

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

203

Amended CWP-18725-2013

Date of decision:05.01.2023

Rajinder Prasad

... Petitioner

Vs.

Financial Commissioner Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Bhupesh Dogra, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. H.S. Oberoi, Advocate for CAG, Haryana.

SUVIR SEHGAL J.

By way of present petition filed under Article 226/227 of Constitution of India, petitioner has approached this Court for issuance of a writ of mandamus for directing the respondents to grant him retiral benefits i.e. gratuity, commutation of pension, balance salary and 3rd ACP. A further prayer has been made for issuance of a writ of certiorari quashing impugned order dated 19.07.2017, Annexure P-11, passed by respondent No.2, whereby the petitioner has been denied promotion to the post of Assistant Superintendent-Treasury and Assistant Treasury Officer from the date his juniors were promoted and for a direction to the respondents to consider the case of the petitioner for promotion.

At the outset, counsel for the petitioner submits that the grievance of the petitioner for the grant of retiral and other monetary benefits, no longer remains and all the due benefits have been paid. Counsel submits that the petition survives insofar as the claim of the petitioner for promotion to the higher post is concerned.

Counsel for the petitioner has submitted that the petitioner was appointed as a Clerk in the Treasury and Accounts Department on 17.10.1980 and was promoted to the post of Assistant in the year 1996. FIR No.40 dated 20.09.2002 was registered against him at Police Station S.V.B., Ambala, for offence under Sections 07 and 13 (1) (d) of Prevention of Corruption Act, 1988 and after trial, petitioner was acquitted on 04.03.2005. Counsel submits that the petitioner attained the age of superannuation and retired from the post of Assistant on 31.05.2012. Although, initially he was not given the financial benefits, but the same have been granted to him. He submits that the petitioner has been repeatedly representing for consideration of his case for promotion and during the pendency of the instant petition, vide impugned order, Annexure P-11, the request of the petitioner for promotion, has been declined. Counsel submits that the petition was amended to challenge the freshly passed order.

Counsel for the petitioner urges that the impugned order has been passed on the ground that the judgment of acquittal is under challenge before this Court. By referring to judgment dated 31.10.2017, Annexure P-12, in CRA-S-1787-SBA-2005 titled as State of Haryana Versus Rajinder Parshad, counsel contends that the appeal filed by the

petitioner has been dismissed. He submits that as the judgment, Annexure P-12, has been passed subsequent to the impugned order, the ground on which his representation has been rejected, no longer exists.

Learned State counsel has, however, supported the impugned order and has argued that adverse remarks were made against the petitioner in the Annual Confidential Report for the year 2002-2003, which were conveyed to him on 25.09.2003. He submits that the adverse ACR report has not been challenged and advice has been received that adverse remarks are not to be expunged.

I have heard counsel for the parties.

While rejecting the case of the petitioner vide impugned order, Annexure P-11, respondent No.2 has observed as under:-

“That keeping in view the fact that criminal appeal filed by the State is still pending for adjudication before the Hon'ble High Court, the Government has advised vide memo no.29/27/2013-5FA dated 06.09.2016 not to expunge the adverse remarks in the ACR of the year 2002-03, as reproduced in the above table. Hence, the petitioner is not fit for promotion to the post of Assistant Superintendent-Treasury and Assistant Treasury Officer from the date of petitioner's junior's promotion.”

It is evident from the above that the reason, which prevailed with the authority, is the pendency of the appeal filed by the respondent-State. However, the appeal has since been dismissed. Therefore, the sole premise on which the impugned order is based, no longer survives. In these circumstances, this Court has no option, but to set aside in the

impugned order.

Accordingly, impugned order dated 19.07.2017, Annexure P-11, is quashed with a direction to respondent No.2 to pass a fresh order, within a period of 04 months, after taking into account the subsequent developments.

With these observations, petition is disposed of.

05.01.2023
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No