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

CWP No. 633 OF 2016

DATE OF DECISION: 04.05.2022

Birbal Dass

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J. K. Goel, Advocate with
Mr. Shvetanshu Goel, Advocate,
for the petitioner.

Mr. Pankaj Middha, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks quashing of order dated 24.05.2013 (Annexure P-16) to the extent it says that petitioner is not entitled for arrears of pay and allowances from 02.02.2000 to 11.04.2011. Further a prayer has been made to release the arrears of pay and arrears thereof for the post of Clerk with effect from 02.02.2000 to 11.04.2011, the date when petitioner was given promotion, along with interest @ 18% per annum.

2. Petitioner was appointed as Caner on 10.08.1992 in the respondent-department through employment exchange and is working there since then on temporary/*ad hoc*/daily wages. Petitioner is 100% blind. He approached this Court vide CWP No. 14365 of 1999 and vide order dated 12.04.2002, the writ petition was allowed. Pursuant to same, his services were regularized with effect from 10.08.1992. He was accordingly given appointment letter dated 30.04.2004 (Annexure P-1).

Petitioner had completed more than five years of continued service on the post of Caner. Since he passed his matriculation examination in the year 1988 and also senior secondary examination in the year 1990, he sent various representations for his promotion to the post of Clerk. He again represented on 22.01.2008 vide Annexure P-4 to which the department responded that since there were 193 sanctioned posts of Clerks, out of which 39 Clerks had already been promoted and therefore, no promotional post was lying vacant.

3. Petitioner sought information under Right to Information Act and thereafter submitted fresh representation dated 15.10.2008 (Annexure P-6) stating therein that one Baljeet Singh, Peon, who joined in the year 1994, had been promoted as Clerk in the year-2000, which is in contradiction of the provisions of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 since petitioner is 100% blind. The said representation was also considered and rejected by the department. Petitioner filed application under Section 6 of the Right to Information Act seeking information regarding persons who were promoted in the last ten years to which the department replied that the department has not prepared seniority list from 1996 to 2008. Petitioner approached this Court by way of filing CWP No. 16711 of 2009 to which the respondents replied that the claim of the petitioner has been considered for promotion and accordingly he has been promoted as Clerk vide order dated 11.04.2011. That writ petition was disposed of as having been rendered infructuous vide order dated 02.09.2011 (Annexure P-12) with liberty to the petitioner to seek redressal of his grievance for promotion from back date. Petitioner again represented before the authorities which was not

decided by the respondent authorities. The petitioner had to again approach this Court vide CWP No. 3955 of 2013 and vide order dated 22.02.2013 (Annexure P-15), that writ petition was disposed of with directions to the competent authority to decide his representation dated 24.10.2011 (Annexure P-13). Pursuant to said order, claim of the petitioner was admitted and he was granted benefit of deemed promotion with effect from 02.02.2000 but actual benefit of salary and arrears thereof was denied without any reason vide order 24.05.2013 (Annexure P-16). Petitioner submitted legal notices dated 15.06.2013 (Annexure P-17) and 17.06.2013 requesting the respondent authorities to grant him the benefit of actual pay and arrears with effect from 01.02.2000 along with interest @ 18% per annum. The same has not been adverted till date. Hence, the writ petition.

4. Per contra, learned State counsel submits that the petitioner is not entitled to pay and allowances, as claimed in the writ petition.

5. Having heard rival contentions of learned counsels for the parties, I am of the view that reliance placed by the respondents as also learned counsel representing them in the course of arguments upon the order/judgment dated 16.08.2005 rendered by Division Bench of this Court in CWP-18333 of 2002 in case titled as “**Tilak Raj v. State of Haryana**” seems to be misplaced. What was challenged by said Tilak Raj in the aforesaid writ petition was non-grant of promotion to him on parity with his juniors who had been accorded the same benefit.

6. In this background, the operative part of order/judgment dated 16.08.2005 passed by the Division Bench is relevant and the same is reproduced herein below :

“The petitioner’s claim is that his case for promotion from the post of Clerk to that of Assistant had not been considered by the respondents from the date when his junior Sh. Dharam Vir Singh respondent no.4 has been promoted. The reason for non-consideration was that he had not cleared the typing test. It is the case of the petitioner that as per the Haryana Social Welfare Department and Relief Organisation (State Service Class-II) Rules, 1975, there was no requirement for the passing of typing test for promotion. In the written statement, however, the respondents have taken the stand that as per Haryana Social Defence & Security Department (Group C) Rules, 1998, the passing of such a test in fact had been made mandatory and the petitioner having failed to clear the said test was not entitled to the promotion. We have heard the learned counsel for the parties and have gone through the record. Admittedly, respondent No.4 was promoted in 1995 i.e. at the time when the Rules of 1975 were in operation. To our mind, it is, therefore, clear that the case of the petitioner would have to be dealt with under the Rules 1975 and the stand of the respondents that he was covered by the 1998 Rules is clearly untenable. We therefore, quash the impugned order Annexure P-8 and direct the respondents to reconsider the case of the petitioner for promotions in this background from the date when respondent No.4 had been promoted. The entire exercise will be completed within four months from today. Should the petitioner succeed in getting promotion, the respondents shall consider his claim towards the grant of consequential relief as well. Disposed of in the aforesaid terms.....”

7. A perusal of the above shows that while allowing the petition of Tilak Raj, the Division Bench made it clear that if the petitioner therein succeeded in getting promotion and the respondent would consider his claim towards grant of consequential relief as well. One does not know whether Tilak Raj pursued his claim qua grant of consequential benefits or in the alternative acquiesced to the denial thereof.

8. Be that as it may, merely because said Tilak Raj was not accorded the benefit even if entitled or he acquiesced by his own conduct to the denial thereof, as the case may have been, could not disentitle the petitioner to seek enforcement of his rights qua arrears of salary on parity with other petitioners who had approached this Court and were accorded

benefit of promotion under judicial orders. Reference may be had to order dated 23.08.2012 passed in CWP No. 22231 of 2010 titled as “**Mahabir Singh Malik v. State of Haryana and others**” and CWP No. 22834 of 2010 titled as “**Sukhbir Singh and others v. State of Haryana and others**” which in fact have been relied upon by the respondents themselves in their return.

9. A perusal of the above shows that shoe is in fact on the other foot, inasmuch as the respondents conceded that in those cases where petitioners were similarly situated and were not accorded benefit of promotion, they have been accorded the benefit of arrears of salary confined to 38 months prior to filing of the writ petition. For ready reference, order dated 23.08.2012 as relied in para 7 of the written statement is reproduced herein below :

“.... The present writ petition, therefore, is allowed. Impugned order dated 05.08.2010 (Annexure P-11) is hereby quashed and direction is issued the respondents to consider the claim of the petitioner for promotion to the post of Assistant with effect from the date his junior Dharam Vir Singh was promoted to the post of Assistant. In case the claim of the petitioner is granted, petitioner shall not be entitled to the benefit of the arrears except for 38 months prior to the date of filing of the writ petition. Similar directions would be applicable to the petitioners in CWP No. 22834 of 2010 titled Sukhbir Singh and others vs. State of Haryana and others....”

10. In view of the aforesaid premise, the writ petition is partially accepted to the limited extent that petitioner is also held entitled on parity to be accorded benefit of arrears of salary qua his promotion, confined to 38 months prior to filing of his first writ petition i.e CWP No.16711 of 2009 during the pendency of which the petitioner was accorded promotion with effect from 11.04.2011 and his claim with regard to promotion with

effect from 01.02.2000 was kept alive while disposing of the same in the following terms:

“Mr. Nehra has handed over a copy of the affidavit, which disclose that the petitioner has given promotion w.e.f. 11.4.2011.

The grievance of the petitioner is that he has made claim for promotion with effect from the year 2000.

The writ petition is, accordingly, disposed of as having become infructuous. The petitioner may file a representation before the respondents for seeking promotion from the date from which himself due and from the date his junior were so promoted.”

11. *Apropos* above, the representation of petitioner was decided vide impugned order dated 24.05.2013 (Annexure P-16 herein) to the limited extent of conceding the claim of petitioner to accord him promotion with effect from the year 2011 but with a caveat that he was not entitled to arrears of salary since he had not worked on the promotional post prior to 2011.

12. In the premise, there has been no delay on the part of petitioner to seek benefit of promotion including the arrears of salary. He first filed writ petition which was disposed of on 02.09.2011 with liberty to file representation and subsequent thereto, the representation was filed on 24.10.2011 (Annexure P-13) eventually leading to the rejection of same vide impugned order dated 10.07.2012 (Annexure P-14) and yet again filing of CWP No. 3955 of 2013, whereby the competent authority was directed to decide the same by passing a speaking order. Following rejection of the claim for past arrears vide impugned order dated 24.05.2013 the petitioner filed the instant writ petition on 06.01.2016.

13. As an upshot of the above discussion, since the petitioner though 100% blind has been running from pillar to post, including on the administrative side as well as having taken recourse to multiple rounds of

litigation before this Court, I am inclined to accept the claim of the petitioner for salary confined to 38 months prior to filing of first writ petition i.e., CWP No. 16711 of 2009, on parity with other employees, as noted above, who were also accorded the same benefit by Division Bench of this Court in CWP-18333 of 2002 in case titled as “**Tilak Raj v. State of Haryana and others**”.

14. Disposed of in above said terms.

MAY 04, 2022
Shalini

(ARUN MONGA)
JUDGE

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