

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

CWP-6974-2023

Date of Decision: 10.04.2023

GURMEET KAUR

...PETITIONER

VS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

M.S. RAMACHANDRA RAO, J. (ORAL)

In the instant petition, the petitioner has assailed the order dated 09.06.2022 passed by respondent No.2 rejecting petitioner's claim for promotion to the post of Block Extension Educator under the Punjab Health and Family Welfare Technical (Group-C) Service Rules, 2016.

She also challenges the provisions of the said rules which provide for recruitment to the post of Block Extension Educator by way of 100% direct recruitment contending that such provision is violative of Articles 14 and 16 of the Constitution of India on the ground that no promotional avenue has been provided to Class-IV employees like her, who would have to stagnate on the same post throughout their service. She alleges that in case of Multipurpose Health Workers and Medical Laboratory

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Technician promotion to the post of Block Extension Educator had been provided by relaxing the criteria provided in the said Rules.

Learned counsel for the petitioner relies on the decision of the Supreme Court of India and *Food Corporation of India and Others Vs. Parashotam Das Bansal and Others* 2008 (5) SCC 100.

Admittedly, petitioner is working in the Department of Health and Family Welfare as Ward Attendant which is a Class-IV post. No doubt she has been doing the said job for more than 24 years and she had also acquired certain higher qualifications while in service. Unfortunately, no channel for promotion has been provided from the said post which the petitioner is holding to the post of Block Extension Educator.

When the petitioner previously approached this Court by way of filing of CWP No 8683 of 2022, the same came to be disposed of with a direction to respondent No.2 to consider and decide the legal notice (Annexure P-9) dt. 22.03.2021 got issued by the petitioner in accordance with law by passing a reasoned order within a period of 08 weeks.

Thereupon, (Annexure P-11) impugned order had been passed on 09.06.2022 stating that there is no provision in the Rules for promotion to Class-IV to post of Block Extension Educator; there is no quota/reservation for promotion to the post of Block Extension Educator and the said post has to be filled 100 % by way of direct recruitment in view of

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Notification/Rules dated 02.11.2016 issued by the Government of Punjab. It was held that petitioner was not eligible for promotion to the said post, in view of the absence of provision in the rules for the same.

Learned counsel for the petitioner contends that it is unjust to compel persons like the petitioner to continue in the same post indefinitely without providing any avenue for promotion. He also contends that in the decision cited (supra) of *Food Corporation of India and others*, the Supreme Court has held that a superior Court of this country has jurisdiction to issue directions to make a scheme of promotion to persons who are not provided avenue for promotion in the service regulations.

A perusal of the said judgment shows that in that case the respondents had been appointed in the Engineering Section and they constituted only about 1% of the total workforce of the appellant therein and they had stagnated as no promotional avenue was provided. Further, the appellant itself had approached the Union of India for creation of promotional avenue for them and for formulating schemes providing for Assured Career Promotion, and there was also recommendation to formulate such a scheme by 5th Central Pay Revision Commission. It was contended in that case that in respect of medical officers working in the appellant's organisation pursuant to a judgment rendered by the High Court of Andhra Pradesh, a scheme for Assured Career Progression was already framed.

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The Calcutta High Court took a view that except for engineers of the appellant organisation, all other categories of unionized employees had 2 or 3 promotions; that appellant entered into a memorandum of settlement with unionized employees, (but not with the respondents, who were officers of Group 'B' staff), and then formulated a scheme organizational restructure for unionized employees. It held that Government of India had not rejected the recommendation of ACPs scheme for the respondent since a recommendation had never been made by the appellant to Government of India on the aspect.

A Division Bench of the Calcutta High Court affirmed the said view.

Challenging the same, appellant had approached the Supreme Court of India.

The Supreme Court of India had held that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective, and promotion is a normal incidence of service. It had held that a Superior Court have jurisdiction to issue a necessary direction to make a scheme.

In our opinion, the said decision is clearly distinguishable because, in the instant case there is no proposal mooted by the respondent-State for creating a promotional avenue from the post of Ward Attendant,

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which is Class-IV post, to the post of Block Extension Educator and there is no recommendation from any Pay Revision Commission as well. Whether or not to provide a channel of promotion is the exclusive prerogative of the State and this Court has no jurisdiction to advise the Government to frame such a scheme to provide promotional avenue in the absence of any statutory or fundamental right shown by the petitioner to have been violated. If the petitioner has secured better qualifications while working as a Ward Attendant, it would certainly open to her to look at the other avenues of employment which provided better promotional avenues.

Counsel for the petitioner sought to place reliance also on an order dated 05.04.2019 in CWP No-617-2017.

In the said writ petition this Court had directed the State of Punjab to consider the representation of Class-IV employees to promote them to the post of Multipurpose Health Workers (male) and take a decision and subsequent thereto (Annexure P-8) notification was issued on 16.01.2020 providing for such promotion.

In that case, this Court had recorded specifically that the matter of promotion of the petitioner therein from Class-IV to Multipurpose Health Workers was already in consideration since 2014 and the State Government had been requested to consider the amendment in the Service Rules of Multipurpose Health Workers (male), and it was proposed that 1% posts of

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the total sanction posts would be filled from Class-IV employees working under the Control of the Director Health Services and having a Multipurpose Health Diploma certificate before appointment or after appointment.

It is in that scenario that such a direction was issued because the matter was already under active consideration of the State Government for recreation of promotional channel to the post of Multipurpose Health Workers from Class-IV post. But such is not the position in the instant case. Therefore the said decision also does not come to the aid of the petitioner.

Therefore, we find no merit in the writ petition. Accordingly, the same is dismissed at admission stage.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

10.04.2023
priyanka

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