

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP No.: 13585 OF 1998(O&M)

Reserved on: 29.08.2023

Pronounced on: 20th September, 2023

Gurinder Pal Singh WaliaPetitioner

VERSUS

State of Punjab and othersRespondents

2. CWP No. 6201 of 2011(O&M)

Gurinder Pal Singh WaliaPetitioner

VERSUS

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr.Gaurav Chopra, Sr. Advocate,
assisted by Mr. Akshat Dalal, Advocate,
for the petitioner(s).

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J

1. The above mentioned two writ petitions have been filed by
the petitioner, were heard jointly and are being decided by common order
as the issues are related to one another.

2. Brief facts which require to be noticed are that the petitioner joined the office of District & Sessions Judge, Amritsar, as a Senior Clerk on 01.04.1976 whereafter, he was selected and appointed as Senior Clerk on 16.08.1989 in Labour Department. After having joined, it appears that he had a dispute with the concerned Labour-cum-Conciliation Officer and had put a blame of being wrongfully suspended and transferred in a civil suit preferred by him challenging the said suspension and transfer. The Additional Senior Civil Judge, while passing mandatory injunction order on 15.03.1993 made certain observations of the orders having been actuated by mala fide. It appears that disputes were resolved after the entire amount was paid to the petitioner and he was reinstated but he continued to have complaints against his superior officers and he also remained absent from duty for a long period. He ultimately preferred a Civil Writ Petition before this Court wherein he prayed to direct the respondents to complete his Service Book and release his salary w.e.f. May 1996 and also grant him Proficiency Step Up. It was alleged that the petitioner was entitled for Proficiency Step Up w.e.f. 01.01.1994 but the same were not released. He was also not given salary w.e.f. 13.05.1996 and he was being harassed continuously by respondents No.4 and 5, who were not allowing the petitioner to perform his duty. In this regard, representation was sent to the President as well as to the Chief Minister and various other officials. A Departmental inquiry was initiated against the petitioner for remaining continuously absent from duty. Although he had informed that he was unwell. The medical certificates submitted by

him were also taken into consideration and from the facts which have been stated by the respondents, the inquiry resulted in punishment of stopping his three grade increments which was challenged by him in appeal and the punishment order was set aside in appeal vide order dated 09.06.2003. Punishment order was passed on 09.02.2001 and the appeal was decided on 09.06.2003.

3. Learned counsel for the petitioner contends that the petitioner was entitled to be re-designated as Junior Assistant and also entitled to revised pay scale of the said post as persons junior to the petitioner who were placed in the seniority list were granted the said promotions and had also been further given promotion to the post of Labour Inspector Grade-II while the petitioner was not granted promotion as Labour Inspector Grade-I or Grade-II. He preferred a Civil Writ Petition No.12433 of 2005 which was disposed of by the Division Bench of this Court directing the respondents to pass speaking order. The respondents after considering his representation, re-designated him as Junior Assistant vide order dated 28.10.2005 w.e.f. 01.04.2005 and placed him in the pay scale of Rs.4400-7000.

4. Learned counsel for the petitioner claims that he should have been promoted and re designated w.e.f. 01.01.1996 instead after the petitioner was exonerated in the Departmental proceedings. He, therefore, filed a Contempt petition No.1345 of 2005 which came to be disposed of with liberty to take up remedies against the order dated 28.10.2005 whereafter the second writ petition has been filed.

5. The petitioner thus, claims firstly relief relating to being granted Proficiency Step Up from 01.01.1994; secondly he claims his promotion as Junior Assistant from 01.01.1996 and further promotion to the Post of Labour Inspector Grade-I and Grade-II w.e.f. the dates persons junior to him have been promoted.

6. *Per contra*, the respondents have filed their reply and pointed out that the petitioner remained absent from duty from 13.05.1996 to 23.09.1999 and he was awarded punishment of stopping of three grade increments. The same was, however, set aside in appeal. The orders have been implemented. The claim of proficiency step up from 01.01.1994 is not made out as the petitioner had already been allowed Proficiency Step up from 19.08.1987 after completion of 8 years service as per the previous Government Instructions dated 01.12.1988. Thus he would not be entitled to get next Proficiency Step Up from 01.01.1996 as per the Government Instructions dated 25.09.1998. The petitioner's medical claim and arrears of salary were all settled by the respondents and the payment have been released. The claim based on the letter issued by the Labour-cum-Conciliation Officer, Kapurthala dated 24.01.1996 therefore, is not made out.

7. The respondents have further stated that the petitioner's service record has not been good all through out and therefore he could not be given higher scale and Proficiency Step Up in terms of the Government Circular dated 25.09.1998 which required employees whose over all service record is good.

8. Learned counsel for the respondents has invited attention to the letter issued by the Government of Punjab dated 10.01.2000 which clarifies the Circular dated 25.09.1998 to mean that the overall service record to be adjusted as “good” would mean that 50% report should be good and above including at least two of the last three reports. The rest of the reports may be satisfactory/average. A summary of the confidential report of the petitioner has also been placed on record with the reply. It is also pointed out that the order passed by the civil court was challenged in appeal before the Court of Additional District Judge, Jalandhar, who has observed that the fault lies with the petitioner (respondent in appeal) who was offered the amount of subsistence allowance, but returned, and therefore, the interest thereto on the unpaid amount was not granted and the appeal was partly allowed.

9. Learned counsel for the petitioner has also argued that downgrading of his ACRs from good to average have not been communicated to him and therefore, such downgraded ACRs could not have been considered to deny him Proficiency Step Up. He relies upon the judgments passed by the Apex Court in Abhijit Ghosh Dastidar Vs. Union of India (2009) 16 SCC 166, RITES Limited Vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh 2017 (1) SLR 1, Daljeet Kaur v. State of Punjab 2016(2) PLR 133, Dr.Gurdev Singh Bhardwaj v. State of Punjab, 2012(4) SCT 635 and Raghbir Singh, Sub-Inspector v. State of Haryana 2012(1) SCT 205.

10. I have considered these submissions.

11. The petitioner has since his appointment in 1989 been continuously litigating in the Courts. The allegation of malice has not been held to be proved by the appellate Court and there are bald allegations. The observations of the Civil Court were not accepted by the Appellate Court and based on such allegations of malice and bias, the petitioner has tried to build up a case of denial of his claim for further promotion. However, respondents have pointed out that the petitioner's service record was not good and was mere average. The last three ACRs of the years 1996-1997, 1997-1998 and 1998-1999 were not available as he was absent from duty and of the year 1995-1996 it was average. For the year 1990-1991 to 1993-1994, the petitioner has earned average ACRs. There is a good ACR for the year 1994-1995. Thus, if the record of the petitioner is seen from 1990-1991 up to 1999-2000, there are only two good ACRs while there are four average ACRs and there are four ACRs which have not been submitted by the petitioner for assessment. Even for the year 2000-2001 and 2001-2002, the ACRs are average. Thus, it cannot be said that there has been a downgrading. In Abhijit Ghosh Dastidar's Case (supra), the Apex Court held as under as under:-

“8. Coming to the second aspect, that though the benchmark “very good” is required for being considered for promotion, admittedly the entry of “good” was not communicated to the appellant. The entry of “good” should have been communicated to him as he was having “very good” in the previous year. In those circumstances, in our opinion, non communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than

*the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (**Dev Dutt case, SCC P. 738, para 41**) relied on by the appellant. Therefore, the entries “good” if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.”*

It was a case where there was downgrading from “very good” to “good” and therefore the entry of good was required to be communicated. In **Devdutt Vs. Union of India (2008) 8 SCC page 725**, a similar view was taken by the Apex Court that even good entries can be treated as adverse and will be required to be communicated if it is a case of downgrading.

12. The petitioner’s service record, on the other hand, is found to be average consistently with only two good entries. Thus, it is not a case of downgrading but only a shift from one grade to another. The same, therefore, in the opinion of this Court, are distinct facts wherein the judgments as cited by the petitioner will have no application.

13. It is also noticed that the petitioner attained superannuation on 31.03.2007. He has already been granted the benefit of Proficiency Step Up on completion of 8 years of service whereafter his service record does not give him benefit of the subsequent Proficiency Step Up.

14. As regards the claim of promotion, merely because juniors have been promoted does not necessarily mean that a senior person should be promoted. Each and every person's service record has to be examined independently by the Promotion Committee or the concerned authority. Since the respondents have filed an affidavit and pointed out that they have considered the case of the petitioner for promotion and did not find him suitable, no relief can be granted by this Court as this Court will not substitute its opinion to that of the concerned Administrative Authority.

15. Considering that the respondents have not ignored and fairly considered the claims set up by the petitioner and reached to a conclusion on the basis of service record that he is not entitled for further promotion except to the post of Junior Assistant, no interference is warranted to such a decision of the respondents, moreover, as it is based on the record which has also been produced for perusal of this Court in the reply and additional affidavits.

16. In view of the above, both the writ petitions fail and accordingly dismissed.

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

(SANJEEV PRAKASH SHARMA)
JUDGE

20th September, 2023
mamta

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No