

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

**CWP-14661-2013 (O&M)
Date of decision : 03.08.2018**

Brij Bala

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab,
assisted by Ajay Shandal, Sr. Assistant,
O/o DPI (SE), Punjab.

JITENDRA CHAUHAN, J.

The petitioner was appointed as Clerk on 16.09.1977 and joined services at Government Girls High School, Talwan, District Jalandhar. She was placed in the pay scale of Junior Assistant w.e.f. 01.01.1996 and superannuated on 31.03.2012. While in service, case of the petitioner along with others, for promotion from the post of Junior Assistant to Senior Assistant, was called on 02.06.2011, through telephonic message, upto serial No.550 as per the seniority list. The petitioner had been placed at serial No.399 in the said seniority list forwarded by respondent No.4 vide letter dated 03.06.2011 (Annexure P-2), to respondent No.2. The petitioner's name figured at serial No.14 in the list appended with Annexure P-2, but was not acted upon. Vide letter dated 20.12.2011 (Annexure P-3), the case of the petitioner was again forwarded by respondent No.4.

However, despite there being a large number of posts of Senior Assistant lying vacant since 2005-06, no promotions were made. The grouse of the petitioner is that after her retirement from service on 31.03.2012, the respondents filled up 83 vacancies of Senior Assistant by promotion vide orders dated 30.07.2012 and 29.08.2012, wherein, the juniors of the petitioner were also promoted. The case of the petitioner for promotion was not considered only on the ground that she had already retired from service.

The contention of learned counsel for the petitioner is that the delay in effecting the promotions is solely attributable to the respondents and the petitioner cannot be made to suffer for their inaction. The claim of the petitioner was not considered while she was in service despite the fact that complete case for promotion was forwarded to respondent No.2 on 03.06.2011 and thereafter, again on 20.12.2011.

On the other hand, learned State counsel submits that no person junior to the petitioner was promoted while she was in service, therefore, she is not entitled to the relief sought.

Heard.

There is no dispute with regard to the fact that the petitioner, prior to attaining the superannuation, was fully eligible to be considered for promotion to the next higher grade of Senior Assistant. However, owing to the inaction of the respondents, the DPC was not conducted during her service period. After her retirement, the DPC was conducted and promotions were made wherein, employees junior to the petitioner (during the period she was in service), were promoted. Thus, it is the respondents who failed to extend benefit of promotion to the petitioner which became

due to her well before her retirement and the petitioner cannot be made to suffer on this count. The vacancy will relate back to date of actuarial and should be offered to the claimants eligible on the said date. In ***Chaman Lal Lakhanpal Vs. Union Public Service Commission, CWP-14526-1998, decided on 23.11.1998***, this Court had laid down as under:-

“8. We are unable to accept this contention. The respondent cannot be permitted to take advantage of its own wrong. It is the Commission's own case that the committee could not meet during the years 1994-95, 1995-96 and 1996-97 on account of the interim order of stay granted by the Tribunal in S.P. Gupta's case. After the stay was vacated on December 3, 1996, the Commissioner took no steps for the meeting of the committee immediately. If it had performed its duty and nominated a member for the Committee as constituted under the regulations, the petitioner's rights as guaranteed to him under the rules would not have been violated. By merely failing to nominate a member and not allowing the committee to meet, the Commission cannot be permitted to defeat the rights of the petitioner.

9. It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. Directing the respondents to do the needful on the

hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules.”

Similar view has been taken by Hon'ble the Supreme Court in ***MP Singh Bargoti Vs. State of Madhya Pradesh and another, 2015 AIR (SC) 556***, by holding thus:-

“We have carefully considered the rival contentions, the relevant facts and the prevailing rules governing promotion at the relevant time. There is no dispute that despite directions passed since 15.06.1993 by the Tribunal and lastly reiterated in the case of the appellant on 11.03.1998, a Combined Gradation List was not prepared at the appropriate time and ultimately when it was prepared to show compliance with the order of the Tribunal, it was never acted upon because the subsequent directions of the Tribunal for amendment of rules was preferred by the State and the claim of the appellant was never considered by the Departmental Promotion Committee till he was in service or even thereafter when person like Mr. V.N. Dubey who was junior to the appellant in the Combined Gradation List was considered allegedly on the basis of another subsequent gradation list and promoted with effect from a date when the appellant was still in service.

In the aforesaid circumstances, in our considered view, the Tribunal and the High Court erred in law as well as on facts in denying relief to the appellant. The position would have been different if appellant's junior had been promoted from a date subsequent to his superannuation. Then appellant would have suffered only on account of passage of time or innocuous delay but in the present facts he has suffered hostile and arbitrary discrimination vis-à-vis a junior. The order under appeal is therefore set aside. Since the appellant was in service only till 31.03.1998, he is held entitled to notional promotion to the post of Deputy Superintendent of Police w.e.f. 29.05.1997 till 31.03.1998. He will be deemed to have superannuated on that post and shall be given all the post retirement benefits by recalculating the same on the premise that he held the post of Deputy Superintendent of Police from 29.05.1997 till his superannuation on 31.03.1998. The revised pensionary benefits as well as arrears on that account should be made available to the appellant at the earliest and in any case within three months from the date of this order. The appellant is held entitled to a consolidated cost of Rs.50,000/- which should also be paid along with other benefits within the time indicated above. The appeal is allowed to the aforesaid extent."

This Court in ***Nirmal Singh Vs. State of Punjab and others***,

CWP-23430-2013, decided on 07.10.2016, has held as under:-

"In the present case also, the case of the

petitioner was considered for promotion by taking into consideration his service record. The vacancy was also there but the petitioner could not be promoted due to imposition of election code of conduct. Meanwhile, the petitioner retired and benefit of promotion was declined only on the ground that he had already retired. The petitioner could not be made to suffer because of imposition of election code of conduct as his promotion was already approved but order of promotion could not be implemented, which cannot be a ground to refuse the claim of the petitioner. Had there not been election code of conduct, he could have been promoted prior to date of his retirement.

In view of the facts as well as law position explained above, the present petition is allowed and the petitioner is held entitled for deemed promotion along with all consequential benefits as per law. The respondents are directed to consider the case of the petitioner against the vacancy on which he was promoted by giving benefit of deemed promotion. The needful to be done within a period of three months from the date of receipt of copy of the order. The petitioner is also held entitled for refixation of his pensionary benefits on the basis of deemed promotion.”

Learned State counsel, on instructions, fairly concedes that no FIR, inquiry or departmental proceedings were pending against the petitioner as on the date of her retirement.

In view of the above, the instant petition is allowed and the

petitioner is held entitled for deemed promotion to the post of Senior Assistant w.e.f. the date of her retirement i.e. 31.03.2012. The petitioner shall be deemed to have been retired from service as Senior Assistant and therefore, is also held entitled for refixation of her pensionary benefits and arrears thereof, accordingly.

Allowed in the above terms.

03.08.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No