

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

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CWP-26539-2015

Date of Decision :27.10.2022

Bharto Devi**...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Ms. Sonia G. Singh, Legal Aid Counsel
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance of the petitioner is that her husband namely, Randhir Singh, who was working with the respondent-department has been deprived of the certain benefit, which was extended to one Partap Singh in preference to the husband of the petitioner even though, Partap Singh was not even regular in service, the prayer of the petitioner is that the said benefits be extended to the husband of the petitioner as well so as to rectify the anomaly.

The facts as stated in the present writ petition are that the husband of the petitioner is facing mental illness, for which, he has already been issued certificate dated 09.07.2008 by the competent authority hence, the present writ petition is being filed by the petitioner on behalf of his husband claiming the benefit of promotion as being extended to another employee ignoring the claim of the husband of the petitioner. The husband of the petitioner namely, Randhir Singh was appointed as conductor in the

year 1969 vide appointment order dated 21.07.1969 after being selected and recommended by the Commission. The husband of the petitioner was promoted to the post of Sub Inspector on 21.02.1990 and, thereafter to the post of Inspector on 24.07.2003. The grievance of the petitioner is that the benefit which was extended to the one Partap Singh, who was working on temporary post and whose services were never regularised by the respondents, be also extended to the husband of the petitioner as the said Partap Singh was given promotion as Inspector on 07.03.1979 and, thereafter, as Chief Inspector on 06.07.2001 in preference to the husband of the petitioner, even though, Partap Singh was not a regular employee of the department hence, could not have been given promotion and that too in preference to the husband of the petitioner. The said claim of the petitioner was rejected by the respondents by the impugned order dated 03.03.2016/16.03.2016 (Annexure P/13) and while passing the impugned order, the claim of the husband of the petitioner has not been found comparable with that of Partap Singh and the benefit being claimed by the husband of the petitioner was rejected by comparing the same with another Inspector namely, Bhim Singh.

In the reply filed by the respondents, they have again taken the same stand that the claim of the petitioner has already been considered and rejected. It has further been mentioned in the reply that the claim of the petitioner has been declined on the ground that Partap Singh was given benefit of reservation while granting him the benefit of promotion and the husband of the petitioner was never able to catch the said Partap Singh in any of the cadres before retirement.

During the pendency of the present writ petition, the

respondents filed an affidavit of the Joint Director, State Transport Haryana, Chandigarh on 23.08.2022, wherein, it has been conceded that the petitioner was regularly recruited through proper agency whereas, the said Partap Singh was temporarily appointed and though, no order regularizing the services of the said Partap Singh was passed, but it is a matter of fact that he was granted promotion by the respondents. It has also been mentioned that the said Partap Singh was appointed on temporary basis prior to the regular appointment of the husband of the petitioner therefore, it cannot be said that Partap Singh was junior to the husband of the petitioner so as to claim benefit of promotion, which has been extended to the said Partap Singh.

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

The benefit of promotion could have been granted to Partap Singh had he been working on regular basis after being selected through proper agency or after his services are regularized as it is a conceded position that Partap Singh was appointed on temporary basis. Respondents have conceded in their affidavit that there is no record available with them that services of the said Partap Singh were ever regularised by them at any given point of time as no order existed on record as to on which date, the services of the said Partap Singh was regularised after being temporarily appointed initially in the year 1968. That being so, Partap Singh, who was working on temporary basis cannot have better right of promotion to the higher rank than that of the husband of the petitioner, who was regularly appointed in the year 1969 through proper agency. The petitioner being a regular employee has a better right as compared to the said Partap Singh.

Stand of the respondents-authority that Partap Singh was given benefit of reservation while granting promotion hence, he was promoted prior to the promotion of the husband of the petitioner, cannot be accepted. Only a regular employee is entitled for promotion. Partap Singh, whose services were never regularised could not have been granted the benefit of promotion by granting benefit of reservation much less in preference to the husband of the petitioner, who was a regular employee. Nothing has come on record as to how a temporary employee got promotion and that too by ignoring the regular incumbent. Hence promotion granted to Partap Singh in preference to the husband of the petitioner was not in accordance with law or the rules governing the service.

The question arises as to how the husband of the petitioner is to be compensated with regard to the benefit being claimed by the petitioner in the present petition. Once, Partap Singh was working on temporary basis and was granted the benefit of promotion without entitlement and that too over and above the husband of the petitioner, who was regularly appointed, the husband of the petitioner can only be compensated by the grant of promotion from the same date as extended to the Partap Singh in the cadre of Inspector as well as Chief Inspector by the respondent.

Learned counsel for the petitioner brought to the notice of this Court that while considering the said prayer on administrative side, the Deputy District Attorney as far as back in 2016 mentioned that claim of the husband of the petitioner is genuine and he should be granted promotion to the rank of Inspector and thereafter, Chief Inspector with effect from the date the said Partap Singh was granted the said benefit and arrears be restricted to 38 months from the date of filing of the writ petition.

Learned counsel for the petitioner submits that the petitioner will be satisfied in case the said relief be extended to the petitioner on the same terms and conditions as proposed by the Deputy District Attorney.

Keeping in view the above, respondents are directed to consider the claim of the husband of the petitioner for promotion to the post of Inspector and, thereafter, Chief Inspector with effect from the date Partap Singh was promoted and grant the same in case found entitled for, keeping in view his service record. The pay of the husband of the petitioner be notionally fixed in the said cadres up to date of retirement. In case the husband of the petitioner is found fit for the grant of promotion as per his service record, after re-fixing his pay, pensionary benefits admissible to him be also revised and as prayed for by the petitioner, payment of arrears be restricted to 03 years and two months prior to the filing of the first writ petition being CWP-2606-2012 decided on 13.02.2012.

Let the amount so calculated be paid to the petitioner within a period of two months from the date of receipt of copy of this order.

Petition stands allowed in above terms.

October 27, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No