

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17736-1998

Date of decision: - 13.11.2018

Bhagwan Dass Gupta

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Amit Kaith, Advocate
for Mr. Vinod Sharma, Advocate,
for the petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition the challenge is to the order dated 27.02.1998 (Annexure P-6) by which the claim of the petitioner for promotion as Project Officer w.e.f. 21.08.1988, when he completed three years of service as a Stage Setter, has been declined. Further by the same order the claim of the petitioner that he should be granted the pay-scale of ₹2200-4000 with special pay of ₹300/- while working on the post of Project Officer, has also been declined.

The case set out by the petitioner in the present petition is that the petitioner was appointed as a Stage Setter on 21.08.1985. The said recruitment was made through the Haryana Public Service Commission. Initially, the petitioner was appointed on probation period

and he completed his probation period satisfactorily on 20.08.1987. Under the rules, the next promotion from the post of Stage Setter is to that of Project Officer. As admitted by the State in its reply, a Stage Setter with three years experience is eligible for promotion as Project Officer. From the pleadings of the parties, it transpires that there was only one post of Stage Setter in the department and there was only a solitary post of Project Officer. Against the solitary post of Stage Setter the petitioner was working and the post of Project Officer was lying vacant.

The State of Haryana imposed an economic cut of 10% on the staff strength where the cadre was of more than 10 posts. The said cut was imposed in December, 1989. By the time the said decision was taken by the State of Haryana, the petitioner who was working as a Stage Setter had already been completed three years of service as Stage Setter and was the sole claimant for promotion to the post of Project Officer. The State in its wisdom decided to surrender the post of Project Officer in the year 1989, leaving the petitioner without any promotional avenue. The petitioner started making representations for granting him promotion, but in the absence of any post of Project Officer his request was not acceded to and ultimately, the petitioner filed a writ petition being CWP No.9345 of 1996 claiming the relief of promotion as Project Officer. The said writ petition was disposed of by giving a direction to the State to consider the representation dated 10.04.1996 filed by the petitioner and take a decision within a period of three months.

In response to the direction given by this Court in CWP No.9345 of 1996, the respondents/State of Haryana revived the post of

Project Officer and granted the promotion to the petitioner on 21.02.1997 (Annexure P-4).

A bare perusal of order dated 21.02.1997 (Annexure P-4), by which the promotion of the petitioner as a Project Officer made, makes it clear that the said promotion was in the pay-scale of ₹2000-3500 and that too was with immediate effect i.e. prospectively.

As the petitioner was not granted the promotion with effect from the date when the petitioner became eligible in the year 1988 and further he was not being granted the pay-scale of ₹2200-4000 with special pay of ₹300, he again filed representation with the respondents and ultimately as the request of the petitioner was not being decided, he again filed a CWP No.18013 of 1997. The said writ petition was disposed of by this Court, vide order dated 05.12.1997 directing the respondents to consider and decide the request made by the petitioner by representation dated 10.03.1997 by passing a speaking order.

In pursuance to the directions given by this Court on 05.12.1997 while hearing CWP No.18013 of 1997, the respondents considered the claim and rejected the claim being made by the petitioner by passing order dated 27.02.1998 (Annexure P-6). It was mentioned in the impugned order that as the post of Project Officer was lying vacant for more than three years, the same was surrendered under 10% cut and the promotion of the petitioner ultimately made on 21.02.1997 was prospective after the post of Project Officer was revived and the post of Stage Setter was surrendered. With regard to the grant of pay-scale of ₹2200-4000, it has been mentioned that the same was taken by the

department with the Finance Department, but Finance Department rejected the proposal. No reason was given as to why the request of the petitioner was not accepted by the Finance Department. The said order dated 27.02.1998 (Annexure P-6) is under challenge in the present writ petition.

In reply to the writ petition, it has been admitted by the State that Project Officer is a promotional post from the post of Stage Setter and the petitioner became eligible for the said promotion after completing three years of service in 1988. Again the same stand has been taken by the State that the post of Project Officer was surrendered under the cut of 10% in view of the instructions dated 26.05.1983 and 20.07.1983. In reply to para 16 of the writ petition, it has been admitted that the post of Project Officer was always in a higher pay-scale, than the post of Stage Setter, being the promotional post. It has been further admitted by the State of Haryana that w.e.f. 01.01.1986 the pay-scales of the post of Stage Setter was 2000-3200 and was further revised as 2000-3500 w.e.f. 01.05.1990.

Counsel for the petitioner contended that the posts of Project Officer and Deputy Director are both the feeder cadre posts for further promotion as a Joint Director (Technical) under the Service Rules known as the Haryana Public Relations Department (Group A) Service Rules, 1982 and therefore as the post of Project Officer and Deputy Director were in the same pay-scale up to 01.01.1986, the grant of lesser pay scale to the post of Project Officer was arbitrary and hence while working on the post of Project Officer, the petitioner should also be given the pay

scale of ₹2200-4000+300 special pay, as being given to the Deputy Director.

I have considered the submissions, which have been made by learned counsel for the parties.

It is admitted case that there was a solitary post of Stage Setter on which the petitioner was working and there was only one post of Project Officer, which was the promotional post from the post of Stage Setter. The State in its wisdom in the year 1989 decided to surrender the post of Project Officer under the 10% economic cut imposed on the cadre strength by the State of Haryana. By the said action, the petitioner was left with no promotional post/promotional avenue, which is must for an employee in a service career. The State realized its mistake and revived the post of Project Officer while giving the petitioner a promotion on 21.02.1997 in fact, the State should have applied its mind diligently while surrendering the post in the year 1989. The action which the State had taken in February, 1987 of reviving the post of Project Officer and surrendering the post of Stage Setter should have been taken in 1989 when the petitioner was eligible for promotion as Project Officer.

Be that as it may, once it is an admitted case by the State of Haryana that the petitioner was eligible for promotion to the post of Project Officer much before the post of Project Officer was surrendered on 14.12.1989 and the Government after realizing its mistake revived the post on 21.02.1997 and promoted the petitioner on the said post, the said benefit should relate back to the date when the petitioner became eligible so as to do away with the hardship petitioner suffered because of the

action taken by the State of surrendering the promotional post of Project Officer in 1989. Hence, a direction is given to the respondents-State to consider the case of the petitioner for promotion as a Project Officer when he completed three years of service with the deeming fiction that the post of Stage Setter is surrendered instead of the post of Project Officer and grant the petitioner consequential benefits of pay w.e.f. August, 1988, by notionally fixing his pay on the said post.

The next claim which the petitioner is making for the grant of pay-scale of ₹2200-4000+300 to contend that post of Project Officer needs to have a higher pay-scale as being given to the post of Deputy Director, a direction is given to the respondents-State to consider the said claim of the petitioner as while rejecting the said plea of the petitioner, no reason has been given in the order dated 27.02.1998 (Annexure P-6), as to why the Finance Department turned down the proposal of the department. Order dated 27.02.1998 (Annexure P-6) is totally cryptic and non-speaking on this issue.

Present writ petition stands allowed and the impugned order dated 27.02.1998 (Annexure P-6) is set aside.

Let the order be complied with within a period of three months from the date of receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

November 13, 2018
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Whether reasoned/speaking?	Yes
Whether reportable?	Yes