

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

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CWP-14786-2018

Date of Decision: 26.07.2023

Bhinder Singh and others

.... Petitioners

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. R.K. Arora, Advocate
for the petitioners.

Mr. Paramjit Batta, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to grant the benefit to the petitioners in terms of the instructions dated 23.04.2012 (Annexure P-7) and to grant them their pension and other retiral benefits.

2. Learned counsel for the petitioners, while inviting attention to the order passed in ***LPA-37-2017*** in relation to the judgment placed on record, as Annexure P-8 titled '***Jagjit Singh and others Vs. State of Punjab and others***' passed in ***CWP-17358-2015***, submits that the Division Bench has observed that it is the fault of the respondents that they have not conducted the timely exercise of promotion which has resulted in the situation which has arisen and claim of the petitioners for fixation of their pension on the basis of last emoluments drawn by them based on the higher pay scale was to be given of the promotional post. It would be apposite to

quote the order passed by the Division Bench which reads as under:-

“We have heard learned counsel for the parties at a considerable length and are of the view that the appellants cannot take undue advantage of their own inaction or wrongs. Seniority is a condition of service. It has to be determined at the earliest in accordance with the Rules governing conditions of service. If any delay occurs because of multiple Court proceedings, the authorities ought to have evolved some mechanism to grant regular promotions to the senior most Lecturer/ Master/ Mistresses, for promotion is also a legitimate expectation in service career. The controversy nevertheless does not require further deliberations, for necessary directions to consider and promote the Lecturer/ Master/ Mistresses on higher posts as per their seniority and other eligibility conditions have already been issued by this Court in the above-cited order dated 23.05.2017. Let those directions be complied with within the time-frame given in the cited order. The respondents in the lead case or the writ petitioners in the connected petitions shall also be considered for regular promotion as per their seniority and eligibility conditions from the due date and in accordance with the Rules, which were in vogue at the time of occurrence of vacancies. While the promotions shall be granted retrospectively but on notional basis only and they shall be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. They shall also be entitled to arrears of pension and other retiral benefits alongwith interest @7% per annum. The needful shall be done within a period of six months. However, if the respondents in the lead case and the writ petitioners in the connected cases have not been granted emoluments for the period they officiated/worked on the higher posts, let such claim be also considered within a period of four months.”

3. From the above, it is apparent that while a Single Judge had allowed the petitions too and held that the pension shall be fixed on the basis

of last emoluments, even though the petitioners were working on officiating basis on the higher post, the Division Bench has clarified and held that the promotions shall be granted retrospectively but on notional basis only. The petitioners before it who are similar to the petitioners before this Court in the present petition, would be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on higher promotional post, if they are found to be suitable and recommended for promotion.

4. It is the case of the respondents that the petitioners could not be considered as they did not fall in the zone of consideration. However, this Court deems it appropriate to direct the respondents to consider the cases of the petitioners afresh in terms of the directions issued by the Division Bench (*supra*) and if they are found suitable and within the zone, they may be given the same benefit *mutatis mutandis*. The said exercise shall be conducted within a period of four months from today.

5. With these observations, the writ petition stands disposed of.

26.07.2023

D.Bansal

**(SANJEEV PRAKASH SHARMA)
JUDGE**

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