

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

CWP-31983-2019

Date of Decision: 24th February, 2020

Satish Kumar

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for issuance of a writ of mandamus directing the respondents to consider the claim of the petitioner for promotion to the post of Medical Lab Technician Grade-1, from the date the said vacancy became available for promotion and the petitioner was eligible, but the respondents have not proceeded to do so and preferred to continue the petitioner on the post of Medical Lab Technician Grade-2.

2. It is the contention of learned counsel for the petitioner that the petitioner was promoted to the post of Medical Lab Technician Grade-2 from the post of Laboratory Attendant vide order dated 12.6.2014. He became eligible for consideration for promotion to the Post of Medical Lab Technician Grade-1, on 13.06.2017. Petitioner fulfilled the conditions as laid down under the rules and therefore, when the vacancy being available, petitioner was required to be considered for promotion to the Post of Medical Lab Technician Grade-1. Petitioner continued with the respondents

till the date of his superannuation on 31.12.2017. His contention is that there being a vacancy available and the petitioner also eligible for consideration for promotion, the non-consideration of the claim of the petitioner for promotion would amount to denying him promotion to the post, which the respondents did not grant him despite his claiming to the said post. Prayer has, thus, been made for issuance of the mandamus to consider the claim of the petitioner for promotion from the date the vacancy became available to the post of Medical Lab Technician Grade-1 and grant of consequential benefits.

3. This contention of the learned counsel for the petitioner cannot be accepted in the light of the fact that the rules, admittedly, do not mandate for fixing a time frame for promotion on the vacancy being available for such promotion to the Post of Medical Lab Technician Grade-1 from the Post of Medical Lab Technician Grade-2. In the absence of any mandate of the statutory rules to this effect, the mandamus as prayed for by the petitioner, cannot be issued as there is no right for promotion to a post. Merely because the statutory rules provide for a promotional avenue does not mean that a mandamus can be issued to the respondents employer to promote an employee unless so mandated under the rules.

4. Learned counsel for the petitioner has referred to the order dated 02.04.2019 passed by this Court in CWP No. 12219 of 2012 (O&M) titled as 'Harpal Singh Bains Vs. State of Punjab', to claim the benefit as has been made in the present writ petition. The said order, as has been passed by a Co-ordinate Bench, would not be said to be laying down the proposition of law with regard to the power to issue a mandamus in the absence of any

mandate under the statutory rules. The observation made therein by the Co-ordinate Bench was pertaining to a particular case depending upon the facts and circumstances thereof which cannot be taken as a precedent for pressing for a non-existing legal right for which a mandamus is sought.

5. Merely because right for consideration is available to an employee does not mean that an employee can seek a mandamus for promotion in the absence of any such requirement under the statutory rule which fixes a time frame for considering the claim of the eligible candidates for promotion.

6. Finding no merit in the present writ petition, the same, therefore, stands dismissed.

24th February, 2020
Nisha

(AUGUSTINE GEORGE MASIH)
JUDGE

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