

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

103

CWP-21701-2021

Date of Decision :18.10.2022

Indira Rani**...Petitioner****Versus****State of Haryana and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the prayer of the petitioner is that the promotion to the post of Superintendent, which has been effected by the respondents vide order dated 12.08.2021(Annexure P/10) be declared invalid as the petitioner, who was also found eligible by the Departmental Promotion Committee vide their recommendations dated 23.07.2021 (Annexure P/9) has not been promoted and that too without any valid justification. Further prayer of the petitioner is to direct the respondents to promote the petitioner prior to the date of retirement keeping in view the recommendations of the Departmental Promotion Committee dated 23.07.2021 (Annexure P/9).

The facts as mentioned in the present writ petition are that the petitioner, who was working as Deputy Superintendent was to superannuate on 31.07.2021. Next promotion is to the post of Superintendent and as certain posts of Superintendent were lying vacant to be filled by way of promotion, the meeting of the Departmental Promotion committee was convened by the department on 23.07.2021 wherein, claim of the eligible

employees for promotion was considered and the committee had made its recommendations to the competent authority for promotion. Petitioner was found fit for promotion. Before the recommendations could be accepted by the competent authority, the petitioner attained the age of superannuation and retired on 31.07.2021. After the retirement, approval to the recommendations of the Departmental Promotion committee was given by the competent authority and ultimately vide order dated 12.08.2021 (Annexure P/10), the Deputy Superintendents who were found eligible by the Departmental Promotion committee and were in service, were promoted to the post of Superintendent. The prayer of the petitioner is that once the recommendations of the Departmental Promotion Committee, which also found the petitioner eligible for promotion to the post of Superintendent, have been implemented though, after retirement of the petitioner, the said benefit of promotion should have been extended to the petitioner also.

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

The question which arises for determination in the present writ petition is whether merely on the ground that Departmental Promotion Committee, which considered the case of the petitioner and found the petitioner fit for promotion, will make the petitioner entitled to be promoted to the post of Superintendent despite the fact that before the said recommendations of the Departmental Promotion Committee could be accepted by the competent authority, the petitioner had already retired. It is a settled principle of law that recommendations of the Departmental Promotion Committee do not confer any right to an employee to claim promotion, even if, found suitable. Recommendations will only create right

as and when the same are accepted by the competent authority for implementation.

In the present case, no doubt the petitioner was found suitable for promotion by the Departmental Promotion Committee in its recommendations but it is also conceded position that before the competent authority accepted the said recommendations, the petitioner had already retired. That being so, mere recommendations by the Departmental Promotion Committee will not create a right of the petitioner to claim promotion ignoring the fact that petitioner had retired prior to the acceptance of the said recommendations by the competent authority. Hence, the grievance as being raised by the petitioner claiming promotion and for issuance of a direction to the respondent to pass an appropriate order granting promotion to the petitioner prior to the date of retirement, even though, such recommendations of the Departmental Promotion Committee were accepted by the competent authority after the retirement of the petitioner cannot be accepted.

Further, it is not the case of the petitioner that on the date when the petitioner was in service, any junior of the petitioner was given benefit of promotion ignoring the claim of the petitioner. The juniors of the petitioner were promoted on 12.08.2021, on which date, the petitioner was not in service and had already attained the age of superannuation and retired. Therefore, once, no employee junior to the petitioner was promoted to the post of Superintendent up to the date of the retirement of the petitioner, the claim of the petitioner that petitioner be given benefit of promotion from the date of recommendations of the Departmental Promotion Committee cannot be accepted.

Further, in case the prayer of the petitioner that petitioner be given benefit of promotion from the date of recommendations of the Departmental Promotion Committee is accepted, the same will create anomalies and complications. It is a settled principle of law that recommendations of the Departmental Promotion Committee or selection in the direct recruitment does not give any right to claim appointment or promotion. In case the date of recommendations of the Departmental Promotion Committee is to be taken into consideration for granting the promotion, it could be a case that department is filling up the same post by way of direct recommendations as well as by promotion and the newly selected direct recruits join though after recommendations of the Departmental Promotion Committee recruiting promotees but promotion prior to the date of actual promotion in the said cadre, promotees who joined after direct recruit joined but will claim promotion from the date of recommendations of the Departmental Promotion Committee, which cannot be allowed. Hence, the grant of prayer of the petitioner will lead to anomalies, which cannot be permitted.

Learned counsel for the petitioner has placed reliance upon a judgment passed in **CWP-1391-1993** titled as **C.K. Shukla vs. Union of India and others** decided on 08.12.1995. In the said case, consideration had taken place on 24.11.1992 for effecting promotions and the officer concerned was to retire on 31.01.1993 and further in the said case grant of promotion would have given an employee not only promotion but also extension in service for further period of two years. The Government approved the recommendations after period of five months and under these circumstance, the Court had held that once the recommendations were not

made and there was sufficient time with the department to accept or reject the recommendations but the same were kept pending, which in action has not denied the petitioner therein the promotion but also further extension in service for a period of two years, the promotion was ordered to be given, which included further extension in service for a period of two years, which facts cannot be made applicable in the preset case, where, the Departmental Promotion Committee made its recommendations on 21.07.2021 and the petitioner was to retire within next seven days.

Even otherwise, as per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.517-518-2017** titled as **Union of India and another vs. Manpreet Singh Poonam and others** decided on 08.03.2022, existence of a vacancy will not create right in favour of an employee for retrospective promotion, even if, vacancy is available in the promotional post. Applying the said judgment in the present case, though, there was a vacancy in the promotional cadre and the petitioner was considered for promotion but the said consideration and availability of vacancy in the promotional cadre does not give right to claim retrospective promotion as the promotions were actually effected after getting all the necessary approvals on 12.08.2021, which approvals were granted after the retirement of the petitioners.

Keeping in view the facts noticed hereinbefore, no ground for interference by this Court is made out and the present writ petition is accordingly dismissed.

October 18, 2022

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No