

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

LPA-1146-2021(O&M)

Date of Reserve: 20.01.2023

Date of Pronouncement: 31.01.2023

Satish Kumar

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Ashish Aggarwal, Advocate, for the appellant.

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 24.02.2020, vide which the writ petition preferred by the appellant has since been dismissed.

The appellant had prayed for the following substantive reliefs:

“Civil Writ petition under Articles 226/227 of the Constitution of India for the issuance of appropriate writ, order or directions especially a writ in the nature of Mandamus to consider the case of the petitioner seeking promotion to the post of Medical Laboratory Technician Grade-1, whose candidature was not considered and denied despite of the fact that the name of the petitioner featured at Serial No.6 of the Seniority Merit List (Annexure P-2) and also the fact that some of the candidates whose name featured lower than the petitioner in the said seniority list (Annexure P-2) those cases were preferred than that of the petitioner, which is in contravention to the service law jurisprudence and

against the principles of natural justice and equity;

For issuance of any writ, order or direction especially a writ in the nature of Certiorari for setting aside the impugned order (Annexure P-10) dated 26.09.2019 whereby the official respondents have released the list of employees who have been promoted to the post of M.L.T Grade-1, which so has been formulated arbitrarily and without paying credence to the settled principles of service jurisprudence whereby the case of the petitioner has not been considered, despite his name featuring in the seniority list (Annexure P-2) at serial no.6 and having a good case for the promotion, and furthermore, to add insult to the injury, employees whose name featured at the lower position to that of the petitioner in the said seniority list, has been promoted to the said post.

AND/OR

For issuance of any writ, order or direction especially a writ in the nature of Mandamus to release all the consequential monetary reliefs and benefits which the petitioner would have enjoyed had he been promoted to the post of M.L.T Grade-1 at the time from when his promotion was due.”

Learned counsel for the appellant submits that appellant was promoted to the post of Medical Lab Technician Grade-2 on 12.06.2014. And, on 13.06.2017 he became eligible under the rules for further promotion to the post of Medical Laboratory Technician Grade-1. His grievance is that even though vacancies were available in the promotional cadre, yet the authorities failed to consider his claim for promotion. So much so, vide order dated 26.09.2019 (P-10), even persons junior to the appellant were promoted ignoring his claim. Thus, apparently, the action of the authorities

was unsustainable, but yet the learned Single Judge failed to appreciate this position. In support of his submissions, he relies upon the judgment of the Division Bench of this Court in Chaman Lal Lakhan Pal v. Union Public Service Commission, 1999 (1) SCT 175, and also the decision of the Supreme Court in M.P. Singh Bargoti v. State of Madhya Pradesh & Anr., 2015 AIR (SC) 556.

We have heard learned counsel for the appellant and perused the record.

Upon analysis of the matter in issue and the material on record, the learned Single Judge concluded that in the absence of any rules that mandate a time frame within which, upon the vacancies being available, promotions have to be made, no such direction could be issued to the respondent-employer to promote the appellant. The position of law is settled that no civil servant has a right to be promoted to a higher rank/post, as the only right an eligible aspirant would possess is a right of consideration for promotion as and when any such process is initiated by the employer.

While determining a similar issue, a Division Bench of this Court in Union Territory, Chandigarh Administration and others v. Tarlochan Singh and others, 2014(3) SCT 330, upon examining various decisions of the Supreme Court, had concluded that an employee had no right to claim promotion from a particular date or a direction that a vacancy in the promotional avenue be filled up, as it was for the employer to initiate the process of promotion and fill up the post(s) based on its requirements:

“13. In State of Haryana v. Subash Chander Marwaha and others, AIR 1973 SC 2216, the Court held to the following effect:-

16. xxx xxx xxx xxx

17. Similar is the view taken in Nirmal Chandra Sinha v. Union of India, (2008) 14 SCC 29, when it was held to the following effect:-

"7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India v. K.K. Vadera, AIR 1990 SC 442, State of Uttaranchal v. Dinesh Kumar Sharma, (2007)1 SCC 683, K.V. Subba Rao v. Govt. of A.P., (1988)2 SCC 201, Sanjay K. Sinha-II v. State of Bihar, (2004)10 SCC 734."

18. xxx xxx xxx xxx

19. In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer is to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises. However, in case, an Officer is given Current Duty Charge or promoted on adhoc basis, he shall be entitled to the pay of the promoted post as has been held in Arindam Chattopadhyay's case (supra) and State of Haryana Vs. P.K. Grover (1983) 4 SCC 291.

20. In view of the consistent well established principles of law as enunciated in the above mentioned judgments, we find that the direction of the Tribunal holding that the applicants are entitled to be promoted from the day the vacancy arose is clearly not sustainable in law.

Consequently the present writ petition is allowed and the impugned order dated 15.3.2012 passed by the Tribunal is set aside.”

In so far as the decision rendered by the Division Bench in Chaman Lal Lakhan Pal's case (supra), upon which the reliance is placed by the learned counsel for the appellant, the same was considered by a subsequent Division Bench in Mohan Lal Matta v. National Institute of Technology & Another, 2005(7) SCT 907, and it was observed that the judgment in the said case did not lay down any proposition of law. And, the said decision was made in the peculiar facts and circumstances of the said case:

“6. ...The judgment passed in the case of Chaman Lal Lakhanpal (supra) relied upon by the learned counsel for the petitioner, in our opinion does not lay down any proposition of law, as advanced by the learned counsel for the petitioner. In fact, a perusal of the aforesaid judgment would show that the same has been rendered on the basis of the rules governing inclusion of Haryana Civil Services Officers in the select list of IAS. In the present case, no rule which may be para materia to the rules which were under consideration of the Division Bench in the case of Chaman Lal Lakhanpal (supra), have been brought to our notice. The aforesaid judgment was clearly given in the peculiar facts and circumstances of the aforesaid case...”

We have also examined the said decision and found that the same has no bearing on the present case.

As regards the grievance of the appellant that even though he

Grade-2, yet persons junior to him were promoted, is equally erroneous and misplaced. It would be crucial to point out here that appellant had retired from service on 13.12.2017. Whereas, the persons, purportedly junior to him, were promoted, as Medical Laboratory Technician Grade-1, post his retirement on 26.09.2019 (P-10). That being so, the reliance placed by the learned counsel upon a decision of the Supreme Court in M.P. Singh Bargoti's case (*supra*) would not advance his claim either. For, in the said case, the appellant was granted notional promotion to the post of Deputy Superintendent of Police w.e.f. 29.05.1997, when his junior (V.N. Dubey) was promoted and the appellant was still in service, and had retired on 31.03.1998. Which is not the position in the matter at hands.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.01.2023

Rajan

Whether speaking / reasoned:	YES/NO
Whether Reportable:	YES/NO