

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-25867-2014(O&M)
Reserved on : 29.09.2017.
Date of Decision: 22.12.2017.

Harvinder Kaur

--Petitioner

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Harinder Sharma, Advocate for the petitioner.

Mr. T.P.S. Chawla, D.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Petitioner raises a challenge to the order dated 29.11.2013 (Annexure P-10) passed by the Secretary to State of Punjab, Department of Education and whereby claim of the petitioner seeking retrospective promotion to the post of Lecturer w.e.f. the year 2001, has been rejected.

Brief facts may be noticed.

Petitioner belongs to the reserved category of Scheduled Caste and came to be appointed as a Punjabi Mistress in the Education Department, State of Punjab on 22.3.1994. In the year 2000 the Education Department requisitioned cases from eligible Masters/Mistresses for consideration for promotion as Lecturers in different subjects. Petitioner sent her case for promotion as Lecturer in Punjabi through proper channel on 28.9.2000. Apparently, the case for promotion of the petitioner and respondent no.5 herein, who also belongs to the reserved category of Scheduled Caste, was duly considered. Promotion order dated 6.8.2001 was issued in favour of respondent no.5 and an order dated 8.10.2001 was issued in favour of the petitioner promoting her to the post of Lecturer against the

reserved category. It has been averred in the petition that respondent no.5 had joined service as a Mistress on 24.3.1994 i.e. subsequent in point of time to the petitioner and as such, in the cadre of Mistress she was junior to the petitioner.

Case set up on behalf of the petitioner is that at the time of issuance of the promotion order to the post of Lecturer, she was on maternity leave from 3.7.2001 to December, 2001 and it is during such period itself that the petitioner was transferred from district Patiala to district Ludhiana by virtue of order dated 28.6.2001 passed by the Director Public Instructions (S.E), Punjab and endorsed by the District Education Officer (S.E), Patiala on 27.8.2001. It is submitted that petitioner submitted her formal joining at the place of posting in district Ludhiana but then continued to avail of her maternity leave. As per petitioner the orders of promotion dated 8.10.2001 were never communicated to her and as such she could not join the promotional post of Lecturer. Thereafter, it is on 30.5.2008 that the petitioner was promoted as Lecturer in Punjabi and in pursuance to which she joined the promotional post on 6.6.2008. Petitioner states that she became aware of the promotion order dated 8.10.2001 only on 7.3.2011 and whereupon repeated representations were submitted to grant to her the benefit of the promotional post w.e.f. 8.10.2001. Petitioner then preferred CWP No.2656 of 2013 seeking issuance of directions to the respondent authorities to consider her case for promotion as Lecturer in Punjabi retrospectively. Such writ petition was disposed of by this Court on 7.2.2013 (Annexure P-8) with the directions to the first respondent to consider and decide a legal notice that had been served by the petitioner within a period of two months and by passing a speaking order.

It is in purported compliance of the directions issued by this Court that the impugned order dated 29.11.2013 (Annexure P-10) has been passed declining the claim of the petitioner for retrospective promotion on the ground that such claim is barred by laches.

It is against such brief backdrop that the instant petition has been filed seeking quashing of impugned order dated 29.11.2013 (Annexure P-10). Further prayer is for issuance of a Writ of Mandamus for directing the first respondent to promote the petitioner as Lecturer in Punjabi retrospectively w.e.f. 6.8.2001 i.e. the date when private respondent no.5 had been so promoted or in the alternative to be granted retrospective promotion w.e.f. 8.10.2001 i.e. the date the order of promotion in favour of the petitioner had actually been passed.

Counsel representing the petitioner has argued that the order dated 8.10.2001 was never communicated to the petitioner and accordingly she could not join the promotional post. It is urged that petitioner, as such, cannot be penalized for no fault of her and the action of the respondent authorities in denying to her benefit of retrospective promotion is arbitrary and unjust. It is also argued that petitioner had filed CWP No.2656 of 2013 and in which directions had been issued to consider the claim of the petitioner within a stipulated time frame vide order dated 7.2.2013 (Annexure P-8) and under such circumstances it was not open for the first respondent to have rejected the claim of the petitioner on the ground of delay and laches. The plea of discrimination and violation of Articles 14 and 16 of the Constitution of India has also been raised by contending that respondent no.5, who had joined service in the Master cadre on 24.3.1994 was junior to the petitioner and inspite thereof has been granted benefit of

promotion from an earlier date i.e. 6.8.2001. The senior i.e. the petitioner, as such, cannot be denied the same benefit.

Per contra, learned State counsel has justified the passing of the impugned order dated 29.11.2013 (Annexure P-10) in terms of the reasons assigned therein. It is argued that the petitioner has been sleeping over her rights, if any, and cannot be permitted to raise a claim as regards retrospective promotion w.e.f the year 2001 by filing a writ petition in the year 2014.

On a previous date of hearing an issue arose as to whether it is the State Govt. itself to blame as regards the petitioner having not joined the promotional post of Lecturer in pursuance to the promotion order dated 8.10.2001 or it was a deliberate act of the petitioner to avoid the new place of posting by attempting to forego promotion.

Accordingly, vide order dated 6.1.2015 passed by this Court, a direction was issued to the D.P.I (S.E), Punjab to personally conduct a probe without involving the D.E.Os (S.E), Ludhiana or Patiala. Liberty was granted to D.P.I (S.E), Punjab to however take assistance from them for purpose of record or of his juniors. Placed on record is an additional affidavit dated 13.3.2015 and appended along with is a Probe Report dated 24.2.2015 (Annexure R-2) of Sh. Balbir Singh, D.P.I (S.E.), Punjab.

The Probe Report at Annexure R-2 has been perused. The same would reveal that statements of various employees who had been promoted during the year 2001 and vide the same promotion order dated 8.10.2001 had been recorded and after obtaining reports of the D.E.Os (S.E), Patiala as also Ludhiana, it has been opined that orders of promotion were not directly forwarded to the employees concerned or to the heads of

the schools. The orders of promotion were rather available with the respective D.E.O (S.E). It has further been stated that since the promotion cases under consideration of the authorities had been submitted by the employees concerned themselves, such employees were following up the matter and upon visiting the office of the concerned D.E.O (S.E) and after having got verified their original documents, promotion orders were duly supplied.

Even as regards the petitioner, she had herself submitted her case for promotion. The other employees, who were promoted vide same order dated 8.10.2001 had also not been conveyed the promotion order individually and yet they have occupied the promotional post by virtue of the procedure noticed herein above. Petitioner did not even raise her claim for retrospective promotion at the time of her subsequent promotion to the post of Lecturer on 30.5.2008.

There is no rebuttal coming forth at the hands of the petitioner as regards the following observations made by the D.P.I (S.E.), Punjab in the promotion report:-

“Moreover during 2009 the information regarding service particulars of all Lecturers were available on official website in the form of seniority list of Lecturers. However, the petitioner did not raise her claim even at that time also.”

The view taken in the Probe Report as regards claim of the petitioner for retrospective promotion to be not well founded, is based on cogent and valid reasoning. It is not a case where the petitioner is alleging malafides against any particular official of the respondent department. The stand taken on behalf of the petitioner that she was not aware of a

promotion order passed in her favour in the year 2001 till the year 2011 does not inspire confidence particularly in the light of the admitted position of fact that she herself had forwarded her case for promotion.

Even otherwise, a belated claim as regards retrospective promotion w.e.f the year 2001 is sought to be raised in the instant petition that was filed in the year 2014. The aspect of delay in matters of seniority and promotion had been dealt with by the Apex Court in the case of ***P.S.Sadasivaswamy Vs. State of Tamil Nadu, AIR 1974 SC 2271*** and it was observed as follows:-

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

While declining to interfere in the present petition, suffice it to observe that even if this Court in the previous writ petition i.e. CWP-2656-2013 had issued directions on 7.2.2013 to consider and take a decision upon

a legal notice that the petitioner had got served upon the respondent authorities, the same cannot be construed to mean that this Court had condoned the aspect of delay.

For the reasons recorded above, no merit is found in the instant petition and the same is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

22.12.2017

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No