

(101) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11706 of 2003
Date of decision: 21.05.2019

Jai Parkash.

..... Petitioner

Versus

State of Haryana and others.

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. P.K. Sachdev, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. WALIA, J. (ORAL)

[1] Prayer in the writ petition is for the issuance of a Writ of Certiorari to quash order Annexure P-3 dated 29.11.2002 whereby the petitioner was deprived of arrears of pay on the post of Assistant Fitter on account of his retrospective promotion with effect from 29.09.1995 i.e. the date from which his juniors were promoted.

[2] Grievance is that the petitioner and one Karnail Singh working as Helpers were promoted to the post of Assistant Fitter in the pay-scale of ₹ 3050-4350 plus usual allowances admissible as per Haryana Government Rules from time to time vide order Annexure P-1 dated 01.05.2002. On representation given by the petitioner as well as Karnail Singh, both were given retrospective promotion w.e.f. 29.09.1995 i.e. date with effect from which their juniors had been promoted as Assistant Fitters. Aforementioned order promoting the petitioner and Karnail Singh as Assistant Fitters retrospectively with effect from 29.09.1995, was passed vide orders Annexures P-2 and P-4 respectively.

[3] Precise grievance of the petitioner is that while Karnail Singh, was given consequential benefits attached to the post of Assistant Fitter w.e.f. 29.09.1995, the same were denied to the petitioner vide Annexure P-3 on the ground that he had not worked as Assistant Fitter during the period 29.09.1995 to 02.05.2002. Learned counsel for the petitioner contends that the same amounts to discrimination and is, therefore, legally unsustainable.

[4] Learned Counsel contends that earlier the writ petition was allowed vide order dated 21.07.2005 and petitioner was held entitled to the grant of arrears of pay w.e.f. the date of promotion by restricting the benefit of arrears to 38 months prior to the filing of the writ petition with payment to be made within four months from the date certified copy of the order was supplied. Review was filed by the petitioner against order dated 21.07.2005 and vide order dated 15.09.2006, order dated 21.07.2005 was recalled and on 28.10.2006, the writ petition was admitted.

[5] Sole argument of learned counsel for the petitioner is that it is not open to the respondents to discriminate amongst persons similarly situated.

[6] Per contra, learned Sr. DAG contends that the petitioner is not entitled to the benefit as claimed solely on account of the same having been granted erroneously to Karnail Singh and that in the circumstances, the benefit admissible is payable only for a period of 38 months prior to the institution of the writ petition.

[7] I have considered the submissions of learned counsel for the parties. Admittedly, the petitioner was promoted along with one Karnail Singh as Assistant Fitter on 01.05.2002. However, on representation made by the petitioner and Karnail Singh, both of them were given retrospective

promotion w.e.f. 29.09.1995 i.e. with effect from the date when their juniors had been promoted vide order Annexure P-1.

[8] No doubt, Karnail Singh while being granted retrospective promotion vide order Annexure P-4, was held entitled to all consequential benefits attached to the post of Assistant Fitter w.e.f. 29.09.1995 but the same was denied to the petitioner vide order Annexure P-3 dated 29.11.2002 on the ground that he had not worked as Assistant Fitter during the period 29.09.1995 to 02.05.2002. No fault can be found with the order declining to pay arrears for the period for which the petitioner had not worked. Besides, the petitioner maintained a stoic silence and did not choose to challenge his supersession on promotion of his junior namely Sunil Kumar w.e.f. 29.09.1995. It is only after seven years when he was given the benefit of promotion to the post of Assistant Fitter vide order Annexure P-1 dated 01.05.2002 that the petitioner woke up from his slumber and made a representation. The representation of the petitioner was accepted and he was given retrospective promotion w.e.f. 29.09.1995, i.e. the date from which his junior Sh. Sunil Kumar had been promoted.

In the circumstances, when the petitioner challenged the action of the respondents in denying him the benefit of arrears for the period 29.09.1995 to 02.05.2002 on the post of Assistant Fitter vide instant writ petition in the year 2003, the petitioner cannot make a grievance that he be held entitled to arrears with effect from the date he had been given retrospective promotion. Two wrongs cannot make a right and if Karnail Singh had been given arrears of pay retrospectively with effect from the date his junior had been promoted, the same cannot be insisted upon by the petitioner and at best he can be held entitled to arrears of pay on the post of

writ petition. At this stage, learned counsel for the petitioner states that the petitioner had earlier invoked the jurisdiction of this Court by way of CWP No.936 of 2002 which was disposed of vide order dated 15.01.2002 directing the respondents to decide representation dated 05.11.2001 (Annexure P-6) attached to the said writ petition by passing appropriate speaking order within a period of three months. Learned counsel states that in the circumstances the period of 3 years 2 months be construed to have commenced with effect from the period of 38 months prior to the institution of CWP No. 936/2002. I find merit in the submission.

[9] Accordingly, the writ petition is allowed. Petitioner is held entitled to arrears with effect from his date of promotion with arrears of payment being restricted to 38 months prior to the filing of CWP No.936 of 2002 with payment to be made within a period of three months from the date of supply of certified copy of this order to the respondents failing which the same shall carry interest @ 6% per annum.

21.05.2019
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(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.