

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 26491 of 2013

Reserved On: 02.02.2023
Pronounced On: 03.07.2023

Raj Kumar Sharma and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashok Bhardwaj, Advocate
for the petitioner(s).

Mr. R.K.Kapoor, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. As many as five petitioners have prayed for the issuance of the writ in the nature of certiorari to quash the order dated 12.07.2013 passed by the Director, Public Instructions (SE), Punjab. In substance, the petitioners pray for the issuance of the directions to the respondents to grant notional promotion to the petitioners as the Lecturers with effect from the date when the Departmental Promotion Committee recommended their names.

2. In the impugned order, the basic information with regard to each of the petitioners has been compiled in the table, which is extracted as under:-

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<i>S.No.</i>	<i>Name</i>	<i>Date of meeting of D.P.C.</i>	<i>Date of Orders of Promotion as Lecturer.</i>	<i>Date of Superannuation of the petitioners.</i>
1.	Raj Kumar Sharma	13.12.2011 to 15.12.2011	May, 2012	31.10.2011
2.	Ajaib Singh	-do-	-do-	29.02.2012
3.	Veena Kumari	-do-	-do-	29.02.2012
4.	Gurdev Singh	-do-	-do-	31.03.2012
5.	Des Raj	-do-	-do-	30.04.2012

3. A meeting of the Departmental Promotion Committee was held in the month of December, 2011, however, due to the fact that the Model Code of Conduct on account of the elections of the members of the State Legislative Assembly which remained in force w.e.f. 24.12.2011 to 07.03.2012 in the State, the competent authority could not pass the orders of promotion. In the meantime, the petitioners retired before the competent authority could take up the matter for considering the report of the Departmental Promotion Committee.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the petitioners while relying upon the judgment passed in *Nirmal Singh v. State of Punjab and Others (Civil Writ Petition No. 234 of 2013, decided on 07.10.2016)* and *Brij Bala v. State of Punjab and Others (Civil Writ Petition No. 14661 of 2013, decided on 03.08.2018)*, submits that the petitioners are entitled to be promoted as the Lecturers from the date of meeting of the Departmental Promotion Committee.

6. This Court has carefully read the judgment passed in *Nirmal Singh's case (supra)*. The Court concluded that once the vacancy exists but

due to the imposition of the Model Code of Conduct, the employee was not granted the benefit of promotion, hence, deemed promotion along with all the consequential benefits is required to be ordered. Similarly in ***Brij Bala's case (supra)***, the Bench has relied upon the judgment rendered in ***Nirmal Singh's case (supra)*** and allowed the writ petition.

7. On the other hand, the learned State counsel has drawn the attention of the Court to the judgment passed in ***Darshan Singh v. State of Punjab and Others (Civil Writ Petition No. 9781 of 2013, decided on 02.08.2016)***, ***Dr. H.Mukherjee v. Union of India (1994) SCC Suppl. (1) 250.***

8. In ***Darshan Singh's case (supra)***, this Court held that a retired person cannot be promoted unless it is specifically mentioned that the promotion is with retrospective effect or is deemed promotion.

9. In fact, after examining the detailed case law, this Bench in ***Bhajneek Singh and Another v. State of Punjab and Another (Civil Writ Petition No. 24903 of 2015, decided on 22.02.2023)*** held as under:-

“10. This Court has considered the submissions of the learned counsels while analysing the documents placed on the file. Before proceeding further, it would be appropriate to consider the case law relied upon by the learned counsel representing the petitioner. In ***Major General H.M.Singh's case (supra)***, the Supreme Court was considering the issue of promotion of Major General to the post of Lieutenant General. After noticing that by two presidential orders, the petitioner was allowed extension in service in order to enable the Appointment Committee of the Cabinet, held that the rejection of the claim on the ground that he was on an extended period was invalid. It is evident that the aforesaid judgment is in the peculiar facts of

*the case. The next judgment relied upon by the petitioner in **Chaman Lal Lakhanpal's case** (supra), is not applicable because the claim for promotion to IAS was being considered in respect of the vacancies which had occurred in the consecutive years viz. 1994-95, 1995-96 and so on. The Division Bench held that the Union Public Service Commission had failed to consider the petitioner's claim. It may be noted here that for promotion to the post of IAS, the appointment is regulated by the Indian Administrative Service (Appointment by Promotion) Regulation 1994, which envisages year wise vacancies and consideration. Hence, the aforesaid judgment is not applicable to the facts of the present case. In **Jagjit Singh's case** (supra) the Division Bench while upholding the judgment passed by the learned Single Judge held that it was wrong on the part of the respondent to determine the seniority as it is a condition of service and it has to be determined at the earliest in accordance with the rules governing the conditions of service. There was delay on account of multiple court proceedings and the respondent in that case had continued to work on the officiating capacity. In those circumstances, the Court upheld the judgment of the Single Bench. In **Brij Bala's case** (supra), a meeting of the Departmental Promotion Committee was not held before the retirement of the petitioner and in that case his juniors were promoted. The Court while relying upon **Chaman Lal Lakhanpal's case** (supra) allowed the writ petition. In **Vijay Kumar Bansal's case** (supra) this Court had followed the judgment in **Major General H.M. Singh's case** (supra) and allowed the writ petition. In **Nirmal Singh's case** (supra) it was found that though the appointing authority had promoted him but the order was not implemented as he has already retired. In those facts, the Court allowed the writ petition.*

11. On the other hand, the Supreme Court in **Union of India vs. N.P.Damania 1995 (Supp) (1) SCC 1** examined the concept

*of granting the deemed date of promotion with retrospective effect. In that case, Appointment Committee of the Cabinet (hereinafter referred to as 'ACP') did not agree with recommendations of the Departmental Promotion Committee without recording the reasons. In that context the Supreme Court held that the Tribunal was not correct in directing the deemed date of promotion but directed the ACP to reconsider the matter. Recently, in **UOI vs. Manpreet Singh Poonam 2022 (6) SCC 105** the Supreme Court once again examined the same matter in issue and reviewed the entire case law and held that the deemed date of promotion should not be ordinarily resorted to because the departmental Promotion Committee is merely a recommendatory/advisory body and ultimate decision is to be taken by the competent authority. The recommendations of the DPC are not final and binding on the competent authority. It was also held that delay in consideration of promotion due to vacancy creates no vested right and the promotion cannot be granted retrospectively de hors the rules. This Court has also examined the judgments passed in **State of Uttranchal and another vs. Dinesh Kumar Sharma 2007 (1) SCC 683**, **UOI vs. K.K.Wadhera 1989 (Supp) (2) SCC 625**, **Fakir Chand Chawla vs. State of Punjab 2013 (4) SCT 659** and **Sikander Singh vs. State of Punjab 2016 (4) SCT 542** wherein it has been held that unless provided in the rules there is no provision for deemed promotion on the date of the vacancy."*

10. It is evident that there was no unnecessary delay or malafide on the part of the competent authority. Moreover, the report of the Departmental Promotion Committee is recommendatory. The final decision is required to be taken by the competent authority. The promotion cannot be ordered from the date the vacancy arises. It depends upon the decision of the competent authority as and when the vacancy is sought to be filled up. It is evident that

while delivering the judgments in *Nirmal Singh's case (supra)* and *Brij Bala's case (supra)*, the attention of the Bench was not drawn to the well settled law of the Supreme Court in the various judgments which have already been discussed, in detail, in the previous case.

11. Keeping in view the aforesaid discussion, this Court does not find it appropriate to issue either the writ of certiorari or mandamus. Consequently, the writ petition is dismissed.

(Anil Kshetarpal)
Judge

July 03, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No