

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

CWP-14735-2013

Date of Decision:13.12.2017

Mohinder Singh

.....Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.D.S.Rawat, Advocate,
for the petitioner.

Mr.R.K.Doon, AAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

Pursuant to the orders dated 18.09.2017, an affidavit of the Special Secretary to the Government of Haryana, Secretariat Establishment, has been filed in Court today by the learned State counsel, in which it is stated that, after 18.11.2008, five vacancies occurred on the post of Assistant (on 25.11.2008), and one thereafter on 30.11.2008, and as on 19.12.2008, 37 clerks were promoted as Assistants against existent vacancies, including those 6 vacancies.

Learned counsel for the petitioner submits that as per the instructions Annexure P-18, dated 02.11.1992, any official who has foregone his promotion would be reconsidered for such promotion atleast after a period of one year thereafter, and all persons promoted during the period interim would rank senior to him on the higher post.

The petitioner forewent his promotion on 31.05.2006, such

promotion having been made vide the order Annexure P-1. However, it is seen that thereafter in fact, he again expressed a desire to forego his promotion vide the letter dated 28.01.2008, a copy of which is annexed as Annexure P-12.

Very obviously the stand of the petitioner, in that letter, is that though he had asked to forego his promotion for a period of 2 years, he had been allowed only one year, whereas no time limit has been prescribed in the rules on the issue, and therefore, looking to his future prospects, he needed more time to take an appropriate decision in that regard.

It is further stated in the petitioners' letter that the Director, Industrial Training & Vocational Education, had allowed a three year period 'of foregoing promotion' to one Smt.Parkash Bala, Junior Teacher.

Eventually, it is stated that the petitioner be allowed to forego his promotion for one year further, "from the date of my promotion i.e. 06.12.2007." Thus, obviously he did not seek promotion till at least 05.12.2008.

Nothing has been pointed out to this Court that thereafter the petitioner had still further foregone promotion, and infact vide a letter dated 12.03.2008, Annexure P-13, he is seen to have requested that he be promoted as an Assistant w.e.f. 01.06.2008, i.e. 2 years after he had foregone his original promotion.

Mr.Doan, learned counsel for the respondent State, submits that the petitioner having foregone his promotion as noticed hereinabove, he could not be considered for promotion for the 37 posts filled in on 19.12.2008.

Having considered the arguments, that contention is rejected, in view of the fact that, as already noticed immediately hereinabove, nothing having been shown that the petitioner wished to forego his promotion even after the letter dated 28.01.2008, by which he had stated that he may be considered for further promotion after one year starting from 06.12.2007, i.e. after 05.12.2008, he was bound to be considered for promotion on 19.12.2008, when others junior to him are stated to have been considered.

As regard the petitioners' contention that he would be entitled to promotion from 01.06.2008, that is rejected in view of his said letter 28.01.2008.

This petition is therefore allowed to the extent that the petitioner would now be considered for promotion to the post of an Assistant w.e.f. 19.12.2008, with seniority to be assigned to him in terms of the letter dated 02.11.1992 (Annexure P-18). However, any arrears of pay which may become admissible to him are restricted to a period of 3 years and 2 months prior to the date of filing of this writ petition.

Obviously, the last person junior to him, promoted on 19.12.2008, would be deemed to have been promoted from the date that the next vacancy to the post of an Assistant fell vacant, but with no financial benefits that have accrued to that person, to be taken away from him.

No order as to costs.

December 13, 2017

dharamvir

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO