

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(214)

CWP-22238-2010 (O&M)
Date of Decision : May 16, 2022

Mahavir Sharan

.. Petitioner

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manu K. Bhandari, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-11406-CWP-2013

As prayed for, the application is allowed.

CM-11407-CWP-2013

As prayed for, the application is allowed.

CWP-22238-2010

In the present petition, the grievance of the petitioner is that order dated 14.06.2010 (Annexure P-6) which has been passed by the respondents granting the petitioner promotion with retrospective effect but without back wages, is contrary to the settled principle of law and therefore, grant of promotion as Senior Assistant w.e.f. 10.07.1989 but without

granting arrears of salary, is liable to be set aside.

The facts mentioned in the petition are that the petitioner was not granted the concession of promotion as Assistant while working with the respondent-Department. As per the petitioner, he became eligible for the post of Assistant on 10.07.1989 but he was not granted the said benefit, which action was challenged by the petitioner by filing a Civil Suit No.258 of 1998, which was ultimately decreed. As per the directions given, the petitioner was to be granted promotion as Assistant (re-designated as Senior Assistant) w.e.f the date persons junior to him i.e. respondents No. 3 to 6 (in Civil Suit No.258 of 1998, Jalandhar), were promoted. After the said judgment attained finality, the petitioner filed an execution and in the execution, the petitioner was granted promotion as Senior Assistant w.e.f. 12.11.1998 as an exempt candidate but not with effect from 08.06.1989 when respondents No. 3 to 6 (in Civil Suit No.258 of 1998, Jalandhar) were promoted.

The petitioner challenged the said order by filing the execution before the Civil Court for compliance of the decree passed in favour of the petitioner dated 27.01.1999. In the execution, the Executing Court found that the grant of the promotion to the petitioner w.e.f. 1998 is in accordance with the decree and disposed of the said execution petition filed by the petitioner.

Aggrieved against the said order passed in execution, the petitioner filed a Civil Revision being CR No.3806 of 2008, which was decided on 02.03.2010 (Annexure P-5) wherein, a Coordinate Bench of this Court directed that the petitioner is held entitled for promotion as Senior Assistant w.e.f 10.07.1989 and the said civil revision was disposed of

accordingly.

In compliance of the order passed by the Coordinate Bench of this Court in CR No.3806 of 2008, the respondents passed the impugned order dated 14.06.2020 (Annexure P-6) granting the said promotion.

In the present petition, the said order is under challenge on the ground that the petitioner has not been granted the arrears of salary on the retrospective promotion.

Learned counsel for the respondents-State contends that order dated 14.06.2010 (Annexure P-6) is an order passed in compliance of the directions given by this Court in Civil Revision No.3806 of 2008. Learned counsel for the respondents submits that once the order has been passed in compliance of the said order passed by this Court, no grievance can be raised by the petitioner by filing the present petition. Learned counsel for the respondents further submits that whatever benefit has been granted to the petitioner by the competent Court of law, has already been extended to him and now the petitioner wants more than the decree awarded in his favour, which is not permissible and even otherwise, keeping in view the letter of the State Government dated 08.12.1998 (Annexure R-2), once the petitioner has not worked on the post, retrospective promotion will not entitle him the arrears of pay.

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

Petitioner had raised his grievance with regard to non-promotion to the post of Senior Assistant by filing a civil suit. Learned counsel for the petitioner has not been able to explain to this Court whether, the petitioner had claimed the promotion along with consequential benefits

or not. Learned counsel for the petitioner submits that he does not have the paper book of the said suit and hence, he is unable to answer the query of the Court that whether the suit was filed seeking promotion with all consequential benefits or not.

Be that as it may, once the petitioner has not been granted the benefit of consequential benefit of arrears of pay by the Civil Court while passing the decree dated 27.01.1999 granting him promotion with retrospective effect, the petitioner cannot claim the same now especially when, the non-compliance of the decree was challenged by the petitioner himself by way of filing Civil Revision No.3806 of 2008 before this Court wherein also, the Coordinate Bench only granted promotion and not the arrears of salary.

That being so, by this petition, the petitioner actually wants this Court to amend not only the decree dated 27.01.1999 but even the order passed by the Coordinate Bench in CR No.3806 of 2008 so as to grant him the arrears of the salary, which is impermissible. In case, the petitioner sought the retrospective promotion as Senior Assistant along with consequential benefits but not granted, he is estopped from filing the present petition on the principle of res judicata. Even otherwise, as per the settled principle of law, if the petitioner sought the promotion to the post of Senior Assistant with consequential benefits but not granted, then also, the same stands denied and second petition for the service relief is not permitted. Having accepted the decree as well as the order in civil revision without raising any grievance, the petitioner cannot file the present petition seeking the arrears especially when the petitioner did not work on the said post.

No interference is called for in the impugned order dated
14.06.2010 (Annexure P-6).

Dismissed.

May 16, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes