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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13412-2000 (O&M)

Date of Decision: 13.09.2023

SHAKUNTLA DEVI

.....Petitioner

V/s.

**STATE OF PUNJAB THROUGH SECRETARY TO GOVERNMENT
OF PUNJAB, DEPARATMENT OF EDUCATION, PUNJAB AND
OTHERS.**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present Mr. P.S. Khurana, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J (Oral)

1. The petitioner by way of this Writ Petition has prayed for issuance of a Writ in the nature of *certiorari* for quashing of the order dated 22.05.2000 (Annexure P-5) whereby promotion has been granted to her juniors.

2. Learned counsel for the petitioner submits that the petitioner was working as a Mistress and as per the seniority list, she was placed at Sr. No.4557. She was to be considered for the promotion to the post of Head Mistress but her case was not considered and persons junior to her, who were at Sr. No.4578 and 4833, were promoted vide impugned order dated 22.05.2000. Aggrieved thereof, present Writ Petition has been preferred by her.

3. Learned counsel for the petitioner submits that the petitioner has had a very good service record to her credit except two average ACRs

which were recorded by the then Head Master, Jaswinder Singh, for the years 1997-98 and 1998-99, merely because the petitioner had objected the concerned Head Master to unauthorized and illegal withdrawals from the P.T.A. funds, resulting in mentioning of remarks in her ACRs, but overall grading was given to the petitioner was average and thus, there was no adverse remark which could have been taken into consideration to deny her promotion.

4. The respondents have filed their reply and stated that the case of the petitioner was also considered for promotion, but on account of adverse remarks in her ACR for the years 1997-98 and 1998-99, she was not granted promotion. It is stated that as per the Government Policy and instructions dated 21.07.1997, ACRs for the only last 5 years were required to be checked. It is also stated that the adverse remarks in the ACR for the year 1997-98 were conveyed to the petitioner on 26.05.2000. The said aspects have been conveyed to the petitioner while rejecting her representation on 09.04.2004. This Court had directed the respondents to file an additional affidavit wherein the same aspect has been reiterated.

5. In replication, the petitioner has stated about her gist of ACR remarks for the last 10 years which are as under:-

1992-93	Very Good
1993-94	Very Good
1994-95	Excellent
1995-96	Very Good
1996-97	Very Good

6. In the years 1997 to 1999, she has been shown as average and in the year 1999-2000, there is a certificate issued to her to the effect that no complaint or enquiry was pending against her and that she bears a good moral character. The Special ACR has been shown as “very good” and it has also been mentioned that she is punctual, honest, hardworking and reliable. In the year 2000-2001 also, her ACR reflects that she has been given remark “very good”. Thus, this Court finds that her ACRs have been consistently “very good” except for the two years i.e. 1997-98 and 1998-99.

7. Lowering down of the ACRs of the petitioner from “very good” to “average” would have to be conveyed to the petitioner giving the reasons for the same.

8. In Dev Dutt Vs. Union of India and Others; (2008) 8 SCC 725, the Supreme Court has held as under:-

“13. It has been held in Maneka Gandhi vs. Union of India & Anr. AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the A.C.R. of a public servant is arbitrary because it deprives the concerned employee from making a representation against it and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra 1997 (4) SCC. Hence such non-communication is, in our

opinion, arbitrary and hence violative of Article 14 of the Constitution.

9. Reiterating the same principle in **Sukhdev Singh** Vs. **Union of India and others**; 2013 (9) SCC 566, the Supreme Court has again held as under:-

“8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.”

10. Keeping in view the above, this Court finds that lowering down of ACRs from “very good” to “average” would require the respondents to give an opportunity of hearing to the petitioner after conveying the said remarks.

11. In **Gurdial Singh Fijji** Vs. **State of Punjab and Others**; (1979) 2 SCC 368, the apex Court has held as under:-

“The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities

unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him.”

12. Thus, un-communicated adverse remarks cannot be taken into consideration while considering the case of an employee for promotion.

13. The petitioner has not conveyed the said remarks till the time the respondents conducted exercise for promotion as the order of promotion of persons junior to the petitioner were issued on 22.05.2000. Annexure R-2 annexed with the reply reflects that adverse remark of ACR for the year 1997-98 was conveyed to the petitioner only on 26.05.2000 i.e. after the promotion order have already issued to the persons junior to the petitioner. Thus, the adverse remarks remained un-communicated upto the date the promotion exercise was conducted. The same, therefore, could not have been taken into consideration for denying the petitioner her promotion.

14. This Court finds that even if the ACRs of 1997-99 are taken into consideration, the two ACRs reflect that there was no adversity and the overall grading granted to the petitioner was “average” while there were 3 “very good” ACRs in her credit. Even earlier ACRs of previous years are either “very good” or “excellent”. In the circumstances, it cannot be said that the petitioner would be disentitled for consideration for promotion on account of adverse remarks in the ACRs.

15. In view of the above, the order of rejecting her representation is held to be illegal and unjustified and is accordingly quashed. The respondents are directed to consider her case for promotion w.e.f. the date her juniors were promoted i.e. 22.05.2000 and grant her all consequential benefits of salary and pay fixation. The petitioner would also be entitled for consequential higher retiral benefits. The entire exercise shall be conducted within three months from the date of issue of certified copy of this order.

16. The Writ Petition Stands allowed accordingly.

17. Pending application(s), if any, shall stand(s) disposed of.

September 13, 2023
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes/No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>