

**CWP-24903-2015 (O&M)
and other connected cases** **1**

**107-3 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Bhajneek Singh and another
....Petitioners

State of Punjab and another ..Respondents

Resham Singh
....Petitioner

State of Punjab and another ..Respondents

Rattan Singh and others
....Petitioners

State of Punjab and another ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Mr.D.K.Singal, Addl. AG, Punjab

1. By this order, three connected civil writ petitions i.e CWP-24903-2015, 26157-2015 and 16500-2016 shall stand disposed of.

2. Learned counsel representing the petitioners admits that the issue which arises for adjudication is common, hence, these writ petitions can conveniently be disposed of by a common order.

3. The relevant facts, in brief, are being noticed from CWP-24903-2015.

4. The petitioners pray for issuance of a writ in the nature of Mandamus to direct the respondents to consider and grant them promotion as the Deputy Director (Horticulture).

5. CWP-24903-2015 has been filed by the two writ petitioners, who were to attain the age of superannuation i.e 58 years on 31.03.2015 and 30.09.2014 respectively. They were working as the Assistant Director (Horticulture). Both of them were granted extension for a period of 2 years and they retired on 31.03.2017 and 30.09.2016, respectively. They claim entitlement for promotion as the Deputy Director (Horticulture). It has been stated that they filed CWP-750-2015, which was disposed of by directing the respondents to notify the rules and thereafter, take a conscious decision, in accordance with the rules, within a specified time period, however, the respondents did not take the effective steps as directed, forcing the petitioners to file a contempt petition. It is their case that 17 vacancies of the Deputy Director (Horticulture) were lying vacant and they were given the current duty charge on various dates. In this case, a meeting of the Departmental Promotion Committee was held on 09.10.2015 and their cases including 9 others were recommended for promotion. However, before the competent authority could approve their promotion, the State of Punjab

amended the Punjab Civil Services Rules on 30.10.2015, debarring those employees from promotion, who were in continuity of service due to extension after the ordinary age of retirement. In the said amended rules, it was provided that the employees, who have already been granted extension, shall be entitled to give their option to continue, in view of the amended rules. The competent authority took the decision on 10.11.2015 promoting 8 officials whereas the petitioners were not promoted in view of the amended rules notified on 30.10.2015. Thereafter, the petitioners gave their option on 27.11.2015 to continue after having acknowledged that they shall not be entitled to promotion. The present writ petition was filed on 27.11.2015.

6. Learned counsel representing the parties are ad idem that the validity and the correctness of the aforesaid amendment, made effective from 30.10.2015 has been upheld by the Division Bench of the Court in CWP-23811-2015 titled as '**Ajaib Singh and others vs. State of Punjab and others**' decided on 20.11.2015.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

8. On the one hand, the learned counsel representing the petitioners contends that sufficient vacancies for the post of the Deputy Director (Horticulture) were available and the Departmental Promotion Committee on 09.10.2015 recommended their promotion. It is submitted that the petitioners are entitled to be promoted with effect from 09.10.2015 whereas the amended rules were notified on 30.10.2015, which are prospective in nature. Learned counsel relies upon a judgment

passed by the Supreme Court in **Major General H.M Singh vs. Unino of India and another 2014 (3) SCC 670**, **Chaman Lal Lakhanpal vs. Union Public Service Commission 1999 (1) SCT 175**, **State of Punjab and others vs. Jagjit Singh and others 2018 (4) SCT 549**, **Nirmal Singh vs. State of Punjab and others 2017 (1) SCT 554**, **CWP-14661-2013** titled as '**Brij Bala vs. State of Punjab and others**' decided on 03.08.2018 and **CWP-5148-2020** titled as '**Vijay Kumar Bansal vs. State of Punjab**' decided on 13.01.2023.

9. On the other hand, learned State counsel contends that the Departmental Promotion Committee is required to recommend the most suited employees for promotion and the ultimate decision lies in the hands of the competent authority. He submits that there was no unreasonable delay in considering the proceedings of the Departmental Promotion Committee, however, on 30.10.2015, the rules that govern the promotion were amended and therefore, the petitioners could not be promoted to the said post. He further submits that the petitioners were being given opportunity to continue to serve the Department on the same post and the petitioners themselves opted to continue on the post of Assistant Director (Horticulture) while acknowledging that they shall not be entitled to promotion during the extension period.

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.

12. This Bench now proceeds to examine the facts of the present case. As already noticed, the proceedings of the Departmental Promotion Committee took place on 09.10.2015 and on 30.10.2015 the rules were amended to debar the consideration of the employees who were serving the Department on extension after the ordinary age of retirement. When the recommendations of the Departmental Promotion Committee were placed before the competent authority by that time the amended rules were enforced. In such circumstances, there has been no unreasonable delay on the part of the concerned authority.

13. Moreover, the petitioner's themselves gave option on 27.11.2015 to continue in service after having acknowledged that they shall not be entitled to promotion during the said extension period.

14. Keeping in view the aforesaid facts and discussion, this Court does not find it appropriate to issue a writ directing the respondents to grant deemed date of promotion to the petitioners from the date the Departmental Promotion Committee recommended their names to the competent authority.

15. Hence, the writ petitions are dismissed.

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16. All the pending miscellaneous applications, if any, are also disposed of.

22.02.2023
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE