

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

**CWP No.14669 of 2014 (O&M)
Date of decision : April 05, 2017**

Joginder Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Puneet Jindal, Advocate with
Mr. Varun Jindal, Advocate for the petitioner.

Mr. Nikhil Chopra, Addl. A.G., Punjab.

Mr. Harsimran Singh Sethi, Advocate for respondent No.2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Petitioner, Joginder Singh, retired as Deputy Director from the Rural Development and Panchayat Department has sought mandamus for granting him notional promotion as Joint Director in the pay scale of ₹10,025-15,100/- w.e.f. 01.10.2000 and as Additional Director in the pay scale of ₹13,500-16,800/- w.e.f. 01.10.2001 i.e. the date when the petitioner became eligible keeping in view the vacancies of Joint Director/Additional Director were available.

The petitioner also seeks actual promotion as Additional Director with arrears of salary w.e.f. 22.03.2002 when he actually

shouldered the responsibility of Additional Director and accordingly to refix the pay and allowances payable to the petitioner after implementing the revised pay scale w.e.f. 01.01.2006 in the rank of Additional Director and release the pension and pensionary benefits payable to the petitioner with interest.

The petitioner joined the respondent-department as Block Development and Panchayat Officer on 01.10.1982. After clearing the probation, he was promoted as District Development and Panchayat Officer (for short 'DDPO') w.e.f. 01.10.1988. While working as DDPO, he was directed to officiate as Deputy Director w.e.f. 30.04.1993 and subsequently w.e.f. 01.10.1995, he was regularly promoted as Deputy Director, keeping in view the recommendations of DPC. The services of the petitioner were governed by The Punjab Rural Development & Panchayat (Class-II) Services Rules, 1974 and the Punjab Rural Development & Panchayat (Class-I) Services Rules, 1990. Before 2002, the service condition of Class-I officers were governed by the Punjab Development & Panchayat (Class-I) Services Rules, 1990. As per clause(3) of Rule 6, it is laid down that "*the promotion shall be made by selection on seniority-cum-merit basis and no person shall be entitled to claim promotion on the basis of seniority alone.*"

The petitioner claims that he had completed requisite 7 years' experience as DDPO and vide office order dated 24.12.1999 (Annexure P-1), the petitioner was promoted as Deputy Director w.e.f. 01.10.1995. For further promotion to the post of Joint Director, the requisite experience is five years. Therefore, he became eligible for promotion as Joint Director w.e.f. 01.10.2000. The petitioner being senior most and competent Deputy

Director was entitled to be considered and promoted to the post of Joint Director.

However, the case of the petitioner for promotion to the post of Joint Director was not considered because of the pendency of a CWP No.17665 of 1999 filed by Harbans Singh Gill, respondent No.2, claiming seniority over and above the petitioner. The said writ petition was allowed vide order dated 01.06.2000 and the Government was directed to promote Harbans Singh Gill w.e.f. the date petitioner was promoted to the post of Deputy Director. Against the said order, Special Leave Petition was filed by the petitioner before Hon'ble the Supreme Court. Two more SLPs were also filed. Hon'ble the Supreme Court also set aside the order passed by this Court, whereby Harbans Singh Gill was ordered to be promoted to the post of DDPO from 11.10.1998 and to the post of Deputy Director w.e.f. 18.06.1997. Hon'ble the Supreme Court set aside the decision rendered by the Division Bench of this Court on 01.06.2000 vide order dated 29.11.2015 (Annexure P-2) and directed this Court to consider the matter afresh after making "Joginder Singh in CWP No.17665 of 1999 party respondent". The said writ petition is still pending before this Court.

It is further stated that the a DPC was convened on 26.02.2002, in which the matter for the promotion to the post of Joint Director, Rural Development was considered. Respondent No.2 Harbans Singh Gill was wrongly considered as senior to the petitioner. However, it was found that Harbans Singh Gill (respondent No.2) did not fulfill the requisite minimum bench mark of 12 marks for promotion to the post of Joint Director, whereas the petitioner fulfilled the said criteria by getting 16 marks. Therefore, the

petitioner was found fit to the post of Joint Director but could not be promoted due to the stay order granted in CWP No.11241 of 2000 filed by Pritam Singh Dhaliwal and Bahadur Singh. Vide interim order dated 13.03.2001, this Court had restrained the State of Punjab from finalizing the promotions to the post of Deputy Director and Joint Director in the Department. The said stay was vacated on 29.03.2010. In another CWP No.16545 of 2010, titled as ***“Pardeep Singh Kalira v State of Punjab and another”***, decided on 25.09.2011, this Court vide order dated 25.08.2011 (Annexure P-6) directed the State to consider all the persons even if they have retired in the meantime to grant them retrospective promotions notionally. However, the petitioner was not granted notional promotion, though the partial compliance of the order dated 25.08.2011 was made.

Respondent No.1-State in the reply by way of counter affidavit referred to the order passed in CWP No.11241 of 2000 filed by Pritam Singh Dhaliwal and Bahadur Singh, whereby the Division Bench of this Court, vide interim order dated 13.03.2001, restrained the Department and the promotion committee from finalizing the promotions to the post of Deputy Director and Joint Director. However, the aforesaid stay was vacated vide order dated 29.03.2010. It is stated that another CWP No.16545 of 2010, titled as ***“Pardeep Singh Kalera and others vs State of Punjab and another”***, was decided on 25.08.2011 with a direction to the respondents to re-adjudge the eligibility and suitability of the officials for their retrospective promotion as and when the vacancy(ies) were available. However, no arrears were to be paid to them and such promotion is to be granted notionally only.

It is further submitted that the petitioner has submitted the representation on 10.09.2012 for grant of notional promotion to the post of Joint Director, Panchayat. The same was filed vide order dated 27.08.2013 (Annexure P-7). It was further disclosed that the petitioner stood retired on 31.10.2006 i.e. prior to the passing of the order dated 29.03.2010, whereby the order dated 13.10.2001 was vacated. It is further stated that in the review DPC dated 21.06.2012, promotion to the post of Deputy Directors were made. As the petitioner already stood promoted as Deputy Director w.e.f. 01.10.1995, therefore, his name was not recommended for the notional promotion regarding which speaking order dated 27.07.2012 endorsed on 30.07.2012 (Annexure R-1) was passed.

Respondent No.2 has not filed any reply.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Two points need to be determined in the present petition:

1. Whether the petitioner is entitled to the promotion as Joint Director and then Additional Director as claimed by him?
2. Whether the petitioner is entitled to the salary of Additional Director w.e.f. 22.03.2002 till the date of his retirement i.e. 31.10.2006, when he was actually working on the post of Additional Director?

Undisputedly, a seniority dispute is pending between the petitioner and respondent No.2, which is still pending adjudication before this Court. It is also not disputed that earlier Harbans Singh Gill was considered senior to the petitioner. Both the parties belong to reserved category and both of them have now retired from service. The petitioner

retired from service on 31.10.2006 and respondent No.2 retired from service in the year 2012. Therefore, the question is now only for grant of notional benefits.

It is not disputed that there is only one post of Joint Director and one post of Additional Director. It comes out that if respondent No.2 is succeeded in his case and gets seniority and he is found eligible for promotion that would mean that the petitioner will not be entitled to the promotion to the post of Joint Director and Additional Director, since he retired from service much prior to respondent No.2.

Taking the first point, the plea of learned counsel for the petitioner is that as per the proceedings of DPC held on 26.02.2002 (the copy of which is Annexure R-3), respondent No.2 was considered senior to the petitioner but it was found that respondent No.2 did not fulfill the requisite criteria of the promotion to the post of Joint Director, whereas the petitioner fulfilled the requisite criteria of the said post and was found fit for promotion. However, on account of stay order dated 13.03.2001 passed in CWP No.11241 of 2000, the promotion to the post of Joint Director could not be made. Since no promotion to the post of Joint Director was made, therefore, the promotion for the next higher post i.e. Additional Director could also not be made.

Undoubtedly, the said stay was vacated vide order dated 29.03.2010 as discussed above.

So far as, further DPC is concerned, it comes out that vide order dated 27.07.2012, endoresed on 30.07.2012 (Annexure R-1/T), the promotion to the post of Deputy Director were made. Since, the petitioner

and respondent No.2 had already been promoted to the post of Deputy Director, therefore, their names were not considered.

The dispute in the present case is regarding the promotion to the post of Joint Director and Additional Director.

Now, the question would arise whether the claim of the petitioner can be allowed for granting him notional promotion as Joint Director and Additional Director?

I am of the view that the same is not possible at this stage. Firstly, the department is to decide regarding promotion to the post of Joint Director. Though, in the proceedings of DPC held on 26.06.2002, the petitioner was found fit for promotion, however, no promotion order was passed. Consequently, now a fresh DPC has to be held to decide about the promotion by relying upon the requisite criteria as may be applicable to the petitioner and respondent No.2. Therefore, unless or until, the seniority of the petitioner and respondent No.2 is decided, the Department will not be able to consider the case of the petitioner and respondent No.2 for their claim of notional promotion to the post of Joint Director and Additional Director and consequently, grant them pay scale of the said posts, refix their pay and pension.

Learned counsel for the petitioner was pointedly asked as to whether he is ready to give up his claim of seniority over respondent No.2, in view of his claim as found in the DPC held on 26.02.2002, wherein respondent No.2 was found unfit for promotion to the post of Joint Director, whereas the petitioner was found fit for the said promotion, who was junior to respondent No.2?

Learned counsel for the petitioner states that he is not ready to give up his claim of seniority.

It being so, it is not possible at this stage to direct the respondents to decide about the grant of notional promotion as Joint Director and Additional Director and order the fixation of pay for grant of notional promotion and fix the pay of the petitioner and also, accordingly, release the pensionary benefits, since, the promotion dispute is pending between the petitioner and respondent No.2 and it would be possible only after the said decision that the Department can take a positive decision to convene the fresh DPC to decide about the claim of the petitioner.

As such, it is held that after the decision of seniority dispute pending between the petitioner and respondent No.2 before this Court, the Department will hold the regular DPC and decide the claim of the petitioner for notional promotion as Joint Director and Additional Director and if he is granted said promotion, his salary and pension be refixed accordingly.

Now, coming to the second point regarding grant of pay to the petitioner for the post of Additional Director for the period he actually worked on the said post, it comes out that vide order dated 22.03.2002 (Annexure P-4), the petitioner, who was then working as Deputy Director, Panchayat was given additional charge to the post of Additional Director, Panchayat till regular officer is appointed to the said post. Admittedly, the petitioner continued to work on the said post till he actually retired on 31.10.2006. However, his pay was refixed and pension was granted as Deputy Director, Panchayat, vide order dated 09.09.2010 (Annexure P-5). It goes to show that from 22.03.2002, the petitioner did work on the post of

higher responsibility of Additional Director till his retirement i.e. 31.10.2006.

I am of the view that, once, the petitioner had worked on the post of higher responsibility, he is entitled to the salary in the pay scale of Additional Director, Panchayat from 22.03.2002 till the date of his retirement i.e. 31.10.2006. However, the grant of regular pay scale of the post of Additional Director, Panchayat will depend upon the seniority dispute pending between the parties as discussed and decided above. Accordingly, the grant of revised pension and other pensionary benefits as claimed by the petitioner will also be decided thereafter.

As such, the present petition is partly allowed with the abovenoted observations.

(KULDIP SINGH)
JUDGE

April 05, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes