

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.25074 of 2017
Date of decision : 24.08.2023

Om Pal

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. R.K. Malik, Sr. Advocate with
Mr. Sachmeet Singh Randhawa, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

1 The present petition has been filed challenging order dated 11.10.2017 (Annexure P-5) by which, though the petitioner has been granted promotion retrospectively from the date, persons junior to the petitioner were promoted but the arrears of salary have been denied on the ground that the petitioner had not actually discharged the duties on the said promoted post.

2 Learned Senior counsel appearing on behalf of the petitioner argues that in the present case, the petitioner who was working as a Patwari was entitled for promotion to the post of Kanungo as he had already attained the eligibility for promotion to the post of Kanungo by passing the departmental examination on 25.05.2012. One Akhtar Hussain, who also passed the departmental examination along with the petitioner and was junior to the petitioner, was promoted as a Kanungo on 09.10.2012 but the petitioner was not given promotion on the ground that ACRs of the petitioner were not received by the department.

3. Aggrieved of the said action of the respondents, the petitioner filed CWP No.15466 of 2017 which was disposed of by this Court on 19.07.2017 directing the respondents to consider the claim of the petitioner for promotion to

the post of Kanungo with effect from the date, his junior namely Akhtar Hussain has been promoted.

4. In compliance of the direction given by this Court, the claim of the petitioner was considered and ultimately, it was found that there was nothing against the petitioner to withhold his promotion and the petitioner was also promoted vide order dated 11.10.2017 (Annexure P-5), with effect from the date, Akhtar Hussain was promoted but with the rider that the petitioner will not be given any benefit of arrears of pay and the said promotion will be notional till the passing of the order. The order dated 11.10.2017 (Annexure P-5) is under challenge to the effect that the petitioner is also entitled for the arrears of salary from retrospective effect from the date of promotion.

5. Upon notice of motion, the respondents have conceded the fact that when person junior to the petitioner was promoted, there was no impediment in considering the claim of the petitioner but as his ACRs were not received, he was not promoted. He submits that once the petitioner has already been promoted now with retrospective effect from the date his junior was promoted along with all the benefits, the petitioner cannot claim the arrears of salary on the ground that he had not discharged the duties of the higher post as for the said period, he was actually working on feeder post-Patwari. Hence, the restriction imposed in the impugned order Annexure P-5 of only granting notional promotion with retrospective effect to the post of Kanungo is perfectly valid.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. From all the facts stated hereinbefore, it transpires that when the person junior to the petitioner was promoted to the post of Kanungo in the year 2012, there was no impediment qua the promotion of the petitioner but the same

was not given to the petitioner on the ground that the ACRs of the petitioner have not been received by the authority concerned. Non-receiving of the record by the Authority concerned cannot be attributed to the petitioner. Rather, once the petitioner was senior to Akhtar Hussain, it was incumbent upon the respondents to first decide the eligibility of the petitioner to get promotion before even considering the claim of a person junior to him by collecting all the material required for promotion. Once, now the respondents while passing the impugned order Annexure P-5 have realized their mistake of non-grant of promotion to the petitioner in the year 2012 when his junior, Akhtar Hussain was promoted as a Kanungo was incorrect and they have rectified the said mistake by promoting the petitioner to the post Kanungo retrospectively from the date, Akhtar Hussain had been granted the said relief, the petitioner cannot be made to suffer with regard to the arrears of salary only on the ground that the petitioner had not discharged the duties of the post of Kanungo for the period in question.

8. It may be noticed that non-discharge of the duties of the post of Kanungo by the petitioner also rest upon the respondents. The petitioner never declined to discharge the duties of the post of Kanungo, rather, respondents never promoted the petitioner to the post of Kanungo despite he being eligible. Hence, now withholding the arrears of salary of the said post will be causing prejudice to the petitioner and that too without there being any of his fault. Once, the respondents are correcting their own mistake of non granting the benefit of promotion to the petitioner when his junior was promoted, the benefit of promotion retrospectively cannot be given with the rider of withholding the arrears of salary. The arrears of salary can only be withheld under one circumstance where, at the time of the promotion of the junior, the junior was senior as per the prevailing seniority list but later on, due to the change in the

seniority position, the said senior became junior thereby entitling others promotion with retrospective effect. The facts in the present case are totally otherwise as, on the date, when Akhtar Hussain was promoted, who was junior to the petitioner in the cadre of Patwari, there was no impediment qua the promotion of the petitioner.

9. Further, the said question of law stand settled by various pronouncements. The Co-ordinate Bench of this Court, while passing order in CWP No.468 of 2013 decided on 26.09.2012 titled as 'Suresh Kumar Vs. State of Punjab and Anr.' held that where the benefit of promotion has been granted with retrospective effect on the ground that the junior had been promoted and there was no impediment in the promotion of the employee concerned, the benefit of arrears have to be granted upon retrospective promotion. The same view was taken by the Hon'ble Division Bench while deciding LPA No.1018 of 2012 decided on 02.11.2012 titled as 'Satyavir Singh Shekhawat Vs. State of Haryana and Ors.'

10. The learned counsel for the respondents has not been able to dispute the proposition of law settled by the Co-ordinate Bench in Suresh Kumar's case (supra) as well as by the Division Bench in Satyavir Singh Shekhawat's case (supra). Hence, the petitioner is held entitled for the arrears upon promotion with retrospective effect and the denial of the same is held to be not justified. Accordingly, present petition is allowed and impugned order Annexure P5 is hereby quashed qua the grant of notional promotion to the post of Kanungo. Petitioner will be entitled for all the arrears of salary w.e.f the date promotion has been given to the petitioner.

11. No other argument has been advanced by learned counsel representing the petitioner or the respondents.

11. Let the respondents calculate the arrears of salary for the period during which the petitioner became entitled upon his retrospective promotion and the same may be released within a period of two months.

August 24, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : Yes