

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

CWP No. 24288 of 2016
Date of Decision : 29.04.2022

Gurnam Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Munish Gupta, Advocate for the petitioner.

Ms. Kanica Sachdeva, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

In the present petition, the grievance of the petitioner is that his claim for promotion to the post of Senior Assistant with effect from the date the persons junior to him were promoted, has been declined by the respondents on the ground that the ACR of the petitioner for the year 2010-2011 was not good.

Learned counsel for the petitioner argues that in the present case, the petitioner is a disabled employee having deformities in all his four limbs. The petitioner was initially selected as a Clerk with the department of Social Welfare and Women and Children Development and thereafter, he was promoted as Junior Assistant. The next promotion is to the post of Senior Assistant and the petitioner was found eligible for promotion in the year 2010 but keeping in view certain domestic circumstances, petitioner could not avail the said promotion.

As the petitioner is a handicapped person and was entitled to be retained in service up to the age of 60 years, but still the respondents passed an order in the year 2012 retiring the petitioner at the age of 58 years, which action was challenged by the petitioner before this Court by filing CWP No. 7974 of 2012, which was ultimately allowed in his favour on 05.12.2012 directing the respondents to allow the petitioner to continue till he attained the age of 60 years.

The respondents did not comply with the said order, which led to the filing of COCP No. 566 of 2015 and it was only during the pendency of the said contempt petition, the petitioner was paid the salary for a period of two years by giving a notional benefit by treating the petitioner in service till he attained the age of 60 years.

As the petitioner was given notional benefit that he remained in service up to the age of 60 years, the petitioner claimed promotion to the post of Senior Assistant as, in the year 2013, certain juniors to the petitioner, who were working as Junior Assistant, were promoted to the post of Senior Assistants vide order dated 14.10.2013. On the said date, the petitioner was deemed to be in service and the petitioner claimed the said promotion. The respondents declined the said promotion to the petitioner on the ground that his ACR for the year 2010-2011 was not good and there were certain remarks with regard to the capability of petitioner in performing the duties of higher post. The said order dated 29.08.2016 (Annexure P-7) by which the claim of the petitioner for promotion to the post of Senior Assistant has been declined, is under challenge in the present petition.

After notice of motion, the respondents have filed the reply and they have tried to justify their act of not promoting the petitioner. Along with the reply, the respondents have attached the Annual Confidential Report (ACR) of the petitioner for the year 2010-2011, according to which, in two columns regarding the working on computers and typing on computers, the proficiency of the petitioner was doubted. The over all grade given to the petitioner was good but the respondents submitted that as the petitioner lack the proficiency in dealing with the computers, he cannot seek promotion to the post of Senior Assistant.

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

It is a conceded position that keeping in view the physical fitness of the petitioner, he was found entitled for promotion to the post of Senior Assistant in the year 2010, which promotion the petitioner had foregone. No such objection was ever raised at the said point of time that the petitioner is not proficient either in dealing with the computers or in typing on computers.

Further, it is conceded that over all grading given in the ACR for the year 2010-2011 is good, meaning thereby that there is nothing adverse against the over all performance of the petitioner. The assertion of the respondents that petitioner is not capable of discharging the duties of the higher post, is contradictory for the reason that petitioner was found eligible for promotion to the same in the year 2010 i.e. when the said ACR for the year 2010-2011 was written. That being the factual position then how, subsequently, it is being asserted that petitioner was not fit to perform the

duties of the higher post. Nothing has come on record that if the petitioner was not fit to perform the duties of the higher post, than how the respondents themselves found the petitioner eligible for promotion in the year 2010. The reply is silent on this aspect.

Keeping in view the above, once the petitioner was found suitable for promotion in the year 2010 and his fitness remained in the same status, it cannot be said that in the year 2013, the petitioner is not fit to perform the duties of the higher post.

Further, in the impugned order, it is being mentioned by the respondents that over all record of the petitioner should be good whereas in the ACR for the year 2010-2011, there are certain adverse remarks. The respondents are mis-reading the ACR. The remarks are not adverse but some observations have been made but over all grading of the petitioner, even in ACR for the year 2010-2011 (Annexure R-1), is good. That being so, the said ACR is to be treated as good while considering the claim of the petitioner for promotion to the post of Senior Assistant, when juniors of the petitioner were promoted in October, 2013. The claim of the petitioner has wrongly been rejected by the respondents without adverting to the facts, which were already on record.

Keeping in view the above, the impugned order dated 29.08.2016 (Annexure P-7) is set-aside. The respondents are directed to consider the claim of the petitioner afresh for promotion to the post of Senior Assistant with effect from the date, when persons junior to him were promoted i.e. 14.10.2013. In case, there is no other impediment in the promotion of the petitioner and record of the petitioner entitles him the

grant of promotion, then appropriate order promoting the petitioner be passed.

Let the consideration of the case of the petitioner be undertaken within a period of two months from the receipt of copy of this order and appropriate order upon consideration be passed within the said period.

If case of the petitioner is found entitled for promotion, the said promotion be extended to the petitioner within a period of four weeks thereafter. It is made clear that petitioner will not be entitled for the grant of arrears but will only be given notional benefits for the said promotion.

Writ petition is allowed in above terms.

April 29, 2022
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

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