

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

CWP-22329-2012

Date of Decision: 31.10.2018.

Saroj Bala and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.K. Girdhar, Advocate,
for the petitioners.

Mr. Vikas Mohan Gupta, Addl. AG Punjab.

JITENDRA CHAUHAN.J.(ORAL)

This is a civil writ petition under Articles 226 and 227 of the Constitution of India for quashing the letter dated 01.09.1989 (Annexure P-1) and order dated 06.07.2012 (Annexure P-3) issued by the State Government vide which claim of the petitioners, who have forgone promotion, for proficiency step up has been rejected.

It has been contended that the issue involved in the present petition as to whether “an employee who forgoes his right of promotion is entitled to proficiency step up” has already been settled by Hon'ble Division Bench of this Court in **Shashi Kiran and others vs. State of Punjab and others 2003(1) SCT 340.**

Learned State counsel does not refute the submissions made by learned counsel for the petitioners.

Heard.

In *Shashi Kiran's case (supra)* this Court observed

as under:-

“We are afraid, the only contention raised and reasons given for declining the relief to the petitioners have already been clearly dealt with by a Division Bench judgment of this Court in *Civil Writ Petition No. 6049 of 1997 (Tipan Chand Sharma and another v. State of Punjab and others)* decided on 6.5.1998, where the Court held as under :

"The question then emerges for consideration is that whether the non-availing of the promotion, as alleged by the respondents, can mar the right of the petitioners from getting the benefit of the Notification.

It is not specifically mentioned in the circular letter that a person who does not avail the promotional opportunity shall not be entitled to the benefit of proficiency step up. The relevant sub-para of the circular letter is reproduced as below :

"(7) For reckoning the period of 8 and 18 years, the entire service in the time scale, senior scale and selection grade (of mere placement and not involving fixation of pay at higher level) etc., wherever available in a cadre, shall be counted. If an employee joins a scale at a stage higher than the minimum as a result of promotion or otherwise, his proficiency step up(s) would stand postponed by a number of years equal to the number of increments already covered by him from the minimum of the scale at the time of initial fixation of pay in the scale. That the step-up is related to the number of years of service in a particular scale and if an employee's pay is fixed by process of promotion at the sixth stage of a scale, he will be entitled to earn a step-up in that scale only after 8 years if an employee serves in a scale of pay for more than 18 years and is not promoted to a higher scale on account of lack of promotional opportunities or non-availability of a vacancy in the promotional scale, he would be granted two step-up(s) in his emoluments."

So far as the case of the present petitioners is concerned, it can be found that none of the petitioners can be punished for alleged non-availing of the promotions before the appointed date. Both the petitioners had completed 8/18 years on the appointed date. Therefore, even if the petitioners had not availed of the promotional avenues as alleged, their right to get the proficiency step up on their appointed date cannot be washed away. We, therefore, do not want to go into discussion of the question to the effect of not availing the promotional avenues in case 8 and 18 years service is not completed by any of the petitioners on the appointed date.

We are, therefore, of the opinion that the reasons for not granting the proficiency step-up to the petitioners are not

justified. We, therefore, allow this writ petition and direct the respondents to grant proficiency step up increments to the petitioners on the completion of 8 and 18 years of service. However, the arrears so calculated shall be restricted for a period of three years and two months prior to the filing of the writ petition which was filed on 3.5.1997."

4. The basic contention raised before us is that the respondents had foregone their promotions as lecturers with effect from 1.1.1986 and consequently they would be debarred from claiming the proficiency step up. The respondents claim to have taken this action in furtherance to paragraph No. 9 of the Punjab Government instructions dated 1.9.1989. It is difficult for this Court to hold that the petitioners would be debarred from claiming the proficiency step up in the circumstances of the case. The petitioners were offered the promotions in September, 1998 and thereafter. By that time the petitioners had completed more than eight years of service as they were appointed on ad hoc basis in the year 1975 and regularly appointed to the same posts in the year 1977 onwards. Thus, in any circumstances and whatever be the interpretation given to the instructions of the Government, the petitioners cannot be denied the eight years proficiency step up increment.

5. In view of the above reasoning and while following the view taken by the Division Bench of this Court in the case of Tipan Chand Sharma (*supra*), we allow this writ petition to the limited extent that the petitioners would be entitled to get the proficiency step up increment after eight years of service in accordance with rules. The parties are left to bear their own costs.

Petition allowed."

In view of above, the present civil writ petition is allowed in terms of **Shashi Kiran's case (supra)**. The letter dated 01.09.1989 (Annexure P-1) and order dated 06.07.2012 (Annexure P-3) are hereby quashed to the limited extent that the petitioners would be entitled to get the proficiency step up increment in accordance with rules.

31.10.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No