

2023:PHHC:136510
CWP-23788-2023 (O&M)
Date of Decision: 19.10.2023

Kaushal Kumar

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMAPresent Mr. Mohit Garg, Advocate for the petitioner.
*****SANJEEV PRAKASH SHARMA, J.(Oral)**

1. The petitioner has already attained superannuation. He claims his promotion to the post of District Sports Officer from the year 2014-2015 on the ground that 3% reservation for disabled quota in promotion, was to be fulfilled. He had preferred CWP-9746-2014, before this Court, wherein, this Court passed the following order:-

“Present writ petition has been filed under Article 226 of the Constitution for directing the respondent authorities to promote the petitioner on regular basis on the post of District Sports Officer as he belongs to Handicapped Category and is entitled for promotion on the basis of 3% reservation quota in view of provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as decision rendered in CWP No.11467 of 2010.

In view of para No.2 of the affidavit dated 23.06.2016 of Sh. Rahul Gupta, Director, Sports, Punjab, learned Counsel on

instructions from petitioner wishes to withdraw the petition with liberty to pursue the matter before the authorities concerned.

Ordered accordingly.”

2. In view thereof, the petitioner submitted a representation and the said representation had been decided and a decision has been taken to file the representation by the Chief Secretary. The petitioner has again challenged the said decision by way of the present writ petition.

3. Learned counsel submits that the decision taken by the respondents is erroneous and the premise on which the same has been filed is wrongful interpretation of the rules/provision. The presumption that even if the ACR for the year 2012-2013, is expunged, the petitioner would not fall within the benchmark, is wrong in terms of the instructions of the Personnel Department dated 24.04.2002. Learned counsel submits that as per reply filed before this Court in the previous writ petition, the petitioner's overall grading in 2011 by counting the ACR for the year 2009-2010 is 'very good' and if the ACR for the year 2012-2013 is treated as expunged, the previous ACR would be taken into consideration and he would get one mark more and would fall within the minimum benchmark and would be entitled to promotion.

4. I have considered the submissions.

5. The instructions of the Personnel Department dated 24.04.2002, as reproduced in the impugned order passed by the Chief Secretary dated 25.01.2023, would reflect that even where the adverse remark is expunged, the grading of the official may not be effected. There can be another cases where the adverse remark is expunged along with expunging the grading, whereafter the previous ACR shall be taken into consideration. In the present case, the Chief Secretary has not proceeded to expunge the ACR of the

petitioner. In view thereof, the claim of the petitioner for counting his previous ACR does not arise at all.

6. In view thereto, the claim of the petitioner for enhancing his total marks grading to meet the benchmark is not possible. The Court would not draw interferences where there is no specific order to presume that if such an action would have been taken, the result would have been otherwise. The decision of the Chief Secretary in filing the representation would be that the sum of the representation of the petitioner for expunging the ACR of the year 2012-2013, wherein he was granted average status, stands rejected.

7. Keeping in thereof, no case for interference is made out. The writ petition is accordingly dismissed.

8. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

19.10.2023.

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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |