IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23337 of 2015 (O&M)
Date of Decision:11.01.2023

S.K. Gupta (since deceased) through LRs

...Petitioner

Versus

Sarva Haryana Gramin Bank

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashok Tyagi, Advocate
for the petitioner.

Mr. Vipin Mahajan, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed by the petitioner seeking a writ in the nature of Mandamus directing the respondent to grant notional promotion to the petitioner with effect from 11.08.2011 i.e. the date on which the respondent Bank issued a Circular for filling Scale—IV vacancies after approval from Board of Directors and the parent/Controlling Bank i.e. Syndicate Bank.

2. The brief facts of the case as stated are that the petitioner (since deceased) had been working in the erstwhile Bank known as Gurgaon Gramin Bank, sponsored by Syndicate Bank till 29th November, 2013, which is now known as Sarva Haryana Gramin Bank, sponsored by the Punjab National Bank. The petitioner was appointed in the respondent Bank on 21.3.1977 and after serving more than 35 years, he retired as a Senior

PREM SINGH
2023.01.27 10:23
I attest to the accuracy and
authenticity of this order/judgment

Manager on 30.4.2012. The petitioner had unblemished record and there was nothing adverse against him nor any criminal proceedings were ever initiated against him. The petitioner, who was working in the Scale III, became due for promotion to the post of Scale—IV from 1.4.2011. It is averred that a notification was issued by the Bank notifying 14 vacancies of Scale IV, vide Circular dated 11.8.2011 (P-3) against which only 12 officers, including the petitioner, who was at No. 1 in seniority, were eligible. It is alleged that though the respondent Bank did promote all officers/officials in Scales I, II and III within a span of five days when the DPC met (on 16th to 20th January, 2012), but it deliberately did not do any promotion to the post of Scale—IV, only with a view to debar the petitioner from promotion. It is submitted that the fact of the petitioner being at seniority No.1 in Scale III officers and promotion of officers to Scales I to III are apparent from Annexures P/4 and P/5. The respondent Bank deliberately delayed the promotion process of Scale III officers and waited for the retirement of the petitioner. After the retirement of the petitioner on 30.4.2012, the respondent Bank notified 22 Scale IV vacancies on 17.11.2012 after increasing the vacancies and within short span of time notified the interview on 11.12.2012, vide Circular Annexure P/7 and thereafter promoted all 16 candidates from Scale III to Scale IV cadre (P-8). Even one D.N. Singla, against whom many FIRs were pending was considered and promoted to Scale IV cadre. It is submitted that the petitioner was deliberately denied in a calculated manner by the respondent Bank of his rightful due to get promoted to Scale IV cadre. Hence, the

PREM SINGH
2023.01.27 10:23
I attest to the accuracy and
authenticity of this order/judgment

instant writ petition.

3. Learned counsel appearing on behalf of the petitioner would argue that the despite the fact that petitioner had unblemished record and there were no complaints whatsoever or remarks against him nor were any criminal proceedings ever initiated against him, still the petitioner was denied of his legitimate right of being promoted to post of Scale IV. It is argued that the Government of India has issued a circular dated 14.12.2014 wherein it has been specified that names of persons who are due to retire should also be considered for promotion. The petitioner was the senior most person when promotions were to be made, however the DPC was not convened. It is submitted that a conspiracy was hatched so as to debar the petitioner from his due promotion and deliberately process of filling up the post of Scale IV was halted. This plea is clearly established from the fact that the respondent Bank did promotion of all the officers to the cadre of Scale I, II and III.

4. Per contra, Mr. Vipin Mahajan, learned counsel appearing on behalf of the respondent would argue that the instant writ petition is liable to be dismissed on the ground of delay and latches. The petitioner is claiming promotion w.e.f. 11.8.2011 whereas the present writ petition was filed in October, 2015 i.e. after a delay of more than four years and there is no explanation forth coming to justify the delay. It is also submitted that the relief sought by the petitioner is totally misconceived. The petitioner is claiming promotion w.e.f. 11.08.2011 i.e. the date on which officers to Scale IV vacancies were promoted. However, admittedly, no person junior to the petitioner was promoted from the date the petitioner is claiming

PREM SINGH
2023.01.27 10:23
I attest to the accuracy and
authenticity of this order/judgment

promotion. It is also submitted that the petitioner was nominated as an accused in FIR No. 1125 dated 25.11.2015 registered at Police Station Sadar Gurugram, for sanctioning housing loan in violation of settled norms of the Bank, and, therefore, has not approached this Court with correct facts.

5. I have heard learned counsel for the parties and perused the record.

6. A short question that falls for consideration in this case is, whether the petitioner is entitled to grant of notional promotion, particularly when no person junior to him has been promoted ignoring the petitioner?

7. The entire grievance of the petitioner herein is that he has been ignored for promotion even though he was No. 1 on the seniority list of persons on Scale III to be promoted to Scale IV and the Departmental Promotion Committee was not held deliberately to avoid promoting him. Great stress has been laid on judgments rendered in **V.P. Gindroniya Versus State of Madhya Pradesh 1970 AIR (SC) 1494; State of Assam Versus Padma Ram Borah 1965 AIR (SC) 473; State of Punjab Versus Khemi Ram (1970) 2 SCR 657; Sudhir Chandra Sarkar Versus Tata Iron & Steel Co. Ltd. and others 1984 AIR (SC) 1064; UCO Bank Versus Rajinder Lal Kapoor (2007) 6 SCC 694; CWP No. 9999 of 2005 titled USHA Jain Versus Uttar Haryana Bijli Vitran Nigram decided on 4.12.2006; CWP No. 1873 of 2014 titled Jogi Ram Versus Haryana State Federation of Consumer's Cooperative Wholesale Stores decided on 23.5.2014; CWP No. 12171 of 2010 titled Ajit Singh Versus Uttar Haryana Bijli Vitran Nigam decided on 19.1.2012; State of Jharkhand and otheres Versus Jitendra Kumar Srivastava 2013 (5) SLR 448;**

PREM SINGH
2023.01.27 10:23
I attest to the accuracy and
authenticity of this order/judgment

Jaswant Singh Gill Versus Bharat Cooking Coal (2007) 1 SCC 663; Rajnagar Textile Mills Versus Gunvant Lal Chanddas Kayastha 2010 LLR 869 and Atam Bodh Sharma Versus State of Haryana 2006 (4) SCT 760 to argue that he is entitled to be promoted since he was the senior most at the relevant time.

8. No doubt, the petitioner has a right to be considered for promotion, if the Departmental Promotion Committee had been convened, which is not the case herein. The petitioner through the writ petition is seeking retrospective promotion from a particular date i.e 11.08.2011, even though it is established that no person junior to him had been promoted ignoring the petitioner. It is only after seven months from the date of retirement of the petitioner that the Departmental Promotion Committee met and promotions were made. Apart from arguing that there was a deliberate attempt to circumvent the promotion of the petitioner by not holding the DPC, there are no allegations of any malafides. The petitioner would have then to establish that the administration was inimical to him.

9. In fact, vide letter dated 11.8.2011 the various branches had been informed about the creation of vacancies as on 1.4.2011, which stood approved by the Board of Director in its meeting held on 8.8.2011. It is thereafter that a fresh seniority list was prepared on 20.9.2011 and the name of the petitioner was reflected at serial No 1. The seniority list was subject to the final outcome of writ petitions/Letters Patent Appeal pending in this Court. The process was initiated to start filling up the vacancies under direct recruitment and promotion for various cadres i.e from Office Assistant to Officer Scale I to Officer Scale III, vide Circular dated 6.1.2012. The

PREM SINGH
2023.01.27 10:23
I attest to the accuracy and
authenticity of this order/judgment

meetings were fixed and scheduled to be held in January 2012. It is thereafter a decision was taken on 17.11.2012 to increase the vacancies and hold interviews, while in the meantime the petitioner had since retired on 31.3.2012. In the opinion of the court, it cannot be said that there was an inordinate delay in holding a DPC. It is settled that an employee at best has a fundamental right to be considered for promotion but cannot demand it. There can not be a vested right with the employee to retrospective promotion unless there is an inordinate delay or an unjustified one in conducting DPC.

10. The ground that the petition filed is to be dismissed as time barred has merit especially when the petitioner retired in March 2012 and approached this Court in 2015. The explanation that he was waiting for the decision in the Letters Patent Appeal, wherein the Bank had challenged his pay-scale, would not be a good enough reason not to approach for his promotion.

11. For the reasons afore-stated, the writ petition is dismissed.

11.01.2023 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No

PREM SINGH
2023.01.27 10:23
I attest to the accuracy and
authenticity of this order/judgment