

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25474-2015 (O&M)

Date of decision: 17.04.2023

Reserved on 22.02.2023

Raj Pal

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikas Chatrath, Advocate for the petitioner

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

ANIL KSHETARPAL, J

1. While filing the writ petition, the petitioner prays for the following substantive reliefs:-

“(ii) To issue a writ in the nature of Certiorari for quashing/ reading down impugned notification dated 30.10.2015 (Annexure P-3) as well as instructions dated 30.10.2015 (Annexure P-4) to the extent vide which the accrued/vested rights in terms of the notification dated 08.10.2012 (Annexure P-1) of the petitioner have been taken away his right of promotion in terms of the recommendations of the proceedings of the meeting dated 14.06.2013 while the person on extension in service had been ordered to be promoted vide order dated 03.10.2013 (Annexure P-6) and at the same time his benefits of revised pay scales etc. would also be affected adversely, since the respondents are applying the said notification retrospectively against the spirit of the same which is explicit from the letter dated 15.11.2015 (Annexure P-7), the same be also quashed accordingly.

ii) To issue a writ of Mandamus directing the respondents to allow the petitioner to discharge her duties in terms of the option already accepted by her vide which she has been allowed an extension in service after attaining the age of 58 years for one year from 01.01.2015 to 31.12.2015 in terms of Govt. notification dated 08.10.2012 (Annexure P-1) and consequently he be promoted in terms of the recommendation of the meeting of the DPC as Joint Registrar alongwith all consequential benefits.”

2. At the outset, it is important to note that on 30.10.2015 State of Punjab notified the Punjab Civil Services (Second Amendment) Rules, 2015. The correctness thereof has been upheld by the Division Bench of the Court in **Ajaib Singh and others vs. State of Punjab and others 2016 (1) SCT 298**. Annexure P-4 is the document that contains instructions issued on the basis of the amendment. The operative part of the aforesaid instructions are extracted as under:-

“(a) Government employees which are in group ‘A’, ‘B’, ‘C’ & ‘D’ on attaining the age of 58 years i.e superannuation and for Group ‘D’ employees on attaining the age of 60 years, there is a provision for further extension of 2 years have been made. For that they have to give their option with these recommendations (Annexure A) within 3 months of their superannuation.

(b) Those Government employees which are presently servicing in accordance with provision of Punjab Civil Service Rules and are in their first or second year of their extension, they have also to give their option again in proforma (Annexure-B)

(c) In accordance with the provision as provided by Punjab Civil Services Rules, Vol.I, Part-I & Vol.II, those employees who will make their option for extension of 2 years after superannuation, they will not be entitled to the following benefits:-

(i) Promotion

(ii) *ACP benefits*

(iii) *Annual increment*

(iv) *Amended Pay Scale by Government*

The aforesaid conditions are to be applicable fully against those who are already in the extension of 1 or 2 years of their extension.

(d) Letter No.22/2/202-3 F.P.-2/243 dated 22.01.2013 issued by Punjab Government, Finance Department (Finance Personnel-2 Branch), is to be revised in accordance with the above revision in following manner:-

(i) Column 'Answer of Explanation' in Sr.8 has to be read in accordance with following:-

“Before this revision if any pay, promotion or ACP already fixed to any Government employees during their extension period after superannuation, then the same shall be taken as last pay drawn for their pensionary benefits.”

(ii) Sr.No.11 and 12 are cancelled.

These recommendations come into operation from their date of issue.”

3. In order to comprehend the controversy involved in the writ petition, some relevant facts are required to be noticed before the Court proceeds to decide the writ petition. As per the Punjab Civil Services Rules, Vol.I, Part I, ordinarily the retirement age of Group 'A', 'B' and 'C' employees is 58 years of age whereas it is 60 years of age in the case of Group 'D' employees. On 08.10.2012, the State of Punjab amended the Punjab Civil Services (First Amendment) Rules, Vol. I, Part I and the amended rules enabled the State Government to extend the period of service beyond the date of retirement for a period not exceeding 2 years after getting option from the concerned Government employee. Clause b of Rule 3.26 provided as under:-

“(b) Notwithstanding anything to the contrary contained in these rules or any other rules for the time being in force, during the extended period of service under clause (a) of this rule, a Government employee shall be entitled to pay equal to the pay last drawn by him on the date on which he attains the age of 58 years or 60 years, as the case may be. However, if a promotional post is available, he shall be eligible for consideration for promotion against that post and on promotion his pay shall be fixed under the relevant rules.”

4. Clause (b) of Rule 3.26 the Second amendment notified on 30.10.2015, reads as under:-

“(b) Notwithstanding anything contained in these rules or any other rules for the time being in force, during the extended period of service under clause (a), the Government employee shall be entitled to pay equal to the pay last drawn by him, on attaining the age of fifty eight years or sixty years including an employee, who is already on extension, as the case may be;

Provided that the Government employee, whose service is extended shall not be entitled to:-

- (i) Promotion*
- (ii) the benefit of Assured Career Progression;*
- (iii) an annual increment; and*
- (iv) any revision of pay made by the State Government.*

Provided further that the pay of Government employee already on extension, who has been given promotion or the benefit of Assured Career Progression during the extended period till the issue of this modification, shall be protected and he shall be given the retiral benefit on the basis of his protected pay.”

5. The petitioner was working on the post of the Deputy Registrar in the Department of Cooperation. He on attaining the age of superannuation i.e 58 years was due to retire on 31.12.2014. With the consent of the petitioner, he was given one year extension in the period

of his service w.e.f 01.01.2015 to 31.12.2015. After the second amendment o 2015, the petitioner exercised a fresh option in terms of the amended Rules. Hence, he was granted 2nd extension w.e.f 01.01.2016 to 31.12.2016.

6. The petitioner claims that he has acquired a vested right as per clause (b) of the notification dated 08.10.2012, which entitles him to promotion. It is the petitioner's claim that on 14.06.2013, a Departmental Promotion Committee (hereinafter referred to as the 'DPC') after evaluating his case recommended him for promotion as a Joint Registrar, Cooperative Societies, however, he was never promoted to the said post.

7. On the other hand, it is the stand of the respondents that the petitioner was promoted as a Deputy Registrar on 26.02.2010 and he was never recommended to be promoted as a Joint Registrar. From the reading of the proceedings of the DPC held on 14.06.2013, it is evident that the petitioner's name was recommended to be promoted on the basis of the seniority list where he was placed at Sr.No.9.

8. This writ petition was filed on 03.12.2015 after the petitioner has exercised his fresh option on 15.11.2015 while undertaking not to claim promotion during the period of extension.

9. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book. Learned counsel representing the petitioner contends that the petitioner was recommended to be promoted on 14.06.2013 and hence, the petitioner has obtained a

right that has been established and it could not be defeated by subsequent amendment in the Rules. It is further contended that as per the first amendment in the Rules notified on 08.10.2012, the petitioner was entitled to be promoted. Hence, the same could not be taken away by the second amendment.

10. On the other hand, the learned State counsel while contesting the writ petition has contended that the writ petition is liable to be dismissed because the petitioner was never promoted till 30.10.2015 and it is not the case of the petitioner that his juniors have already been promoted while ignoring him. It is further contended that the DPC recommends the employees after evaluation to the competent authority for promotion, however, its recommendation are not binding on the competent authority.

11. This Court has analyzed the arguments presented. As already noticed, the petitioner filed the writ petition on 03.12.2015 when he had already given his option for extending the period of service for the second year. Moreover, the learned counsel representing the State is correct in contending that the proceedings of the DPC do not confer any rights to the petitioner for promotion. The competent authority is empowered to issue an order of promotion. It is well established that, in general, the competent authority cannot be compelled to promote an official as it is considered the sole prerogative of the employer (which in this case is State). Moreover, the petitioner never agitated his right upto 26.12.2014 when he was serving the State before attaining the age of 58

years. He also did not invoke the jurisdiction of court during the period he was on extension in the first year.

12. It may be noted here that the learned counsel representing the petitioner has relied upon a large number of judgments in support of his submissions which have already been considered by this Court in CWP-24903-2015 titled as '**Bhajneek Singh and another vs. State of Punjab and another**' decided on 22.02.2023. The relevant discussion is contained in paragraphs 10 and 11, which are extracted 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 dehors 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.”*

13 The learned counsel representing the petitioner has also relied upon the judgment in **Union of India and another vs. Hem Raj Chauhan and others 2010 (4) SCC 290**. On a careful reading of the aforesaid judgment, it is evident that while interpreting the provisions of the Indian Administrative Service (Cadre) Rules, 1954 the Court has held that the State and the Centre Government are bound to undertake cadre review periodically. This judgment is based upon the interpretation of the peculiar provisions in the said Rules. Hence, the aforesaid judgment does not help the petitioner as it does not apply to the facts of his case.

14. Keeping in view the aforesaid facts and discussion, no ground to issue the writ, as prayed for. Hence, dismissed.

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

17.04.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE