

**101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CWP-21943-2017
Date of decision-25.04.2018**

Anshu Gupta

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Sharma, Advocate for the petitioner.

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing the orders dated 27.09.2013, 15.10.2015 and 23.12.2016 (Annexures P-1, P-4 and P-5) passed by respondent Nos.2 and 3 and further direct the respondents to grant all benefits to the petitioner for the period from 08.03.2011 to 19.12.2012 in view of grant of notional promotion to her.

It is contended that vide order dated 27.09.2013 (Annexure P-1), the petitioner was promoted from the post of Junior Assistant to Senior Assistant w.e.f. 08.03.2011 till 19.12.2012. However, the promotion was effected notionally and no benefit of that period was allowed to the petitioner. It is further contended that once the promotion had been made, the petitioner was entitled to all the consequential benefits arising therefrom. The principle of 'No Work No Pay' is not applicable in the present case as the petitioner was on the establishment of the department on the relevant date and she was willing to do work. He further asserts that case of the

petitioner is covered by instructions dated 30.05.1995.

Heard.

The instructions issued vide memo No.4/48/90-3 P.P.1/10414 dated 30.05.1995 of Punjab Government (Personnel & Administrative Department) read as under:-

“If fault of any employee is not proved and said employee is acquitted of charges in departmental enquiry/court proceeding or awarded higher seniority in a dispute of seniority, he/she be awarded promotion from back date and arrears of pay etc be also paid from back date.”

A case of committing fraud of Red Cross Funds was pending against the petitioner as on 31.10.2010 and one annual increment was ordered to be stopped without future effect in the said case vide order dated 13.01.2011. On appeal filed by the petitioner, the punishment was reduced to censure. As per Punjab Civil Services Punishment and Appeal Rules, 1970, the punishment of censure falls in the category of minor punishment. Thus, it is clear that the petitioner cannot take the benefit of Instructions dated 30.05.1995 as she was not exonerated of the charges levelled against her.

The only argument raised by learned counsel for the petitioner is that as the petitioner had been granted notional promotion, therefore, consequential benefits could not be withheld.

As per the impugned order dated 15.10.2015 (Annexure P-4), the relief claimed by the petitioner was denied by the competent authority on the ground that the petitioner never served on higher post nor was she

exonerated of the charge by the competent authority.

The petitioner was promoted to the post of Senior Assistant vide office order dated 20.12.2012 (Annexure P-9) whereas the petitioner laid the claim for awarding promotion with effect from 01.11.2010 against the post vacated on account of retirement of Mr. Ravinder Pal Singh, Senior Assistant on 31.10.2010 against which the petitioner cannot lay her claim as the same was not vacated on the basis of seniority-cum-merit. The petitioner was promoted to the post of Senior Assistant on the basis of seniority-cum-merit on notional basis (No work no pay) from 08.03.2011 till 19.12.2012 vide impugned order dated 27.09.2013 (Annexure P-1) against vacant post of promotion of Mr. Sarwan Singh, Senior Assistant to the post of Superintendent Grade II on 07.03.2011.

It is established on record that there was no vacant post for promotion to the post of Senior Assistant on the basis of seniority-cum-merit and as per service record, the petitioner was not fulfilling the conditions on merit basis. The Court feels that the competent authority rightly rejected the claim of the petitioner after affording an opportunity of hearing to her. No fault can be found with the approach of the Competent Authority.

In the circumstances, the present petition sans merit is hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

25.04.2018

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No