

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

(1) **CWP No. 1502 of 2014 (O&M)**
Date of Decision: 28.10.2022

Jaspal Singh and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

AND

(2) **CWP No. 11415 of 2002 (O&M)**

Narinder Kumar Sharma

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Gaurav Sharma, Advocate and
Ms. Inayat Khullar, Advocate
for the petitioner(s) (in both cases).

Mr. R.K. Kapoor, Additional Advocate General, Punjab

MAHABIR SINGH SINDHU, J.

1. This order shall dispose off above writ petitions as common questions of law and facts are involved in both these cases.

2. CWP No. 1502 of 2014 has been filed under Article 226 of the Constitution, *inter alia*, for quashing of the impugned order dated 22.07.2011 (P-10), whereby claim of 07 petitioners to ante date their promotion for the post of Lecturer (Physics) was declined by respondent No. 2 – Director Public Instructions (Secondary Education), Punjab; further prayer is for directing the respondents to promote the petitioners with effect

from the date when quota for promotees became available under the service

rules, namely, “*The Punjab State Education Class-III (School Cadre) Service Rules, 1978* (for short “*the Rules of 1978*”) with all consequential benefits.

3. CWP No. 11415 of 2002 has been filed by one Narinder Kumar Sharma, *inter alia*, for quashing of the impugned order dated 11.01.2002 (P-8), vide which, his claim for promotion to the post of Lecturer (Physics) was declined; further prayer is for directing the respondents to promote him against the aforesaid post with effect from the date he became eligible under promotional quota in terms of the Rules of 1978.

4. Facts are not in dispute.

CWP No. 1502 of 2014 :

5. Initially petitioners joined as Junior Basic Trained (JBT) Teachers / Science Masters on different dates between 24.12.1991 to 24.04.2001 and later on, they were promoted to the post of Lecturer (Physics) vide order dated 30.05.2008 (P-7).

Feeling aggrieved against the delay in promotion, petitioners raised their grievance vide representation dated 07.08.2009, but no decision was taken by the respondents.

Aggrieved against the inaction, petitioners filed writ petition CWP No. 1877 of 2010, which was disposed off vide order dated 04.02.2010 (P-9) with the directions to decide their claim in accordance with law. Despite above order, no final decision was taken by the quarter concerned, hence petitioners filed COCP No. 487 of 2011. Ultimately, respondent No. 2 while passing the impugned order, rejected the claim of

petitioners.

CWP No. 11415 of 2002

6. Petitioner joined as Science Master on 02.08.1994, but in view of the decision dated 28.09.1994 in CWP No. 5985 of 1994, titled “*Yashwinder Singh Rana and others Versus State of Punjab and others*”, his services were terminated on 23.12.1994. However, again he was appointed as Science Master on 03.10.1997 and later on, during the pendency of present writ petition, he has been promoted to the post of Lecturer (Physics) vide order dated 30.05.2008.

CONTENTION(S)

ON BEHALF OF PETITIONER(S)

7. It is contended by learned counsel for the petitioners that as per the Rules of 1978, respondents were under obligation to fill-up 75% posts of Lecturer (physics) on promotion basis, but the same has been deliberately ignored; thus their action is not legally sustainable. Further contended that under the Rules (*ibid*), only 25% posts are to be filled-up by way of direct recruitment; however, the respondents have breached the ratio, while making excessive appointments through direct mode and as such illegally denied the lawful claim of petitioners.

ON BEHALF OF STATE

8. Learned State counsel, while opposing the prayer of petitioners, submitted that no one can claim promotion as matter of right and at best, the petitioners had only the right for consideration as per Rules. Further submitted that all the petitioners were duly considered and promoted to the post of Lecturer (Physics) as per their turn; and no junior person in the

cadre was promoted prior to them. Also submitted that in pursuance of the promotion order dated 30.05.2008, all the petitioners joined their duties against the promotional post(s), hence they are estopped from filing present writ petition(s).

9. Heard learned counsel for the parties and perused the paper-book(s).

10. Law is well settled that: *“There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules”* [vide (1991) 2 SCC 295; *Director, Lift Irrigation Corporation Ltd. and Others Versus Pravat Kiran Mohanty and Others, para-4 inter alia.*]

11. There is no dispute that at relevant point of time, the post in question was governed under the Rules of 1978 and relevant provisions of the same are extracted as under:-

“9. Method of Appointment:-

(1) *Appointments to the posts in the service shall be made in the manner indicated against each post in Appendix ‘B’ to these rules.*

(1-a) *Where the Government is of the opinion that it is expedient so to do, the Government may, in exceptional cases, fill in the vacancy by making appointment of the person by transfer from any other State Government or Government of India against direct quota if the person holds identical post. [Sub Rule (1-a) added vide No. G.S.R.55/Const./Art. 309/Amd. (10)/2000]*

(2) *As soon as a vacancy occurs the appointing authority shall having regard to the percentage fixed in these rules for each method of recruitment determine the manner in which the same shall be*

filled.

(3) All promotions within the Service shall be made by selection based on merit and taking into consideration seniority but seniority alone shall not give any right of promotion to any person:

Provided that the promotion of teachers of the district cadre shall be made to the posts of masters or mistresses, as the case may be, by selection on the basis of merit and seniority to be determined with reference to the length of their service as teacher subject to the condition that if more than one person are promoted from one district cadre their inter se seniority as master or mistress shall be fixed on the basis of their seniority as a teacher in that district cadre.

APPENDIX 'B'

Sr. No.	Designation of Posts	Minimum Qualification and teaching experience	Method of recruitment	
			Direct Appointment	Promotion
1.	XX	XX	XX	XX
2.	(i) Lecturer for General Education (ii) to (iv)	M.A. or M.Sc. or M.Com. with B.T. or B.Ed. xxxx	25%	75% from amongst the Masters and Mistresses

As per Appendix-B (*ibid*), 75% appointments for the post in question are to be made from the promotional quota and 25% through direct recruitment. From perusal of the impugned order dated 22.07.2011, it is discernible that there were total 12642 sanctioned posts of Lecturers (in all subjects), including Physics and break up of the same would be as under:-

Total Sanctioned	Direct appointment 25%		Promotion 75%	
	Quota 25%	Filled up	75% Quota	Filled up
12642	3160	2152	9482	6457

12. There is no quarrel that as per Appendix-B, minimum qualification for the post in question has been prescribed as M.Sc. It is also

not in dispute that petitioner Nos. 1, 2, 3, 4 & 7 completed their Post-Graduation (M.Sc.) during the period 2002 to 2006 and on the basis of recommendation made by the Departmental Promotion Committee, all the petitioners were promoted as Lecturer(s) (Physics) vide order dated 30.05.2008. Respondent No. 2 while passing the impugned order dated 22.07.2011 has observed that during the year 1997, seven (07) male lecturers in Physics, seven (07) male lecturers in Chemistry and twenty-six (26) lecturers in Biology were promoted; whereas two (02) candidates (one each in Physics & Biology) were promoted during the year 2000. It is further observed that petitioners became eligible for promotion to the post in question w.e.f. 2002, 2003, 2004 or 2006 and consequently they were promoted in the year 2008. It has also been categorically averred by the respondents in para No. 4 of preliminary submissions, that no junior person to the petitioners has been promoted prior to them and this aspect of the matter is not denied by way of any counter affidavit.

13. Also to be noticed that petitioners have neither impleaded the persons, who stood promoted as Lecturer (Physics), nor challenged the excess appointment; if any, made through direct recruitment beyond the ratio specified under Appendix-B (*ibid*).

14. Again there is no dispute that all the petitioners were promoted to the post(s) of Lecturer (Physics) on 30.05.2008 and they have no grievance(s) that any junior member in the cadre was promoted prior to them.

15. Although there is no hesitation to observe that a Govt. employee, who is otherwise eligible for promotion and comes within the

zone of consideration, certainly can raise his claim for consideration as per law; but in the present case, petitioners have not even placed on record the seniority list, to indicate that they were in the zone of consideration with effect from some anterior date.

A fortiori, as per sub-Rule (3), Rule 9 (*ibid*), all promotions in the service are to be made by selection based on “merit” and seniority alone shall not give any right of promotion to any person.

16. Moreover, all the petitioners accepted the promotion order dated 30.05.2008; thus on that count also, they cannot be allowed to approbate and reprobate the same.

17. In view of the above, this Court does not deem it appropriate to accept the prayer of petitioners in either of the writ petitions, while entertaining the judicial review under Article 226 of the Constitution.

18. Consequently, there is no option except to dismiss both the writ petitions.

Ordered accordingly.

Pending application(s), if any, shall stand disposed off.

October 28, 2022
'dk kamra'

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>