

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

CWP-13599-2015

Date of decision-23.09.2019

Gurmeet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Ms. Anju Arora, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for quashing the order dated 16.04.2015 (P-26), whereby, claim of the petitioner for granting her promotion to the post of Lecturer (Biology) has been declined.

It is contended that the petitioner joined her services as Science Mistress on 24.12.1997 on regular basis. She was assigned seniority No.2582 in the Mistress Cadre. The juniors to the petitioner were promoted vide order dated 24.05.2012. Vide order dated 20.12.2013 (P-24) further promotions were made by the department wherein respondent No.6- Harpreet Kaur, seniority No.2859, was also promoted. The department issued a list on the website pointing out deficiencies in the promotion cases

of Masters to be considered for promotion to the post of Lecturer Biology (P-20). In the case of the petitioner, the deficiency pointed out was that her ACRs were not attested.

Feeling aggrieved, the petitioner filed C.W.P. No.25850 of 2014 which was allowed in *limni* vide judgment/order dated 17.12.2014 (P-25) and a mandamus was issued to the respondents to consider the case of petitioner for promotion w.e.f. the date when first junior was promoted as Lecturer (Biology) in the School Cadre in terms of the promotion policy with all monetary and consequential benefits. Thereafter, respondent No.2 passed impugned order dated 16.04.2015 (P-26) wherein, the claim of the petitioner for promotion as Lecturer (Biology) was rejected on the ground of having less benchmark on the basis of decision of the DPC held in May, 2012 and December, 2013 with further directions that departmental and criminal proceedings be got initiated with immediate effect against the petitioner and other officers/officials for misleading the department by recording 03 ACRs of the petitioner in order to give her undue advantage. The stand of the department in the impugned order is that no representation was made by the petitioner for up-gradation of her ACR for the year 2009-2010 and therefore, the ACR recorded on 18.11.2010 and 06.02.2013 cannot be treated in accordance with the instructions and there appears to be connivance of the petitioner with the employees of the District Education Officer (SE), Jalandhar in up-gradation of her ACR. It is also alleged that on the basis of her first Average ACR for the year 2009-2010, she is not

achieving the benchmark.

It is contended that the impugned order dated 16.04.2015 (Annexure P-26) is contrary to the record and the same has been passed without any proper application of mind by the respondent No.2. The entire case of the department to deny promotion to the petitioner and for initiation of disciplinary proceedings is that the petitioner did not make any representation for up-gradation of ACR for the year 2009-2010 from Average to Good and then Good to Very Good. In fact, the petitioner is working as Science Mistress and at the relevant point of time, she was asked to perform dual duties of teaching of Science as well as Mathematics. However, while assessing her performance for writing ACR for the year 2009-2010, her teaching results for the Mathematics subject was considered, whereas, the results for Science subject which were 100% were ignored, resulting into overall assessment as Average/Good. Learned counsel refers to a representation dated 19.12.2012 (Annexure P-9) addressed to the Circle Education Office, Jalandhar, received in his office vide diary No.9749 dated 20.12.2012 wherein, the petitioner had requested that her ACRs have not been correctly written because she is a Science Mistress (Medical Group) and her result of Science Subjects for the year 2009-2010 was 100%, whereas, her ACR has been recorded on the basis of Mathematics subject. Accordingly, she had requested for writing her ACR on the basis of Science Subject for the year 2009-2010. The Circle Education Officer vide memo

dated 01.01.2013 (Annexure P-12) directed the District Education Officer (SE), Jalandhar that a verification may be got conducted from the School Head and report be sent to his office within 15 days so that further action could be taken. The District Education Officer vide memo dated 03.01.2013 (Annexure P-12 colly.), followed by reminder dated 16.01.2013 (Annexure P-13) sought comments of the Head Master, Government Girls High School, Kaji Mohalla, Jalandhar. The Circle Education Officer vide memo dated 21.01.2013 (Annexure P-14) with reference to his previous letter dated 01.01.2013 again directed the District Education Officer to send the action taken report after conducting enquiry in respect of ACR of the petitioner for the year 2009-2010. The District Education Officer again vide memo dated 22.01.2013 (Annexure P-15) directed the Head Master of the concerned school to send the report without further delay. Accordingly, report was sought from the Incharge, Government Middle School, Panjpeer, Jalandhar, where the petitioner was working. The said Incharge submitted her report dated 06.02.2013 wherein, she had admitted the mistake about writing the two ACRs of the petitioner on the basis of Mathematics Subject and accordingly, clarified that revised ACR of the petitioner had been written on the basis of her results of Science Subject for the year 2009-10 being a Medical Group Teacher. The said revised ACR for the year 2009-10 along with report of the Incharge was forwarded to the District Education Officer (SE) by the Head Mistress vide letter No.163 dated 06.02.2013 (Annexure P-17) wherein, she also reiterated that the earlier two ACRs of the

petitioners with different numbers were inadvertently written and therefore, revised ACR on the basis of 100% result of Science Subject has been written and forwarded. The District Education Officer, accordingly, submitted his report to the Circle Education Officer vide memo dated 11.02.2013 (Annexure P-18) along with copy of the revised ACR for the year 2009-2010 with overall assessment as 'Very Good' duly countersigned (Annexure P-19). The relevant contents of the memo dated 11.02.2013 are extracted as under:-

"Vide letter under reference, two ACRs of the subject cited employee for the year 2009-10 were sent to the Headmistress, G.G.HS Qazi Mohalla (Jalandhar) for comments and appropriate action. The Headmistress, G.G.HS Qazi Mohalla (Jalandhar) vide letter No. 163 dated 06.02.2013, has submitted that it is stated by Smt. Parminder Kaur, Incharge, G.MS Panjpeer that she had inadvertently written ACRs with two different numbers. The result of the employee of science subject for the year 2009-10 was 100%. However, her ACR was written on the basis of results in Math subject, which was less than Board results and her grading was recorded as 'Good'. As per Govt. rules/instructions, her ACR was to be written on the basis of the better results of the employee. Thus, she was required to be given 60 marks for the results, whereas, she was earlier given 27 marks. Hence, her ACR for the year 2009-10 was required to be revised. Now, the School head has

revised her ACR for the year 2009-10 as per her results. Therefore, this report, duly countersigned, is being forwarded to you for further necessary action.

Encl/ ACR for the year 2009-10

Sd/-

District Education Officer (SE)

Jalandhar"

On the other hand, learned State counsel submits that the petitioner could not be promoted as she had earned 10 benchmarks against the required 12. She in connivance with the employees of the District Education Officer (SE), Jalandhar managed to get the ACR for the year 2009-10 recorded three times, just to become eligible for promotion by gaining requisite 12 benchmarks. In fact, three ACRs were recorded for one year i.e. 2009-10. The ACRs were upgraded from 'Average' to 'Good' and then to 'Very Good' without any review or revision of the earlier ACRs. Each of the three ACRs were written as fresh ACRs. In this regard, a charge-sheet (Annexure R-1/4) was issued against the petitioner and other officials and regular enquiry had been also marked on 24.02.2016.

Heard.

The necessary relief has been denied to the petitioner only on the ground that the up-gradation of her ACR had been managed by the petitioner in connivance with other officers/officials of the Department. However, the petitioner has categorically taken a stand that she had made a

representation for upgradation of her ACR on the basis of her result in respect of Science Subject. In this regard, reference can be made to the reply filed on behalf of respondent Nos.1 to 5, paragraph No.12 whereof, reads thus:-

" 12. The contents of para 12 of the writ petition are admitted being matter of record to the extent of representation dated 19.12.2012 (P-9) made by the petitioner before respondent No.3. However, these facts were never brought into the notice of the respondent No.2. "

Apart from above, the other facts/documents (Annexures P-12 to P-19) regarding verification/enquiry conducted by the authorities with regard to writing/revising the ACR of the petitioner on the basis her correct results Science Subject referred to in paragraph Nos.13 to 17 of the writ petition are also admitted by the official respondents in the written statement. Therefore, the stand taken by respondent No.2 in the impugned order that the petitioner did not make any representation for upgradation of her ACR for the year 2009-2010 and the same was got written/revised in connivance being against the record, is totally patently incorrect.

In view of the above, this petition is allowed and impugned order dated 16.04.2015 (Annexure P-26) is quashed. The official respondents are directed to consider and grant the petitioner promotion on the post of Lecturer (Biology) on the basis of her upgraded ACR dated 06.02.2013 (P-19) for the year 2009-2010 from the date her first junior was

promoted as Lecturer (Biology). The petitioner is also entitled to all monetary and consequential benefits as already directed in C.W.P. No.25850 of 2014 (P-25). The necessary exercise be completed within a period of six weeks from the date of receipt of certified copy of thus judgment.

(JITENDRA CHAUHAN)
JUDGE

23.09.2019
atulsethi

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