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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-9412-CWP-2023 in/and
CWP-30062-2022 (O&M)
Date of Decision: 30.05.2023**

VINOD KUMAR AND ANR

.. Petitioners

Vs.

BBMB BHAKRA BEAS MANAGEMENT BOARD AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Shivam Sharma, Advocate for applicant-petitioners.

Mr. Amar Vivek Aggarwal, Advocate and
Mr. Prithish Goel, Advocate
for the respondents.

...

Manoj Bajaj, J. (Oral)

Petitioners have filed this writ petition under Article 226 Constitution of India for issuance of a writ of Certiorari for setting aside the order dated 21.03.2022 (Annexure P-1) passed by respondent No.2, whereby their representation seeking consideration for promotion to the post of Superintendent Gr. II has been declined on the sole ground of pendency of CWP-3510-2021, wherein status quo with regard to services of the petitioners therein was passed on 15.02.2021.

Learned counsel submits that the petitioners are currently working as Senior Assistants with Bhakra Beas Management Board (BBMB) and despite their fulfilling the requisite conditions for promotion to the post of Superintendent Gr. II, they are not being considered on the sole ground that CWP-3510-2021 filed by the juniors of the petitioners, challenging the order dated 14.01.2021, withdrawing their deemed date of promotion (granted vide orders dated 25.05.2018 and 31.05.2018), wherein

the status quo with regard to the services of those petitioners was ordered to be maintained on 15.02.2021 is pending. Learned counsel has argued that as per the Bhakra Beas Management Board, Class-III and Class-IV Employees' (Recruitment & Conditions of Service) Regulations, 1994 (Annexure P-2), the petitioners have completed 7 years of service as Senior Assistant and have also passed the written Departmental Accounts Examination (DAE) and being eligible for consideration for promotion to the post of Superintendent Grade.II, but through the impugned order dated 21.03.2022 (Annexure P-1), their claim has been erroneously rejected.

Learned counsel has submitted that in response to the writ petition, respondents have filed the written statement, wherein they have categorically admitted that indeed the petitioners are eligible for promotion and do fall in zone of consideration, who can be considered for promotion against ten available vacancies, but the promotion is not being made to the said post only on the ground of the interim order dated 15.02.2021 passed in CWP-3510-2021. He submits that the issue raised in the said writ petition relates to the correctness and validity of the order dated 14.01.2021, whereby the deemed date of promotion earlier granted to the present petitioners as well as the others was withdrawn, and in the said writ petition, the petitioners are neither party nor the order passed in the said writ petition can be construed adverse to the interest of these petitioners.

Learned counsel submits that the present writ petition is fixed for 20.07.2023, therefore, by way of a civil miscellaneous application bearing No.9412-CWP-2023, prayer for preponement of the hearing of writ petition for its disposal on the basis of admissions by the respondents, has been made.

At this stage, Mr. Amar Vivek Aggarwal, learned counsel for respondents-BBMB appears and does not oppose the prayer for preponement of the date of hearing in the main case for final disposal

Consequently, the application is allowed and the date of hearing in the main case is preponed to today.

Mr. Amar Vivek Aggarwal, learned counsel for the respondents has drawn the attention of the Court to the contents of paras 8 and 9 of the reply on merits and submitted that though the petitioner Nos.1 and 2 are not senior most employees as claimed by them, however, the petitioners are otherwise eligible for promotion and they fall in zone of consideration, who can be considered for promotion against the available vacancies. The contents of paras 8 and 9 of written statement read as under:

“That the contents of Para no. 8 and 9 of the writ petition are admitted to the extent that in the seniority list dated 16.01.2018 (Annexure P-3 attached with the writ petition), the name of the petitioner No. 1 and 2 were at Sr. No. 23 and 24 respectively. The employees at Sr. No. 14, 16 and 17 are still on the roll of the BBMB. Three number employees are senior to petitioner No. 1 and four number employee senior to petitioner No. 02. Thus, petitioners no. 1 and 2 are not senior most employee as stated in this para. However, the petitioners have passed the Departmental Accounts Examination (DAE). However, it is also a fact that a number of posts for promotion are available but the petitioners no. 1 and 2 are not senior most employees as claimed by them in the writ petition, however the petitioners are otherwise eligible for promotion and fall in zone of consideration and can be considered for promotion against the available vacancies.”

During the course of hearing, Mr. Amar Vivek Aggarwal, learned counsel for the respondents fairly conceded that the interim order dated 15.02.2021 passed in CWP-3510-2021 could not have been made basis for denial of petitioners' claim for consideration for promotion to the post of Superintendent Grade-II.

Thus, in view of the above stand of the respondents, the writ petition is disposed of with a direction to the respondents to consider the claim of the petitioners for promotion to the post of Superintendent Grade.II, in accordance with the applicable service rules/regulations.

30.05.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No