

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

Date of decision: 19.05.2016

CWP No.9948 of 2016

Mohinder Singh

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Bali, Advocate, for the petitioner.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

The petitioner is a retired Senior Medical Laboratory Technician. He superannuated on 30.09.1999. He was promoted to the post on 31.01.1995, but he complains that he should have been promoted from 24.12.1992 which seems rather too late to make. He claims the pay scale of the post of Senior Medical Laboratory Technician as per the orders passed in CWP No.4343 of 2003 titled 'Sikander Singh & others Vs. The State of Punjab & others'. The petitioner was a co-party. Sikander Singh & company had prayed for grant of same pay scale as was granted to the petitioners in CWP No.13425 of 1995 & CWP No.13426 of 1995, which petition was allowed on 05.08.2003, wherein the respondents were directed to re-fix the salary of the petitioners within six months and the arrears be released to them within one month thereafter. It is his case that the order

dated 05.08.2003 has been implemented. The pecuniary claims of the petitioners were restricted to 38 months prior to the filing of the petition on 14.03.2003. The name of the petitioner finds mention at Sr.No.58 in the list of Medical Laboratory Technicians (MLT). While the order has been implemented qua the petitioner, but the date of promotion has been wrongly shown and deserves to be rectified, which is said to be a mistake by oversight.

The date of promotion of the petitioner was not a fact in issue in CWP No.4343 of 2003 decided on 05.08.2003 and is an independent cause of action since that case related only to grant of pay scales with the law being covered by the decisions in CWP No.13425 of 1995 & CWP No.13426 of 1995, delivered on 11.07.1996.

In support of his case, the petitioner relies on an office order dated 05.06.1998, which in true translation reads as under:

“Shri Mohidner Singh, Medical Laboratory Technician Grade-I was granted promotion to the post of Senior Medical Laboratory Technician vide office letter No.T(7)(3) P; 98/668 dated 25.01.1995. The employee had prayed that Shri Labh Singh, employee, who has been granted promotion as Senior Medical Laboratory Technician from 23.12.1992. Therefore, he be also given promotion from the back date.

In this regard, the old record was considered and according to which in the year 1992 the posts of Senior Medical Laboratory Technician were vacant.

Keeping in view the above position, Shri Mohinder Singh, Senior Medical Laboratory Technician is granted promotion as Senior Medical Laboratory Technician w.e.f. 23.12.1992.”

The order in its photocopy placed on the file suffers apparent shortcomings. If Labh Singh was junior to the petitioner and was promoted on 23.12.1992, then the order does not promote the petitioner w.e.f. the date junior was promoted. The order merely records that having regard to the old official record, it was found that in the year 1992, the posts of Senior Medical Laboratory Technician were vacant and therefore the petitioner “is given promotion from 23.12.1992”. The operating reason for promotion is not based on a recognised service law principle, but is based only on a vacancy existing. The other shortcoming is that copy of the same was sent to the Civil Surgeon, Moga for necessary action, but the order was not endorsed to the petitioner for it to take legal effect by communication for rights to mature. There is no contemporaneous record or any further link record to confirm, whether Annexure P-7 was given effect to. There is no seniority list or such other evidence placed on record which might show the date of promotion of the petitioner as 23.12.1992. Therefore, no trust can be placed on such a document. If the petitioner has solid proof of promotion as claimed w.e.f. 1992, then he can always approach the Court again or the administrator for correction of what the petitioner calls is an apparent mistake on record and press his claim for promotion twenty four years ago in the background of claim of higher pay scales to be counted from there.

I would therefore dismiss the petition in limine by accepting the position as true and correct that the orders in CWP No.4343 of 22003 stand implemented in *toto* as is reflected in the impugned communication.

Dismissed.

19.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE