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

CWP-17322-2018

Date of Decision: 11.03.2022

Gurnam Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mohit Jaggi, Advocate,
for the petitioner.

Mr. Tarun Vir Singh Lehal, Additional A.G., Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed for the grant of promotion to the petitioner to the post of Inspector, w.e.f. 01.04.2015, i.e. the date on which his juniors were promoted, and also for setting aside the order dated 06.12.2017 (Annexure P-5), passed by respondent No.2, declining the said benefit to the petitioner.

Learned counsel for the petitioner argues that in the present case, it is not disputed that the officials who were junior to the petitioner in the cadre of Sub-Inspector, were promoted to the post of Inspector, vide order dated 14.12.2016 (Annexure P-2), by giving them retrospective date of promotion from April/May, 2015. Learned counsel for the petitioner submits that the seniority number of the petitioner in the list of cadre of Sub-Inspector was 64 and his colleagues in the same cadre, namely Sukhchain Singh and Mohinder Singh, were immediately junior to him in the said seniority list, falling at serial Nos. 65 and 66. Learned counsel for

the petitioner submits that petitioner attained the age of superannuation on 30.11.2014, and thereafter, he was granted extension in service for a period of two years. While the petitioner was on extension, the order promoting his juniors was passed on 14.12.2016, giving Sukhchain Singh and Mohinder Singh promotion to the post of Inspector, w.e.f. 01.04.2015 and 01.05.2015, respectively. Learned counsel further submits that once the officials junior to the petitioner were promoted, the petitioner was also entitled for the grant of promotion, especially in view of the fact that when his juniors were given promotions, the instructions dated 08.10.2012 were in operation, according to which, even during the period when employee is on extension in service, in case any promotional post is available, the said employee will be eligible for consideration of promotion.

Upon notice of motion being issued to the respondents, they have filed the reply, in which it has been conceded that the petitioner was senior to the two personnels, namely Sukhchain Singh and Mohinder Singh, in the feeder cadre of Sub-Inspector and these two employees though junior to the petitioner but were promoted to the post of Inspector in the IT&T Wing, w.e.f. 01.04.2015 and 01.05.2015, respectively. In the reply it has been mentioned that as the petitioner was on extension in service, keeping in view the instructions, dated 30.10.2015, issued by the Government of Punjab, the employees who were on extension in service were not entitled for promotion, and therefore, as the order promoting the juniors of the petitioner was passed on 14.12.2016 and on the said date, instructions dated 30.10.2015 were in force, same were made applicable in the case and the petitioner was rightly declined the said benefit of promotion being not eligible for promotion.

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

The conceded factual aspect is that the petitioner was at serial No.64 in the seniority list of cadre of Sub-Inspector. The two personnels, namely Sukhchain Singh and Mohinder Singh, were just after the petitioner in the seniority list, i.e. at serial Nos.65 and 66. It is also a conceded position that the petitioner attained the age of superannuation on 30.11.2014, and thereafter, he was granted extension in service, keeping in view the instructions, dated 08.10.2012, which have been issued by the Government of Punjab.

The question which arises for consideration by this Court is that whether, keeping in view the facts and circumstances of this case, for governing the promotion of the petitioner to the post of Inspector, the instructions dated 08.10.2012 will be applicable or the instructions dated 30.10.2015 will be applicable.

It is a settled principle of law that the position is to be seen on the date, with effect from which the promotions are effected. No doubt, in the present case, the promotions to the post of Inspector were effected in December, 2016 but the promotions were given to the employees with retrospective effect from 01.04.2015. Once in the present case, the date of promotion of juniors of the petitioner is April/May, 2015, the instructions which are in operation on the said date are to be made applicable on the petitioner. It is a conceded position that instructions dated 08.10.2012 were in operation during period of April/May, 2015, when the promotions to juniors of the petitioner were granted. According to the instructions dated 08.10.2012, the promotions could have been granted to the employees who

were on extension in service. The relevant paragraph of the instructions dated 08.10.2012 is as under:

“..... (b) Notwithstanding anything to the contrary contained in these rules or any other rules for the time being in force, during the extended period of service under clause (a) of this rule, a Government employee shall be entitled to pay equal to the pay last drawn by him on the date on which he attains the age of 58 years or 60 years, as the case may be. However, if a promotional post is available, he shall be eligible for consideration for promotion against that post and on promotion his pay shall be fixed under the relevant rules.”

Even otherwise, the instructions dated 30.10.2015 cannot be made applicable with retrospective effect. Once the promotions have been allowed to the juniors of the petitioner, w.e.f. April/May, 2015, the instructions dated 30.10.2015 cannot be made applicable from a date prior to the issuance of said instructions, hence applying the instructions dated 30.10.2015 in the case of petitioner so as to declare him ineligible is illegal and arbitrary. Keeping in view the above, denial of the promotion to the petitioner by the respondents to the higher rank, when the same was extended to the juniors of the petitioner w.e.f. April/May, 2015, is totally arbitrary and illegal.

In view of the above, the present petition is allowed and the impugned order dated 06.12.2017 (Annexure P-5), declining prayer of the petitioner for grant of promotion is held to be bad and the same is set aside. A direction is issued to the respondents to consider the claim of the petitioner for grant of promotion, w.e.f. the date when the persons junior to him were promoted, along with all the consequential benefits. Let this

consideration take place within a period of two months from the date of receipt of this order. In case, petitioner is found fit and eligible for promotion, the said benefit be extended to him w.e.f. the date the persons junior to him in the seniority list in the cadre of Sub-Inspector were promoted, even if a superannuating post is to be created to accommodate the petitioner in the cadre of Inspector.

11.03.2022*Apurva***(HARSIMRAN SINGH SETHI)****JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No