

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105)

CWP-18650-2021 (O&M)

Date of Decision : August 04, 2022

Virender Kumar

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(105-A)

CWP-18726-2021 (O&M)

Bal Kishan

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mohd. Arshad, Advocate, for the petitioner
(in both petitions).

Mr. Harish Nain, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-15698-CWP-2021 and CM-15697-CWP-2021

As prayed for, the applications are allowed.

Annexures P-5 and P-6 are taken on record.

CWP-18650-2021 and CWP-18726-2021

In the present writ petitions, the grievance of the petitioners is

that they were entitled for promotion with effect from the year 2012 when the vacancy in the cadre of Principal arose for which, the petitioners claim eligibility.

Learned counsel for the petitioners argues that the promotion to the post of Principal are governed by Mewat District School Education (Group B) Service Rules, 2012 (hereinafter referred as '2012 Rules'), according to which, a lecturer is eligible for promotion to the post of Principal. Learned counsel for the petitioners submits that as per the said Rule, the petitioners were eligible for promotion in the year 2012 but the respondents did not grant the same to the petitioners and the same was only granted to the petitioners in the year 2019 and therefore, the petitioners are entitled for the grant of promotion w.e.f. date the vacancy arose in the cadre of Principal keeping in view the 2012 Rules.

After notice of motion, the respondents have filed the reply wherein, they have justified their action in not effecting promotion to the post of Principal. As per the respondents, after framing of the rules, the seniority list, the finalization of which is the basic requirement for effecting promotion, remained in litigation before this Court.

As per the respondents, till the seniority is finalized, no promotion could have been effected and after the seniority in the cadre of lecturer became final, the promotions were effected in the year 2019 itself and therefore, there is no delay in making the promotion.

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

The first question which arise is whether, an employee can claim promotion w.e.f the date the vacancy arose in the promotion cadre.

As per the settled principle of law, no employee has a right for promotion and the only right is for consideration for promotion keeping in view the eligibility and seniority, which is governed by the relevant rules. In the present case, the prayer of the petitioners is that they were eligible in the year 2012 when the vacancy arose and therefore, rather than giving them promotion from the year 2019, it should be given retrospectively from the year 2012.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 517-518 of 2017 titled as Union of India and another versus Manpreet Singh Poonam etc, decided on 08.03.2022***, no employee can claim retrospective promotion from the date the vacancy arise. The Hon'ble Supreme Court of India has held that the promotions are to be effected keeping in view the rules governing the service and the procedure therein has to be followed and the promotion can only be given effect to after following the procedure laid down in the relevant rules. The relevant paragraph of the said judgment is as under:-

“18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. In the present case, the authority acting within the rules has rightly granted promotion

after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

19. This Court in the case of Union of India v. KK Vadhera and Ors., 1989 Supp (2) SCC 625 has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that:

“5....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

Keeping in view the above, the petitioners do not have a right for seeking retrospective promotion from the date when the vacancy arose and therefore, the said claim is rejected.

Even otherwise, in the present case, the respondents have projected a valid reason for not effecting the promotions despite

availability of the vacancies in the promoted cadre. The promotions are to be made on the basis of seniority of a candidate. In the present case, the seniority list was under litigation and the said seniority list attained finality in the year 2019. That being so, it cannot be said that the promotions which were effected in the year 2019, were bad in law or were delayed in any manner.

Keeping in view the above, the prayer of the petitioners as raised in the present writ petitions cannot be accepted and the writ petitions are accordingly dismissed.

A photocopy of this order be placed on the file of other connected case.

August 04, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No