

**213 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.26034 of 2013.
Date of Decision: 31.10.2018**

Dr. Beant Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

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

Ms. Bhawna Gupta, DAG Punjab.

JITENDRA CHAUHAN J.

Through the instant civil writ petition, the petitioner seeks issuance of a writ in the nature of mandamus directing the respondents to promote the petitioner against the post of Senior Lecturer (redesignated as Assistant Professor) in the Speciality of Gyane and Obstetrics.

The facts of the case are that the petitioner who is a member of Scheduled Caste, was appointed as Medical Officer on regular basis with effect from 15.07.1985. He had completed his MD in the speciality of Gyane and Obstetrics in December 1985. On 14.12.2007 the office of Director, Research & Medical Education had invited applications for filling up posts of Senior Lecturer/Assistant Profession in the Gyane and Obstetric Department. The petitioner had also applied for the same. Though, the respondents were to fill roster

point No.44 & 45 but inspite of the roster point 44 being meant for scheduled caste category, no post was shown to be for scheduled caste. The candidature of the petitioner was ignored on the ground of not having the requisite experience. Vide letter dated 14.12.2007 again applications were invited by respondent No.2. The cadre of six posts was shown. Two posts were shown vacant; one for promotee quota and the other for the direct quota. As per the common cadre roster, the post of promotee quota was shown to be of General Category whereas, the same ought to have been given to reserved category candidate. The candidature of the petitioner was rejected and the post was offered to Dr. Manpreet Kaur a general category candidate. Again on 13.03.2012 respondent No.2 had invited applications for filling up posts of Senior Lecturer. The petitioner came to know that there is only one post in the Gyane and Obstetrics Department under promotee quota for general category. The petitioner had to file CWP No. 6813 of 2012 which was disposed of with liberty to the petitioner to move representation before the department. The department passed order dated 19.05.2013 (Annexure P-6) observing that the petitioner will be considered against the post of promotee quota as per the rules/instructions of the Government. The request of the petitioner for appointment against the reserve point from the back date shall be considered in DPC. Again vide public notice applications were invited for filling up post of Professor, Associate Professor, Assistant Professors and the petitioner has made representation requesting the authorities to consider his

candidature against roster point No.44 which was reserved for SC category. Though, on 16.09.2013 the petitioner was appointed as Assistant Professor of Gyane and Obstetrics but he was not given promotion from the back date when the roster point No.44 was available and the petitioner was eligible for consideration. It is contended that as per the running roster, the post in question ought to have been offered to the petitioner.

On the other hand, it is contended that a review DPC was held on 11.06.2016 and in pursuance thereto, the petitioner has been granted the seniority on the post of Assistant Professor from the date the roster point was available and the petitioner was eligible for promotion i.e the year 2008. Thereafter, another DPC was held on 30.12.2015 in which the case of the petitioner for further promotion to the post of Associate Professor was considered and recommendations were made but the same was not given effect to as the present writ petition was pending. Thereafter, the respondents have shown inability to promote the petitioner from the back date on the ground that the promotions will have only prospective effect.

Heard.

Keeping in view the fact that the petitioner has been given promotion to the post of Assistant Professor from the due date and that the further promotion to the post of Associate Professor was also considered and recommendations had been made, accordingly, there is no bar in promoting the petitioner from the back date as the legitimate

right had accrued to the petitioner. The petitioner in fact, deserved to be promoted with effect from the date roster point No.44 became available. The rightful claim of the petitioner was not given to him for a considerable period. With the intervention of the Court, he was promoted to the post of Assistant Professor with effect from the due back date. The necessary consequence thereof has to follow. The petitioner deserves to be given the further promotion as well with effect from the date, it became available. Consequently, the present civil writ petition is allowed. The respondents are directed to promote the petitioner from the back due date. The necessary exercise be done within a period of two months from the date of receipt of certified copy of the judgment.

31.10.2018.

SN

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No