

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

CWP-11617-2016 (O&M)

Date of Decision: 06.12.2023

Rajinder Singh

... Petitioner

V/s.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present : Mr. Vikas Singh, Advocate, for the petitioner.

Mr. Charan Preet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this writ petition has come before this Court third time claiming his consideration for promotion on the post of Superintendent Gr. I. The petitioner had preferred this writ petition seeking quashing of the order dated 28.03.2016, whereby the representation of the petitioner for retrospective promotion has been declined. The writ petition was later on amended in light of a decision taken by the respondents dated 14.12.2017, which has been endorsed on 22.12.2017, whereby the case was again examined in terms of the directions issued by this Court in case CWP No.1040 of 2016 vide order dated 16.02.2016 passed in this case earlier.

2. Learned counsel for the petitioner has submitted that the channel of promotion from the post of Superintendent Grade-II to Superintendent Grade-I is by way of promotion on seniority-cum-merit basis from amongst the Superintendents Grade-II, who are members of

Group-B. The post of Superintendent Grade-I is a Group-A post and therefore, the same is to be filled by on the basis of recommendations of the DPC. The Secretary of the Department, after examining the candidature of the petitioner and two other Superintendents working in the Department, recommended the case of the petitioner for promotion to DPC. It was stated that the post of Superintendent Grade-I was available and the same was to be filled from general category. However, the recommendations were not acted upon by the respondents and as it is stated by the respondents that the issue whether the post is to be filled from Scheduled Caste and belongs to backlog or whether the post is to be filled from General Category, was not clarified. Therefore, advice was sought from the Department of Legal and Legislative Affairs. The Legal Remembrancer and Secretary has ultimately given his advice on 31.8.2015 holding that the post of Superintendent Grade-I was against Roster Point No.20, which belongs to General Category. The respondents, however, did not promote the petitioner as the advice was received on 31.08.2015 and the petitioner retired on 31.08.2015. He therefore, preferred the writ petition before this Court.

3. The Personnel Department thereafter examined the matter and passed an order dated 28.03.2016 rejecting the claim of the petitioner for notional promotion based on the opinion of the Legal Remembrancer. The same was not treated as a speaking order by this Court and, therefore, another order was passed by the respondents afresh on 22.12.2017, wherein the respondents although found that a post of Superintendent Grade-1 was available as on 01.04.2015, however, the post could not be filled up immediately for justifiable reasons, in terms of the order passed on

28.03.2016 and now the same cannot be filled on account of the instructions issued by the Government of Punjab dated 30.08.1996 which does not allow retrospective promotion to persons who have already retired.

4. Learned counsel for the petitioner further submits that the decision taken by the respondents is only contrary to the observations made by the High Court in its order dated 16.02.2016. The High Court in the essence while passing the order directs the respondents to promote the petitioner retrospectively if it is found that the petitioner was entitled for promotion against the vacant post. Thus he submits that the petitioner's case was to be examined by the DPC for considering his entitlement and he was to be given retrospective promotion from the date the post had fallen vacant i.e. from the date of occurrence i.e. 01.04.2015 when the petitioner was in service. He also submits that accordingly the petitioner was also entitled for all consequential benefits.

5. Per contra learned counsel appearing for the respondent- State has vehemently contested the case and submitted that consideration of petitioner for promotion to the post of Superintendent Grade-I was justifiably denied earlier while he was in service on account of confusion whether the post is to be filled from general category or from reserved category. The clarification from the Legal Remembrancer came only on 31.08.2015 and on that day the petitioner retired. He, therefore, could not have been considered by the DPC for promotion while he was in service. The Circular issued by the Government of Punjab dated 30.08.1996 specifically bars consideration of retired persons for promotion retrospectively and therefore, the case of the petitioner was examined and

his request for retrospective promotion was declined. The order, therefore, does not suffer from any illegality and he prays for dismissal of the writ petition.

6. I have considered the submissions made by the learned counsel for the parties and found that petitioner's case was recommended for consideration for promotion by the Secretary of the Department but the Department of Welfare on basis of some report received from their own inspection team, created a confusion that the post is to be manned by an SC candidate, however, it is to be noticed that the Secretary himself has while making recommendations pointed out that the post falls at point No.20 and it being a general post at roster No. 20, it was to be filled up from general category candidate. In-spite of there being no ambiguity on account of the fault of the Department up to the date when the petitioner retired the issue was not finalized by the respondents and it was only on 31.8.2015 that it was clarified that the post is to be filled from general category. In spite of that on the basis that the petitioner is now retired on 31.08.2015, the case of the petitioner was not considered.

7. While there is no right of promotion, there is a right of consideration for promotion. The respondents cannot avoid their obligation to consider the candidature of the petitioner for a post, which was lying vacant while the petitioner was in service. This aspect has been examined by the Court in its earlier order passed on 16.02.2016 and it would be apposite to quote the relevant part of the order as under:-

4. "The request appears genuine and bona fide since it cannot be said that the petitioner has no legitimate grievance as he was senior most Superintendent Gr. II in line for promotion

as per seniority and turn. Consequently, a direction is issued to respondent No. 1 to consider and decide the representation Annxure P-6 within one month from the date of receipt of a certified copy of this order. If the petitioner makes a request for personal hearing, it shall be granted to him for which an additional 15 days is granted from the time line fixed above. If the Commission is convinced that the petitioner has been wronged then they can promote the petitioner retrospectively without having to pass a detailed order or calling the petitioner for hearing.

5. In case, the petitioner is found fit for promotion with effect from the due date of occurrence of vacancy he may be promoted notionally but the monetary benefits of such promotion would go to him in the shape of arrears of difference of the salary between the posts of Superintendent Gr. I and Superintendent Gr. II including passing of an order rectifying the last pay certificate with consequential benefits enhancing accordingly pension and pensionary dues. If this is found admissible then the monetary benefits be computed and paid within the next one month.”

From above, it is apparent that the Court had directed the respondents to consider the petitioner's candidature and if he is found fit for promotion, he was to be granted promotion with effect from the date of occurrence of vacancy. However, the respondents have adopted an adamant approach and again denied the petitioner his rightful claim relying upon a circular dated 30.08.1996, which also does not debar the petitioner from his rightful claim. In fact the Circular issued by Govt. of Punjab dated 30.08.1996 specifies that in cases where the employees have got specific judgment of the Court in their favour, the matter may be decided in accordance with the respective judgments and if needed, the opinion of

Legal Remembrancer may be taken before issuing orders. However, again the respondents have forced the petitioner to approach this Court as they did not conduct the exercise and did not convene the DPC, it is for the DPC to have examined the case of the petitioner and seeing his record for the purpose of recommending his case for the promotion. Where-after on receiving the recommendation and after considering the law as laid down by this Court, retrospective promotion was required to be given to the petitioner with benefits as already directed (supra).

8. This Court feels saddened by the approach adopted by the administrative authorities, who force persons to come for unnecessary litigations, not only the time of the Court is wasted but the State is also found to be entering into unnecessary litigation. In this regard, the principal of accountability should be introduced by the State authorities against persons, who unnecessarily put/ spokes and try to give wrong interpretations to Court's orders and although the Court has passed orders in unambiguous language. No clarification was sought from this Court with regard to its order dated 16.08.2016 and by creating further confusion and interpretation, this set of litigation has again come before this Court.

9. Having noticed above, without further hanging on the issue, this Court directs the respondents to conduct the DPC for the post of Superintendence Gr. I treating it as a general post as 01.04.2015 and if the petitioner is found suitable with respect to the requirements under the Rules, necessary orders shall be passed promoting him from the retrospective date i.e. 01.04.2015 and all consequential benefits accruing from the said order shall also be made available to the petitioner. The entire exercise shall be

is stated to have retired, his pension and all retiral benefits shall also be revised accordingly and the same shall also be released within the said period.

10. Considering the attitude adopted by the respondents relating in this litigation coming before this Court more than once, I impose a cost of Rs. 20,000/- to be also paid to the petitioner, which shall be recovered from the concerned officers of the Department of Personnel.

11. Petition stands disposed of accordingly.

12. All the pending civil miscellaneous application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

06.12.2023

Seema/vs

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