

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

**CWP No.6993 of 2017 (O&M)
Date of decision : February 06, 2020**

Sh. Pritam Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ajay Kumar Thakur and
Mr. Rajesh Kumar Sanwaria, Advocates for
Mr. Vikas Chatrath, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the claim of the petitioner is that the he is entitled for the revised pensionary benefits, keeping in view the fact that at the time of retirement of the petitioner, the petitioner was discharging the duties on a higher post, for which post, the petitioner has been paid the salary hence the petitioner is also entitled for the fixing of the retiral benefits, as per the last pay drawn on the higher post.

Reliance is being placed upon the judgment of this Court passed in CWP No.17358 of 2015, titled as ***“Jagjit Singh and others vs State of Punjab and others”***, decided on 09.09.2016.

Upon notice of motion, respondents have filed the reply. In the reply, respondents have stated that the petitioner was never regularly promoted and he was only given the current duty charge of the higher post with the clear condition that the petitioner will not be paid any remuneration. Further, the respondents have stated that the petitioner is only

entitled for fixing the pensionary benefits of the substantive rank which he was having at the time of his retirement.

Learned counsel for the respondents further states that the order passed by this Court in case of **Jagjit Singh** (*supra*) has already been modified by this Court in LPA No.37 of 2017, vide order dated 25.09.2018 and therefore, the petitioner is not entitled for the benefit as being claimed in the present writ petition.

I have heard learned counsel for the parties and have also carefully gone through the case file with their valuable assistance.

The claim of the petitioner is liable to be considered, in terms of the order passed by the Division Bench of this Court in LPA No.37 of 2017, decided on 25.09.2018. Though, the order passed in case of **Jagjit Singh** (*supra*) has been modified by the Division Bench of this Court in LPA No.37 of 2017, but a direction has been given to the State to consider the claim of the petitioners themselves for regular promotion on the higher post, against which they were discharging their duties on their current duty charge at the time of their retirement. The review against the judgment has also been dismissed on 13.09.2019. The relevant paragraph of the order passed by the Division Bench in LPA No.37 of 2017 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 for 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”

Learned counsel for the respondents very fairly states that the claim of the petitioner will also be considered, keeping in view the order passed by the Division Bench of this Court in LPA No.37 of 2017, decided

on 25.09.2018, and in case, it is found that the petitioner was entitled for regular promotion on the higher post against which he was discharging his duty on current duty charge prior to his retirement, appropriate order will be passed, keeping in view the direction of the Division Bench given in LPA No.37 of 2017, decided on 25.09.2018.

Keeping in view the above, the present writ petition is disposed of with a direction to the respondents to consider the claim of the petitioner for regular promotion against the vacancies which were available on the date of retirement of the petitioner, for regular promotion, keeping in view his service record and the Rules and Regulation governing the service. Let the said consideration take place within a period of three months from the date of receipt of the certified copy of this order and in case, the petitioner is found entitled for the relief after consideration, the same be also released to him within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

February 06, 2020

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes