the petitioner from the date his juniors have been promoted and to grant all consequential benefits arising therefrom with effect from 09.10.2015. A further prayer has also been made for issuance of a direction to the official respondents to consider all the annual confidential reports (here-in-after called as 'ACRs') of the petitioner operative in facts and circumstances of the case.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was appointed as Lecturer in mathematics and joined on 11.07.1983 and since then, he is working on the said post. A Departmental Promotion Committee (here-in-after called as 'the DPC') was convened on 14.08.2015. The Agenda before the DPC was to fill up the vacant posts of Principals of Government Colleges, which were lying

vacant. As per criteria, last five ACRs of the Lecturers were to be considered and promotion was to be made on the basis of ACRs as well as seniority of the eligible candidates. Total 40 candidates of general category were found eligible against 20 vacant posts of Principals. The petitioner's name was figured at serial No.19 in the seniority-cum-merit list. Total 18 candidates including juniors to the petitioner were promoted as Principal but the case of the petitioner was not considered. Nothing was conveyed to him but he came to know that he was given 'Nil' marks for his ACRs and certain ACRs were not taken into consideration. The petitioner applied for supplying certified copies of the ACRs under RTI, which were supplied to him on 02.12.2015. It was found by the petitioner that his ACRs were very good but certain ACRs were not signed by the reviewing authority and the same were not considered. Petitioner made a representation to the respondent department but the same was neither considered nor replied.

In the present petition, the petitioner has prayed for issuance of direction to the official respondents to consider all his ACRs, which were recorded by the competent authority but the same were not affirmed/counter signed by the reviewing authority.

Learned counsel for the petitioner submits that juniors to the petitioner were promoted and appointed as Principal, whereas, the case of the petitioner was not even considered as certain ACRs which were not signed by the reviewing authority were not considered. Learned counsel also submits that it was not the fault of the petitioner as his ACRs which were recorded as 'very good' were not signed by the competent authority because of which the said ACRs were considered as 'nil' while considering the case of the petitioner. He further submits that the action of the

respondent department is illegal, arbitrary and discriminatory as well and the same is in violation of principles of natural justice as well as Articles 14 and 16 of the Constitution of India.

Learned counsel for the petitioner also submits that the same controversy was there before this Court in **CWP No.20491 of 2016** titled as **Mrs. Komal Broca vs State of Punjab and another** decided on **03.12.2016** and **CWP No.7121 of 2015** titled as **Rama Sharma vs State of Punjab and others** decided on **11.05.2016**.

In response to notice of motion, reply has been filed by learned counsel for respondents No.1 and 2 in the Court today and the same is taken on record.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that the DPC has assessed the suitability of the candidates on the basis of their service record, particularly with reference to the ACRs for five preceding years. In case, the required qualifying service is more than five years and the candidate fulfills the bench mark, then only he/she can be considered. The ACRs of the petitioner were not accepted by the reviewing authority and in absence thereof, the same were not taken into consideration. Learned State counsel also submits that the ACRs received after 31st December of each year cannot be placed on the personal file of the concerned employee and the same are treated as invalid reports. He also submits that in case, the report is recorded within the prescribed time schedule but is not reached to the Controlling Authority due to justified reasons, such a report can not be placed on the personal file within a period of six months i.e up to 30th June of the year.

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

The grievance of the petitioner in the present petition is that his juniors have been promoted as Principal on the basis of recommendations made by DPC. As per criteria adopted by DPC, the promotion to the post of Principal was to be made on the basis of seniority-cum-merit. The ACRs for preceding five years were to be taken into consideration for determining the merit and marks were assigned for different grading in the ACRs of the candidates. The qualifying benchmark was 12 marks. As per case of the petitioner, the details of the ACRs from 2006-07 to 2014-15 are as under :-

Year	Assessment	Dispatch No.	Dated
2006-07	Good	6627	20/10/07
2007-08	Average	8275	29/09/08
2008-09	NAC	9419	30/09/09
2009-10	Very Good	1607	02/12/10
2010-11	Very Good	1175-76	03/01/12
2011-12	Very Good	-----	-----
2012-13	Very Good	4158	25/09/13
2013-14	Very Good	5752, 5992	09/09/14 27/10/14
2014-15	Very Good	7132	31/07/15

As per criteria, preceding five years’ ACRs were to be taken into consideration but there should not be any adverse remarks. As per stand taken by the respondents, the petitioner got 11 marks and was not having required benchmark of 12 marks. The grading/benchmark recorded by the respondents are reproduced as under :-

Excellent	4 Marks
Very Good	3 Marks
Good	2 Marks
Average	1 Mark

The ACR for the year 2006-07 has been recorded as `good’ by

the Reporting Authority but the same was not recorded by the Reviewing Authority. The ACR for the years 2007-08 and 2008-09 were not available. Similarly, the ACR for the year 2009-10 was not available in the record. Even no report was there of the year 2010-11 but the ACRs for the year 2011-12 and 2012-13 were recorded by the Reporting Authority as 'Very Good' and not recorded by the Reviewing Authority. The ACR for the year 2013-14 was available and the Reviewing Authority did not record his opinion.

As per case of the respondents, the requisite benchmark is 12 marks and the petitioner got 11 marks and hence, his case was not considered for promotion to the post of Principal. Only two benchmarks have been recorded i.e for the period 1999-2000 for the report 'Good' and one mark has been awarded for 'Average' i.e of the ACR recorded for the year 2003-04. The reports for the years 2004-05 and 2005-06 were not available. Two marks were awarded of the ACR for the year 2006-07. The ACRs for the year 2007-08, 2009-10 and 2010-11 were not considered as the same were not available. The reports which were not available on record could not be considered as adverse. The petitioner was having one mark less than the required benchmark. In case, the ACRs for the last five years i.e from 2009-10 to 2013-14 are considered then the petitioner fulfils the criteria. Three marks are there for the report as 'Very Good' and four marks are there for the report 'Outstanding'.

Learned State counsel does not dispute the factual contention regarding non-consideration of ACRs which were not available on the file and also where it was not recorded by the Reviewing Authority. Learned State counsel has not been able to show any instruction which provides that

due to non confirmation by the Reviewing Authority or acceptance by the Final Authority, ACR's are to be ignored for consideration for promotion at the relevant time or not as in case, said ACRs are ignored, then also the petitioner is entitled for grant of marks.

The same issue was there in ***Komal Broca's*** case (supra). The observations made therein are as under :-

“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 12.05.2016 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 fulfilment 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 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.”

Similar controversy was there in ***Rama Sharma’s*** case (supra), wherein, it was held that where some of the ACRs were not conveyed to the petitioner then the same cannot be disadvantageous and promotion cannot be denied for the reasons in case those ACRs have not been conveyed. It is a settled position of law that ACRs cannot be conveyed in one lot covering many years and this sort of thing has not met judicial approval. It was also held therein that in case, the ACRs were not available or conveyed, the fault was with the respondents and the petitioner cannot be held responsible and he should not be punished for the fault on the part of the respondents.

As per Executive Instructions dated 06.09.2001, the evaluation of ACRs for the purpose of ascertaining the benchmarks, the following marks are awarded against ACRs of different grading :-

Outstanding	4 Marks
Very Good	3 Marks
Good	2 Marks
Average	1 Mark

In the present case, some of the ACRs of the petitioner were not considered either on the ground that the same were not recorded by the Reviewing Authority or the ACRs were not available on the file. In case, all these ACRs are taken into consideration, then the petitioner fulfils the benchmark of 12 and he cannot be denied promotion on the basis of criteria of seniority-cum-merit. It is also not disputed that neither any chargesheet is pending nor any punishment has been awarded to the petitioner. The case of the petitioner for promotion has been rejected only on the ground of non-fulfilment of benchmark.

On perusal of additional affidavit filed by Joint Director (Admn.) Office of Director Public Instructions (Colleges), Punjab, Chandigarh, it appears that the last five ACRs for the period from 2010-11 to 2014-15 are 'Very Good'. In case, the benchmark is counted then it comes to 15 as three marks are there for the report recorded as 'Very Good'. The details of the ACRs for the period from 2010-11 to 2014-15 are as under :-

1	2010-2011	Very Good	No regular DPI was posted in the office.		
2	2011-2012	Very Good	Very Good	Very Good	3
3	2012-2013	Very Good	Very Good	Very Good	3
4	2013-2014	Very Good	The reviewing authority i.e DPI (C) did not record his opinion		
5	2014-2015	Very Good	The reviewing authority i.e DPI (C) did not record his opinion		

On perusal of said chart, it is clear that total marks comes to 15, whereas, the benchmark is 12 and as such, the petitioner fulfils the criteria

as he is getting more marks then the required benchmark.

Accordingly, the present petition is allowed and the official respondents are directed to consider the case of the petitioner for promotion to the post of Principal from the date his juniors have been promoted in the promotion quota. The petitioner is held entitled for all consequential benefits except monetary benefits which shall be notionally fixed. The necessary exercise be done within a period of four weeks from the date of receipt of certified copy of this order.

06.12.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes