

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

(206)

CWP-21805-2014

Date of Decision: February 26, 2019

Surjan Ram

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Mehardeep Singh, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance raised by the petitioner is that though the petitioner was allowed to continue in service upto 11.06.2013 but the pension of the petitioner has been fixed by treating him retired w.e.f. 01.04.2011 whereas, according to counsel for the petitioner, the pension is to be fixed on the basis of last drawn wages hence the prayer made in the present writ petition is that the pension of the petitioner should be fixed on the wages which the petitioner was drawing as on 11.06.2013 instead of fixing the same on this pay as on 31.03.2011. Further, a prayer has been made that the petitioner was granted promotion to the post of Senior Lab Attendant with retrospective effect but the petitioner has been denied the arrears on account of retrospective promotion though, according to the petitioner, the same benefit was released to the similarly situated persons.

The facts as stated in the writ petition are as under:-

The petitioner joined the department as a Class IV employee on

14.09.1979. The petitioner claims that though he was eligible for promotion to Class III post but the said benefit was denied to him, which led to the filing of the writ petition by the petitioner being CWP No.18802 of 2002. By the said writ petition, the petitioner claimed promotion to a Class III post against the 15% quota reserved for Class IV employee. The above mentioned writ petition came to be decided on 29.02.2012 on which date, the said writ petition was disposed of in terms of an order passed in CWP No.10410 of 2010 decided on 28.05.2010. Directions were issued to the respondent-department to consider the case of the petitioner for promotion with effect from the date the person junior to the petitioner was promoted. Further, it was directed that in case the petitioner is found entitled for retrospective promotion, petitioner will also be given the consequential benefits. The order passed by this Court dated 28.05.2010 is as under:-

“The petitioner while working as a Chowkidar in the Education Department, Government of Punjab, was promoted as Senior Lab Attendant vide order dated 20/21.8.2009 (Annexure P-1). He seeks a mandamus to direct the respondents to promote him retrospectively with effect from the date when his juniors were allegedly promoted in the year 1985 or thereafter.

Having heard learned counsel for the petitioner, I deem it appropriate to dispose of this writ petition with a direction to the respondents to consider the claim of the petitioner for promotion with effect from the date when his juniors were allegedly promoted and if he is found eligible, suitable and entitled to, he may be prompted with all the consequential benefits except the arrears of pay, within a period of six months from the date of

receiving a certified copy of this order.

Ordered accordingly.

Dasti.”

In compliance with the order passed by this Court, the petitioner was granted retrospective promotion to the post of Senior Lab Attendant w.e.f. 26.11.1985. This order was passed by the respondents on 15.11.2012.

It is relevant to state here that the retirement age of Class IV employee is 60 years whereas, the Class III employee is to retire at the age of 58 years and therefore, once the petitioner was promoted as Senior Lab Attendant w.e.f. 28.11.1985, he was supposed to retire on attaining the age of superannuation at the age of 58 years, which the petitioner reached on 31.03.2011.

Keeping in view the said fact, an order was passed by the respondents on 11.06.2013 retiring the petitioner from service as Senior Lab Attendant i.e. a Class III post w.e.f. 31.03.2011 when the petitioner attained the age of 58 years.

After the petitioner retired, the service benefits i.e. the retiral benefits of the petitioner were computed and the pensionary benefits were paid to the petitioner starting from February, 2014 onwards till April, 2014.

The grievance which is being raised by the petitioner in the present writ petition is that the pensionary benefits of the petitioner have been calculated by the respondents on the basis of the salary which the petitioner was drawing as Senior Lab Attendant as on 31.03.2011 i.e. when the petitioner completed the age of 58 years whereas the demand of the petitioner is that as the petitioner continued working with the respondents

till 11.06.2013 and therefore whatever the pay the petitioner was getting as on the said date, the pensionary benefits should be calculated on the same.

Notice of motion was issued on 28.10.2014.

In reply filed by the respondents, the respondents have stated that once the petitioner was promoted to the post of Senior Lab Attendant, which is Class III post, the petitioner was to retire at the age of 58 years and therefore, the pensionary benefits is to be seen on the date of retirement and therefore the pensionary benefits have been rightly calculated keeping in view the date of retirement as 31.03.2011.

In respect of the second claim, the respondents have stated that the petitioner is not entitled for the arrears as the petitioner never worked on the said post though, the petitioner was granted retrospective promotion as Senior Lab Attendant.

I have heard learned counsel for the parties and gone through the record with their able assistance.

It is a matter of fact that a Class IV employee is to retire on attaining the age of 60 years and the retirement age of Class III employee is 58 years. Once the petitioner was granted retrospective promotion as Senior Lab Attendant i.e. a Class III post, the petitioner could not have continued beyond the age of 58 years. It is an admitted fact that the petitioner was to retire on 31.03.2011 i.e. when he attained the age of 58 years while working on a Class III post. As per the Rules, the pay which an employee is getting on the date of retirement, is to be taken into consideration for fixing pensionary benefits. It is not denied by the counsel for the petitioner that the pensionary benefits have been calculated keeping in view the pay which the petitioner was to draw on the post of Senior Lab Attendant as on

31.03.2011. The contention of the petitioner is that once the petitioner was allowed to continue to serve till 11.06.2013, the said pay should be taken into consideration. This argument cannot be accepted.

Once, keeping in view the order passed by this Court, the petitioner was promoted from a Class IV post to Class III post, all the necessary consequences have to be taken to logical end including the retirement age and the fixation of the pensionary benefits. No rule has been cited/shown by counsel for the petitioner in support of his prayer. Once the promotion has been given to the petitioner on a Class III post, the necessary consequences have to follow, for which the petitioner even agreed and gave his consent. Therefore, no fault can be found in the action of the respondents in fixing the pensionary benefits on the pay which the petitioner drew as on 31.03.2011 on the post of Senior Lab Attendant on attaining the age of 58 years.

The next prayer of the petitioner is that the petitioner is entitled for the arrears on account of retrospective promotion as Senior Lab Attendant. Even that argument cannot be accepted. While passing the order, this Court had clearly stated that in case the petitioner is found entitled for retrospective promotion, all the consequential benefits except arrears are to be granted. Once the petitioner has been granted promotion under the said order dated 28.05.2010 passed in CWP No.10410 of 2010, the petitioner is not entitled for the arrears in pursuance to the said order.

The present writ petition is not even maintainable qua the said relief keeping in view the order passed by this Court dated 28.05.2010.

In view of the above, the present writ petition fails. No interference is called for in the action of the respondents.

The writ petition stands dismissed.

February 26, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes