

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

CWP-7666-2013

Date of decision-12.10.2018

Karamjit Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. CM Chopra, Advocate for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J. (Oral)

The claim of the petitioner in the instant writ petition filed under Articles 226/227 of the Constitution of India is for grant of promotion to the post of Lecturer (Math) from the date his juniors were promoted.

It is the case of the petitioner that he was appointed as Math Master on 26.09.1989. During service, he acquired Post Graduate Degree in Mathematics on 09.04.1996 as also Masters in Education and thus, became eligible for promotion to the post of Lecturer under the Punjab State Education Class III (School Cadre) Service Rules, 1978, as amended from time to time. On 28.05.2011, with a view to fill up the posts of Lecturers in various subjects by promotion, the Department invited cases from amongst eligible Masters/Mistresses. The case of the petitioner, being fully eligible, was duly forwarded by the Heasmaster of the school to the DEO, Ludhiana for onward transmission to the DPI vide letter dated 25.08.2011 (Annexure P-4). However, vide order dated 17.05.2012 (Annexure P-10), several co-

employees of the petitioner including those junior to him , were promoted as Lecturers, whereas, the claim of the petitioner was ignored. Aggrieved against, the petitioner approached this Court by way of CWP-16723-2012, which was disposed of by this Court vide order dated 29.08.2012 (Annexure P-13), with a direction to the respondent-authorities to treat the writ petition as a representation and consider the the claim of the petitioner in accordance with law by passing a speaking order. As the respondent-Department failed to comply with the directions issued by this Court, the petitioner preferred COCP-211-2013. During the pendency of the contempt proceedings, the claim of the petitioner was rejected vide order dated 22.02.2013 (Annexure P-14) on the ground that the petitioner had acquired 11 benchmarks as against the requisite 12 benchmarks to be considered for promotion to the next higher grade. The contempt petition was dismissed by this Court vide order dated 05.03.2013 (Annexure P-15) with liberty to challenge order dated 22.02.2013 (Annexure P-14).

It is contended that the report for the period 2006-07 had been graded 'Average', which remarks were never conveyed to the petitioner, therefore the same cannot be read against him and are liable to be ignored. In support of his contention, reliance has been placed on the decision rendered by Hon'ble the Supreme Court in ***Dev Dutt Vs. UOI and others, 2008(4) RSJ 130.*** It is further contended that the petitioner has been discriminated against as many Masters/Mistresses who had earned less than 12 benchmarks already stood promoted. Learned counsel has further referred to order dated 15.09.2014, to contend that the petitioner represented

against the uncommunicated ACR to the competent authority but the same was rejected by the DEO, who is not the competent authority to review its own decision. Lastly, it is contended that the petitioner cannot be denied promotion on the basis of 'unsatisfactory results'.

On the other hand, learned State counsel submits that the ACR in question pertains to the year 2006-07 i.e. prior to the judgment in Dev Dutt's case (supra), therefore, the dictum of law laid down in the cited case is not applicable in the instant case. It is, thus, contended that the petitioner cannot claim any benefit on account of non-communication of the remarks in question. Further submits that the cases of all those employees who were given promotions despite the fact that they fell short of the prescribed 12 benchmarks, have been taken up for reversion. The representation of the petitioner for upgradation of remarks in ACR for the year 2006-07 in pursuance of the order passed by this Court on 15.09.2014, was considered and rejected by the competent authority by passing a detailed order dated 18.11.2014 (Annexure R-1).

Heard.

The grouse of the petitioner is that his case was ignored for promotion on account of the fact that he did not have the requisite 12 benchmarks, whereas, several employees junior to the petitioner, including Ram Partap Singh, Tarsem Lal, Karnail Singh and Satish Kumar, who had 11, 11, 10 and 11 bench marks, respectively, stood promoted. The assertion raised by the petitioner in this regard has not been rebutted. Rather, it has been admitted by the respondent-Department that all those employees who

were given promotion despite the fact that they did not have the requisite benchmarks, have been served with notices for reversion. On 17.09.2018, this Court passed the following order:-

“Learned State counsel seeks some time to have the necessary instructions whether persons reflected in paragraph No.15 have been reverted or not.

Post again on 28.09.2018.

To be shown in the urgent list.”

Despite availing sufficient opportunities, specific instructions in terms of order dated 17.09.2018, have not come forth. However, it has been submitted by learned State counsel that certain employees who were reverted had challenged the action of the respondents which is pending adjudication before this Court. Be that as it may, as on today, the employees who did not have the requisite 12 benchmarks including those who were junior to the petitioner, stood promoted as Lecturers and are working as such with the respondent-Department. Their reversion orders, if any, have not attained finality. Therefore, the petitioner, at this stage, cannot be denied the relief claimed by him as the action of the respondents in not promoting him in the first instance when similarly placed employees were given promotions is discriminatory and deserves to be rectified. Thus, the petitioner is held entitled to be given promotion from the date his juniors were promoted, though, he will have to follow the consequences of the decision(s) which may come in the cases of co-employees who have been sought to be reverted by the respondents.

Once the petitioner is held entitled to the relief claimed on this score alone, the Court is not inclined to delve into the merits of other arguments and counter-arguments raised by learned counsel for the parties.

In view of the above, the instant petition is allowed. The respondents are directed to promote the petitioner to the post of Lecturer (Maths) from the date his immediate junior(s) were promoted along with all consequential benefits. The necessary exercise be completed within six weeks from the date of receipt of a certified copy of this judgment.

(JITENDRA CHAUHAN)
JUDGE

12.10.2018
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No