

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

**LPA No.702 of 2018(O&M)
Date of decision: 24.07.2018**

State of Haryana and another

... Appellants

Versus

Mohinder Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Deepak Balyan, Addl. AG, Haryana,
for the appellants.
Mr. Dharmender Singh Rawat, Advocate
for the caveator-respondent.

KRISHNA MURARI, C.J. (Oral)

This intra-court appeal under clause X of the Letters Patent is directed against the judgment and order of the learned Single Judge dated 13.12.2017 allowing the writ petition filed by the petitioner-respondent claiming promotion.

The facts relevant for the purpose in a nutshell can be summarized as under:-

Petitioner-respondent herein forwent his promotion to the post of Assistant on 31.05.2006. However, he was allowed to forego promotion only for a period of one year. Subsequently, he made another application for forgoing his promotion for another one year which was allowed and thus he did not seek any promotion till 05.12.2008. After expiry of period of two years, he made a request to consider his case for promotion, but the same

was denied that once he has foregone the promotion he is not entitled for the same. The petitioner came up in writ petition challenging the said action of the respondents.

Learned Single Judge finding that there is no rule which prohibits to claim promotion after forgoing it allowed the writ petition and directed to consider the case for promotion of the petitioner to the post of Assistant w.e.f. 19.12.2008 and arrears of pay which may be admissible to him but the same was restricted for a period of 3 years and 2 months prior to the date of filing of the writ petition.

Learned Additional Advocate General appearing for the appellants submits that once the petitioner-respondent had foregone his promotion he loses his further claim for any promotion. However, he has not been able to place or point out any such rule which makes such a prohibition. In the absence of any such rule, we find no illegality in the order of the learned Single Judge that the petitioner would be entitled to claim promotion after expiry of a period of two years for which he requested to forego his promotion.

Learned Additional Advocate General next submits that once the petitioner has drawn his salary while working as Statistical Assistant and then on the post of Research Assistant for a period of 38 months, there is no question of making any payment towards arrears as directed by the learned Single Judge.

Learned counsel appearing for the petitioner-respondent at the outset made a submission that he shall not make any claim as regards the arrears but only entitled to difference in salary, if any, on being given promotion.

In view of the statement made by learned counsel appearing for the respondent, we dispose of this appeal by providing that the petitioner would be entitled to payment of difference of salary after he is promoted to the post of Assistant, if there is any, and the order of the learned Single Judge stands modified to that extent.

LPA stands disposed of accordingly.

**(Krishna Murari)
Chief Justice**

**(Arun Palli)
Judge**

24.07.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO