

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

(101)

CWP-26098-2012

Date of Decision: December 06, 2018

Kanwarjit Singh

..Petitioner

Versus

State of Punjab & another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jatin Salwan, Advocate, for the petitioner.

Ms. Anju Arora, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the petitioner is challenging order dated 24.07.2012 (Annexure P-7) by which, the regular promotion to the petitioner, on the post of Director Public Instructions, has been denied.

The factual matrix of the case is as under:-

The petitioner initially joined as a Lecturer after being selected by the Punjab Public Service Commission on 03.08.1976. While working on the said post, the petitioner also acquired the qualification of Phd. on 15.02.1999. On 22.11.1996, Punjab Public Service Commission had advertised six posts of Principal to be filled by way of direct recruitment. The petitioner, who was fully eligible as per the advertisement, applied for the same and consequently was selected as a Principal and was placed at Sr. No.1 in the merit list. After his selection, the petitioner joined as a Principal on 30.12.1997. It is not disputed that the petitioner discharged his duties on the post of Principal and nothing was found against the petitioner in respect of his discharge of his duties.

As per the Punjab Education Service (Colleges Cadre (Class-I)

Rules, 1976, the next promotion is to the post of Director Public

Instructions (hereinafter referred as DPI). Under Rule 10 (1) of the said Rules, the post of DPI is to be filled from Principals on the basis of direct selection. On 01.02.2006, the post of DPI became vacant on the retirement of one Smt. Nisha Shard. As the post fallen vacant, vide letter dated 31.01.2006, the petitioner was given the additional charge of the post of DPI (Colleges) vide order Annexure P-1. The petitioner held the additional charge and therefore continuously discharged the duties as DPI (Colleges) as well.

As the respondents were not making regular promotion to the post of DPI and the petitioner was asked to continue by holding the said post as an additional charge, the petitioner filed a writ petition bearing CWP No. 10017 of 2008. In the said writ petition, the prayer made was to make regular promotion to the post of DPI and to consider the case of the petitioner who was at Sr. No.1 in the seniority. The said writ petition was disposed of by this Court on 30.05.2008 by giving a direction to the respondents to pass a speaking order on the representation filed by the petitioner, wherein the petitioner was seeking regular promotion to the post of DPI. That before any order could be passed on the directions given by this Court, the petitioner superannuated from service on 30.09.2008. It is highlighted herein itself that at the time of superannuation of the petitioner, the petitioner was discharging the duties of the DPI.

On 08.10.2008, the respondents rejected the representation filed by the petitioner seeking regular promotion as DPI. In the said order, the respondents have admitted that the post of DPI had fallen vacant with effect from 01.02.2006 and the petitioner kept on working on the said post from the said date and also that the petitioner was at Sr. No. 1 in the

seniority. The only objection taken for not promoting the petitioner was that the petitioner was appointed during the tenure of Sh. Ravinder Pal Singh Sidhu, who was the Chairman of Punjab Public Service Commission and all the appointments which were made during his tenure, were being reviewed on the ground that they might be tainted. Citing said reason, the request of the petitioner was rejected for regular promotion. Relevant paragraph of the order dated 08.10.2008 rejecting the case of the petitioner is as under:-

“ Shri Kanwarjit Singh, Principal, who is seniormost and as per the service record fulfills eligibility conditions for the post of Director Education Department (Colleges), but as per above mentioned advice of the Personnel Department since the appointment of this official was made by the PPSC during the tenure of Shri Ravinder Pal Singh Sidhu, as Chairman and because of the matter regarding the selection made during the tenure of Shri Ravinder Pal Singh Sidhu being pending in the Hon'ble High Court and as per above given advice by the Personnel Department, Shri Kanwarjit Singh, Principal (Retired on 30.09.2008), the request/representation given by Shri Kanwarjit Singh dated 8.5.2007 is being filed.”

The petitioner again approached this Court challenging the order dated 08.10.2008 and the said writ petition, came to be decided by this Court on 23.08.2011. A Coordinate Bench of this Court, after noticing the objections which was raised by the Department to deny the petitioner the regular post of the DPI, held that the petitioner was fit enough to discharge the duties of the DPI (Colleges) and thus the respondents cannot deny the regular promotion and the consequential monetary benefits to the petitioner.

While passing the said order on 23.08.2011, the Coordinate Bench also noticed that the selection of the petitioner as a Principal was challenged in two writ petitions before this Court, and both the writ petitions were dismissed meaning thereby that there was nothing against the selection of the petitioner as a Principal as was made in December, 1997. The judgment of this Court dated 23.08.2011 reads as under:-

“The petitioner has been denied regular promotion to the post of DPI (Colleges) Punjab despite being seniormost and fully eligible Principal, in accordance with the Punjab Education service (College Cadre (Class-I) Rules, 1976. The promotion has been denied merely on the suspicion that his selection as Principal (College Cadre) was made during the period when Ravi Inder Pal Singh Sidhu was the Chairman of the Punjab Public Service Commission and there can be a possibility of his appointment being tainted.

The selection of the petitioner was challenged by some aggrieved candidates before this Court in two writ Petition which were dismissed by a Division Bench of this Court vide judgment dated 04.05.2010 (Annexure P-10).

There is no dispute with regard to eligibility or suitability of the petitioner for the aforementioned promotional post in fact the respondents themselves gave the additional charge of DPI (Colleges) which the petitioner held till his retirement on 30.09.2008. The petitioner was obviously fit enough to discharge the duties of the DPI (Colleges). The respondent thus cannot deny regular promotion and consequential monetary benefits to the petitioner.

The writ petition is accordingly allowed with a direction to the respondents to consider the claim of

the petitioner for the promotion as DPI (Colleges) on regular basis from the due date and if found suitable to grant him the same alongwith consequential benefits. Let the needful be done within four months from the date of certified copy of this order is received.”

A bare perusal of the above order show that the findings had been given by this Court that as the respondents themselves made the petitioner discharge the duties of the post of DPI (Colleges) upto the date of retirement, the regular promotion could not be denied. But still, the respondents were asked to pass appropriate order in this regard.

In compliance of the order dated 23.08.2011, the respondents again passed an order on 24.07.2012 rejecting the claim of the petitioner for regular promotion as DPI and surprisingly, the objection taken was that the Vigilance letter dated 23.01.2003, had found the selection of the petitioner tainted and therefore, as the selection of the petitioner as a Principal was tainted, he was not eligible to be granted regular promotion as DPI. The relevant paragraph of the order dated 24.07.2012 is as under:-

“Whereas in compliance of the judgment dated 23.8.2011, the Govt. convened the meeting of Department Promotion Committee on dated 18.07.2012 as the suitability of a Govt. employee/officer is to adjudged by the DPC. The DPC considered the case of regular promotion as DPI of the petitioner in view of the letter dated 21.8.2003 of the Vigilance Department. As per the letter of Vigilance Department the selection of the petitioner as principal is tainted. Hence, the DPC has rejected the claim of regular promotion as DPI of the petitioner.

In view of the position explained in forgoing paras, I am of the considered view that the petitioner

is not eligible to be promoted as regular D.P.I. (Colleges) Punjab. Accordingly, his claim for promotion as regular D.P.I. is hereby rejected.”

This order is under challenge before this Court and the petitioner seeks regular promotion and the consequential benefits which arises out of the regular promotion as DPI.

I have heard learned counsel for the parties and gone through the record.

As per the admitted facts, which have been enumerated hereinbefore, there is nothing adverse against the petitioner after his appointment as a Principal. Even prior to the said date when the petitioner was working as a Lecturer, there was nothing adverse against his performance in any manner. Further, it is an admitted case that after the post of DPI (Colleges) fell vacant on 01.02.006, the petitioner being the seniormost, was given the additional charge of the said post and the petitioner continued discharging the duties of the said post till he superannuated on 30.09.2008.

The only ground to deny the regular promotion to the petitioner despite being eligible and seniormost was that the appointment of the petitioner as a Principal was tainted one as per the letter dated 21.08.2003. When the respondents passed an order on 08.08.2008, the only reason given was that the appointment of the petitioner as a Principal was made during the tenure of Shri Ravinder Pal Singh Sidhu and therefore, as there was a cloud over the appointment(s) made during his tenure, the petitioner cannot be granted regular promotion. This ground has been considered by this Court as to whether the same is valid one or not, while passing the order in

CWP No.9679 of 2009. A categoric finding has been recorded by this

Court, already reproduced hereinbefore, that in the circumstances, which has been noticed above, once the petitioner was discharging the duties of the post DPI (Colleges) till his retirement, it cannot be said that the petitioner was not fit and this Court held that the respondents cannot deny the regular promotion and consequential monetary benefits to the petitioner. Still, despite clear directions, the respondents in order to harass the petitioner, rejected his case on the same plea, which did not find favour with by this Court while passing an order on 23.08.2011.

The arguments which has been raised by counsel for the petitioner is that the letter dated 21.08.2003 written by the Vigilance Department, was not produced before the Hon'ble Court when CWP No.9679 of 2009 was decided and therefore, this is a valid ground to deny the petitioner the regular promotion.

In my opinion, this argument is of no help to the respondents for the reason that the letter dated 21.08.2003 passed by the Vigilance Department which is being relied by the respondents, was very much in existence, when the earlier rejection order was passed by the respondents on 08.10.2008. This letter continued to be in existence when the petitioner filed Civil Writ Petition No.9679 of 2009 claiming regular promotion but this letter was never pressed by the respondents during the said round of litigation. Therefore, now pressing the said letter, which also says the same thing that the selection of the petitioner as a Principal was tainted one, cannot be pressed to deny the petitioner the relief of regular promotion as DPI (Colleges). In view of the categoric finding given by this Court that the petitioner was fit enough to discharge his duties as DPI hence the respondents cannot deny regular promotion and consequential monetary

benefits.

Furthermore, this letter of 25.08.2003 uncovers nothing new. The same objection had already been taken by the respondents while passing an order dated 08.10.2008, which duly stand considered by this Court while deciding CWP No.9679 of 2009.

Further, if there was any report adverse to the petitioner in respect of his initial appointment as a Principal, nothing prevented the respondents from taking appropriate action. It is a matter of fact, which has been admitted by the respondents themselves that not even a show cause notice was ever issued to the petitioner in respect of his appointment as a Principal even after the issuance of letter dated 25.08.2003. In these circumstances, a letter of the Vigilance Department will not put a clout upon the appointment of the petitioner as a Principal especially in view of the fact that the said appointment has already been upheld by this Court as noticed by the Coordinate Bench while passing an order dated 23.08.2011. A legitimate right of promotion cannot be denied by the respondents on the plea that the initial appointment was surrounded with suspicion and therefore the letter dated 25.08.2003 written by Vigilance Department cannot come into the way of petitioner in getting promotion at all and the ground so given by the respondents to deny the benefit of promotion to the petitioner is rejected.

In view of the above, the order of rejection passed by the respondents on 24.07.2012 (Annexure P-7), denying the regular promotion to the petitioner as DPI, is set aside. A direction is given to the respondents to pass appropriate orders giving regular promotion to the post of DPI from the date, on which the charge of the said post and was given to the

petitioner. After passing of the said order, the respondents shall calculate the consequential benefits/monetary benefits for which the petitioner will be entitled for and grant the same to the petitioner within a period of four months from the date of receipt of copy of this order.

In case, any revision to the pension, which is to be done by the petitioner is to be done, the same shall also be done within four months mentioned above.

The writ petition stands allowed, in above terms.

December 06, 2018
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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