

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

**CWP No.7440 of 2015
Date of decision: 11.07.2016**

Babu Lal

.....Petitioner

Versus

Municipal Corporation, Faridabad

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sudhir Mittal, Advocate,
for the petitioner.

Mr. Randhir Bawa, Advocate,
for the respondent.

Ritu Bahri, J.

The petitioner is seeking direction to the respondent to notionally promote him as Superintendent w.e.f. 08.07.2005 and grant him difference of salary till the date of his retirement along with with other pensionary benefits.

The petitioner was appointed as a Clerk (Moharrir) in Municipal Committee, Old Faridabad on 01.11.1971. He was promoted as Octroi Inspector on 24.05.1984. Subsequently, he was promoted as Assistant Superintendent w.e.f. 09.11.1995. Ultimately, he retired on 31.12.2006 as Assistant Superintendent. Services of the petitioner were governed by the Haryana Municipal Corporation Employees (Regulation & Condition) Service Rules, 1998 (for short 'Service Rules, 1998'). The next promotional post from Assistant Superintendent is Superintendent. Rule 9 (1) of the

Service Rules, 1998, which is relevant, is reproduced as under:-

“9 (1) (XXXI) in the case of Superintendent,-

(i) 80 per cent by promotion from amongst Assistants and 20 per cent by promotion from amongst Senior Scale Stenographers;
or

(ii) by transfer or deputation of an officer already in the service of any State Government or Government of India;”

As per Appendix 'A' (Annexure P-1), the pay scale for the post of Land & Licensing Officer and Treasurer is the same as that of Superintendent. A note dated 10.06.2005 (Annexure P-2) was sent for eight vacant posts, which were to be filled according to the roster from roster point No.34 to roster point No.41. Roster Point No.34 and 38 were reserved for Scheduled Castes. The petitioner being at serial No.11, was recommended for promotion and his promotion was to be made against roster point No.38. The Establishment Officer moved a proposal on 01.07.2005 (Annexure P-3), vide which, petitioner was proposed to be promoted to a vacant post of Land & Licensing Officer in Ballabgarh zone.

After receiving the proposal dated 01.07.2005 (Annexure P-3), the Administrative Officer, vide his note dated 05.07.2005, asked for information regarding the Court cases pending against certain Assistants, who had been appointed directly and whose appointment had been set aside by the Civil Court. On 08.07.2005 (Annexure P-4), the information prepared by the Assistant-II was endorsed by the Superintendent and approved by the Administrative Officer. In the meantime, the petitioner superannuated from the post of Assistant Superintendent on 31.12.2006 and the approved proposal for promotion was not implemented. Subsequently, on 08.04.2011, the Commissioner of respondent-corporation issued an office order (Annexure P-5) promoting the persons in the cadre of Superintendent/Land & Licensing Officer/Treasurer w.e.f. 08.07.2005. One

Vishes Kumar Verma was promoted, who was to be promoted after the petitioner as per the Roster Point. The petitioner lost his chance of promotion simply because he was not in service on the date of passing of the promotion order (Annexure P-5). The information regarding recommendations (Annexures P-2, P-3 and P-4) of promotion of the petitioner came to the knowledge of the petitioner after getting necessary information under the Right to Information Act, after retirement. Thereafter, he made a representation dated 27.01.2015 (Annexure P-6) claiming that he has a right to be promoted w.e.f. 08.07.2005 notionally, but to no avail. Hence, this petition.

Upon notice, written statement on behalf of the respondent has been filed, wherein it has been stated that in the year 2005, eight posts in the cadre of Superintendent/Land & Licensing Officer/Treasurer etc. were available in the respondent-corporation. Out of these eight posts, 6 were to be filled from amongst the General Category and remaining two were to be filled from the Scheduled Caste Category on the basis of roster point. A proposal to fill up these posts was put up for consideration and approval of the higher authorities, which was approved by the then Commissioner, Municipal Corporation, Faridabad on 08.07.2005. However, the order could not be implemented as the said Commissioner was transferred and when the new Commissioner came, the petitioner had been superannuated on 31.12.2006. It is admitted that out of the 2 posts meant for SC category, the petitioner was in the zone of consideration being at serial No.11 and could be promoted against roster point No.38. It is further stated that 3 persons, who were senior to the petitioner in the General Category, will seek the same benefit. It has been further stated that vide order dated 27.05.2015

Dinesh Kumar Sharma and others Vs. State of Haryana, the notification/reservation policy dated 15.05.2015 providing reservation in promotion has been stayed. Pursuant to the stay order granted vide Annexure R-1, the petitioner cannot be given the benefit of promotion to the post of Superintendent w.e.f. 08.07.2005.

Heard, counsel for the parties.

The claim of the petitioner in the present case deserves to be allowed. The respondent has admitted in the written statement that the case of the petitioner had been approved for promotion vide note (Annexure P-2). Further, the said proposal was approved by the Commissioner, Municipal Corporation, Faridabad on 08.07.2005. This approval could not be implemented as the said Commissioner was transferred and the new Commissioner had to decide the matter afresh. In the meantime, the petitioner had retired on 31.12.2006. Grievance of the petitioner is well founded that after his retirement, he came to know that on 08.07.2005, the Commissioner of the respondent-corporation had issued an office order promoting the persons in the cadre of Superintendent, Land & Licensing Officer and Treasurer w.e.f. 08.07.2005 (Annexure P-5). A perusal of note/order dated 08.07.2005 (Annexure P-5) shows that it was the proposal (Annexure P-2) which had been implemented on 08.04.2011. In the proposal (Annexure P-2) at roster point No.38, Babu Lal's case had been recommended under the reservation policy. The said promotion was subject to the final decision of RSA Nos.2427 of 1996 and 1210 of 1998, which were pending before this Court. Although the petitioner has superannuated on 31.12.2006, yet he has a legitimate right to be promoted pursuant to the proposal (Annexure P-2), which was implemented vide order dated

The only ground for not extending this benefit to the petitioner is that three persons are senior to the petitioner, who will claim the same benefit from the respondent-corporation. This stand of the respondent is liable to be rejected, as the case of the petitioner was recommended vide Annexure P-2 at roster point No.38 under the reservation policy and all those persons, who are senior to the petitioner, cannot claim promotion on roster point No.38. Even otherwise, while making promotions vide order dated 08.04.2011 (Annexure P-5), one Vishesh Kumar Verma had also been promoted, who was junior to the petitioner.

Another stand of the respondent that on account of stay granted by this Court vide order 27.05.2015 (Annexure R-1), the benefit of promotion cannot be extended to the petitioner, is also liable to be rejected, as the petitioner is not claiming benefit of the reservation policy. Rather, he is claiming the benefit of promotion as per the approval, vide which, persons junior to him have been promoted. Therefore, he cannot be denied the benefit of promotion.

The respondents are further resisting the claim of the petitioner on the ground of delay and laches. The Hon'ble Supreme Court in **M.R. Gupta Vs. Union of India and others**, 1995 (5) SCC 628, has held that fixation of pay is recurring loss to a Government employee and his claim cannot be rejected on the ground of delay. It has been further observed as under:-

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on

merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong, if on merits his claim is justified. Similarly, any other consequential relief claim by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 01.08.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.”

Further, the Hon'ble Supreme Court in **Union of India and others Vs. Tarsem Singh**, 2008 (8) Supreme Court Cases 648, held that even a delay of 16 years would effect the consequential claim of arrears. By following the decision given in **M.R. Gupta's** case (supra), it has been observed as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But, if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a

past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

In view of the above discussion, this petition is allowed and a direction is given to the respondent to promote the petitioner as Superintendent/Land & Licensing Officer w.e.f. 08.07.2005 notionally and thereafter, re-fix his pay and pension accordingly. The arrears of pay and pension are restricted to 38 months prior to the date of filing of this petition.

11.07.2016
ajp

(RITU BAHRI)
JUDGE