

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210)

CWP No. 14283-2015

Date of Decision : 03.02.2020

Subhash Chander (since deceased) through his legal heir Kanta Rani

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.K. Rattan, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance which is being raised by the petitioner is that the petitioner, who on the date of his retirement i.e. 31.08.2014, was officiating as an Establishment Officer, is entitled for the benefit of regular promotion to the said post alongwith consequential benefits keeping in view the fact that the claim of the petitioner for regular promotion as Establishment Officer had already been cleared by the DPC for promotion much prior to the date of his retirement.

As per the facts stated in the writ petition, petitioner was appointed as a Clerk with the respondents on 02.04.1979. He was thereafter promoted as a Senior Assistant on 10.09.1985 and further promoted as Superintendent Grade-I w.e.f. 26.06.2007. While the petitioner was working as a Superintendent Grade-I, one post of Establishment Officer was

to become available for promotion on the retirement of Smt. Harkesh, who was working as Establishment Officer on 30.11.2012. It is an admitted fact that a DPC was conducted by the respondents on 23.08.2012 with regard to the post which had to become available by 31.11.2012 and in the said DPC, the claim of the petitioner was considered and allowed for promotion w.e.f. 01.12.2012, which is clear from letter dated 06.09.2012 (Annexure P-2).

Smt. Harkesh Kaur, keeping in view the Instructions issued by the Government of Punjab dated 08.10.2012 was granted one year extension in service i.e. upto 30.11.2013 and, therefore, though the claim of the petitioner was allowed for promotion but as no post had become available on 30.11.2012, petitioner could not be promoted in pursuance to the recommendation of the DPC dated 06.09.2012 (Annexure P-2).

It is further not disputed that petitioner was granted the current duty charge on the post of Establishment Officer when one month was left for Smt. Harkesh Kaur to retire as she had gone on leave. The petitioner continued on the said current duty charge till he attained the age of superannuation on 31.08.2014.

After the retirement, the petitioner was granted the pensionary benefits on the basis of last pay drawn of the post of Superintendent Grade-I and not of the post of Establishment Officer, on which Post he was discharging the duties. The claim of the petitioner in the present writ petition is that once the post of Establishment Officer had already become available prior to his retirement and his claim had already been considered and approved by the Departmental Promotion Committee on 06.09.2012, the respondents be directed to promote the petitioner on regular basis as Establishment Officer and consequently revise the pensionary benefits and

grant the arrears of the same to the wife of the petitioner being the widow of Sh. Subhash Chander as petitioner unfortunately died on 24.01.2017. After the death of the petitioner, his wife being the legal heir has been brought on record to continue with the present proceedings.

Respondents have appeared and contested the claim of the petitioner. Respondents have stated in their reply that as the post of Establishment Officer had not become available on 01.12.2012 and, therefore, the petitioner could not be granted the benefit of the recommendation of the Departmental Promotion Committee dated 06.09.2012 and as Smt. Harkesh Kaur continued working against the post of Establishment Officer till 30.11.2013. Respondents have stated in the reply that as there was no fresh DPC conducted, regular promotion to the petitioner to the post of Establishment Officer was not granted and before the DPC could be constituted to consider the claim of the petitioner for regular promotion as Establishment Officer, he had already retired on 31.08.2014. The respondents have further stated that for the period when the petitioner officiated on the post of Establishment Officer, the pay of the same has already been extended to the petitioner and hence, no grievance can be raised by the petitioner in this regard.

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

The facts, which have been stated before, are not in dispute. It is not in dispute that the petitioner was cleared for promotion in the DPC held on 06.09.2012 as the post was to become available on 01.12.2012. The said promotion could not take effect as the incumbent, namely, Harkesh Kaur was granted extension for a period of one year. After the said

extension period came to an end, petitioner was granted the current duty charge on the said post of Establishment Officer, which petitioner continued to hold till he retired on 31.08.2014. It is not disputed that the petitioner was the senior most Superintendent Grade-I entitled for promotion and further that the claim of the petitioner for promotion had already been cleared by the DPC on 06.09.2012. That be so, denial of the promotion to the petitioner on the post of Establishment Officer after the post had become vacant on 01.12.2013, was arbitrary. Once, the respondents felt that the post of Establishment Officer needed to be filled and petitioner was granted current duty charge, the petitioner could have been granted the regular promotion as well being the senior most eligible employee having already been cleared by the Departmental Promotion Committee.

A Division Bench of this Court in LPA No. 37 of 2017 titled as ***State of Punjab and others Vs. Jagjit Singh and others*** considered somewhat the similar claim of the employees, who were granted the current duty charge of a higher post, on which they were working till the time of their retirement, for the regular promotion on the higher post on which they were holding the current duty charge. The Division Bench directed the concerned department to consider the claim of the employees, who were holding current duty charge of the higher post on the date of their retirement, for regular promotion in case they are the senior most eligible employees and the regular posts were vacant. The relevant paragraph of the said judgment is as under:-

“[4] We have heard learned counsel for the parties at a considerable length and are of the view that the appellants cannot take undue advantage of their own inaction or wrongs. Seniority is a condition of service. It has to be determined at

the earliest in accordance with the Rules governing conditions of service. If any delay occurs because of multiple Court proceedings, the authorities ought to have evolved some mechanism to grant regular promotions to the senior most Lecturer/ Master/ Mistresses, for promotion is also a legitimate expectation in service career. The controversy nevertheless does not require further deliberations, for necessary directions to consider and promote the Lecturer/ Master/ Mistresses on higher posts as per their seniority and other eligibility conditions have already been issued by this Court in the above-cited order dated 23.05.2017. Let those directions be complied with within the time-frame given in the cited order. The respondents in the lead case or the writ petitioners in the connected petitions shall also be considered for regular promotion as per their seniority and eligibility conditions from the due date and in accordance with the Rules, which were in vogue at the time of occurrence of vacancies. While the promotions shall be granted retrospectively but on notional basis only and they shall be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. They shall also be entitled to arrears of pension and other retiral benefits alongwith interest @7% per annum. The needful shall be done within a period of six months. However, if the respondents in the lead case and the writ petitioners in the connected cases have not been granted emoluments for the period they officiated/worked on the higher posts, let such claim be also considered within a period of four months.”

In the present case, the petitioner is on a better footing than the petitioners before the Division Bench in LPA No. 37 of 2017 as the claim of the petitioner for regular promotion had already been considered and allowed by the DPC. Therefore, only the recommendations of the DPC were to be implemented when the post of Establishment Officer became

available after the retirement of Smt. Harkesh Kaur on 01.12.2013. That being so, a direction is issued to the respondent-department to consider the claim of the petitioner Subhash Chander for regular promotion on the post of Establishment Officer from the date, the post became available, keeping in view the facts and circumstances as noted above, especially the fact that his name was already cleared by the Departmental Promotion Committee. In case, there is no other impediment, the benefit of promotion on regular basis be granted to Sh. Subhash Chander on the post of Establishment Officer and if found entitled for, appropriate orders be passed in that regard. In case, the regular promotion is granted, petitioner will also be entitled for re-fixation of his pensionary benefits, which should be done by the respondents within a period of two months from the receipt of the certified copy of this order. The benefits for which the petitioner is entitled for, be released in favour of his legal representative, who has already been impleaded in the present writ petition as unfortunately, the petitioner has already died during the pendency of the writ petition.

Writ petition is allowed in above terms.

February 03, 2020
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*