

CWP-29549-2022 (O&M)
CWP-20446-2023 (O&M) &

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2023:PHHC:126148

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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(1) CWP-29549-2022 (O&M)
Date of Decision :-22.09.2023

Sikander Singh Sangwan

...Petitioner

Versus

State of Haryana and others

...Respondents

(2) CWP-20446-2023 (O&M)

Dharmendra Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil Kumar Nehra, Advocate for the petitioner
in CWP-29549-2022.

Mr. Anurag Jain, Advocate with
Ms. Suruchi Sharma Tiwari, Advocate for the petitioner
in CWP-20446-2023.

Mr. Pankaj Middha, Addl. A.G, Haryana.

Mr. Tapan Yadav, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

By this common order, above mentioned two writ petitions are
being disposed of as both the petitions involve the same question of law and
similar facts.

For the purpose of present order, relevant facts are being taken from CWP-29549-2022 titled as **Sikander Singh Sangwan vs. State of Haryana and others.**

Petitioners in both these petitions were recruited as Fisheries Officer on 27.06.1994. Further promotion from the post of Fisheries Officer is to that of District Fisheries Officer. The promotion to the said post is governed by the Haryana Fisheries Group-B Service Rules, 1980 (hereinafter referred to as '1980 Rules'). As per the said rules, Fisheries Officer having following qualification is eligible for promotion to the post of District Fisheries Officer:-

“(a) B.Sc. With Zoology from a recognized University with ten years experience as Fisheries Officer.

(b) One year training in Fisheries from the Central Indian Fisheries Research Institute, Barrackpore, Calcutta.”

Both the petitioners were promoted to the post of District Fisheries Officer on 15.07.2015 after they attained the requisite qualification as reproduced hereinbefore. After the promotion to the post of District Fisheries Officer, both the petitioners raised a grievance that as the posts of District Fisheries Officers were lying vacant since long hence, they are entitled for the benefit of retrospective promotion to the said post. Prayer of the petitioners is that even though, the qualification of training in fisheries from Calcutta required for promotion was completed by them in the year 2014 but as it was only due to the inaction on the part of the respondent-department that the petitioners could not possess the said qualification, earlier to the year 2014 hence, the qualification mentioned at Clause-b of 1980 Rules needs to be relaxed in their favour so as to grant them antedated promotion to the post of District Fisheries Officer.

Claim of the petitioners were considered by the respondents and after obtaining legal advice from the learned Advocate General, Haryana, the claim of the petitioners for the grant of antedated promotion to the post of District Fisheries Officer by giving relaxation in the 1980 Rules, has been rejected, which order of rejection of their claim is under challenge in both the writ petitions.

Learned counsel for the petitioner-Dharmendra Singh argues that the petitioner had gone for training to Calcutta at the first available chance in the year 2014 as from the year 2008 onwards till 2013, no training was organized by the respondent-department and no name was sponsored for the same hence, an inaction on the part of the department to send the petitioner-Dharmendra Singh for training cannot cause prejudice to him and therefore, in the facts and circumstances of the present case condition of acquiring the qualification of one year training from Calcutta needs to be relaxed by the department so as to grant him promotion to the post of District Fisheries Officer with retrospective effect and declining the said request of the petitioner is totally arbitrary and illegal.

Learned counsel appearing for petitioner-Sikander Singh Sangwan submits that at no stage, prior to year 2014, an offer was given to the petitioner to undergo one year training in fisheries and on the first available opportunity, the petitioner had undergone for training in the year 2014 hence, the petitioner is entitled for the benefit of retrospective promotion to the post of District Fisheries Officer from the date the said post became available with all consequential benefits and rejection of the claim of the petitioner Sikander Singh Sangwan for the grant of retrospective

promotion by giving relaxation of acquiring qualification of one year training from Calcutta without noticing the actual facts, is arbitrary and illegal.

Learned counsel for the respondent-State argues that in the present case claim of the petitioners is for the grant of relaxation under 1980 Rules whereas, relaxation in rules cannot be claimed as a matter of right and it is for the department to ascertain as per the facts and circumstances of a particular case whether the rules need to be relaxed or not keeping in view the prejudice caused to an employee in any manner and in the present case, after considering all the facts a detailed order has been passed by the respondents rejecting the claim of the petitioners for the grant of retrospective promotion to the post of District Fisheries Officer by the grant of relaxation under the 1980 Rules.

Learned counsel for the respondents further submits that petitioner-Dharmendra Singh was given a chance to undergo training course from Calcutta in the year 2007, which offer was refused by him in the said year hence, it cannot be said that petitioner-Dharmendra Singh was not given a chance to undergo the said training prior to the year 2014 hence, claim of the petitioner-Dharmendra Singh has rightly been rejected by the respondents by noticing the correct facts.

Learned State counsel further submits that with regard to the petitioner-Sikander Singh Sangwan after noticing all the facts keeping in view the advice of the learned Advocate General, Haryana that as the claim of the petitioner was also identical to that of Dharmendra Singh, his claim has been rejected hence, no interference is called for by this Court in the

impugned order.

Learned State counsel submits that promotion was given to the petitioners in the year 2015 whereas, the present petitions have been filed in the year 2022-2023 therefore, on the ground of delay and laches, the claim of the petitioners is liable to be rejected.

Learned counsel for the petitioners contends that the argument being raised by the learned State counsel is incorrect as there is no delay in filing the present petitions as the impugned orders have been passed only in the year 2022-2023, which were immediately challenged.

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

In the present petitions, the claim of the petitioners is for the grant of relaxation under the 1980 Rules so as to grant them antedated promotion to the post of District Fisheries Officer. It is a settled principle of law that relaxation cannot be claimed as a matter of right and it is only the employer who can grant relaxation after appreciating the facts and circumstances of each case as to whether any prejudice has been caused to any employee or class of employees. Reliance can be placed upon the law settled by the Hon'ble Supreme Court of India in Civil Appeals No.2250-2252 of 2020 titled as Dr. Thingujam Achouba Singh and others vs. Dr. H. Nabachandra Singh and others decided on 17.04.2020, according to which, even High Court does not have power to relax the qualification prescribed by an employer.

Not only this, in the present case, the Government being an employer has already rejected the claim of the petitioners and by passing the

detailed order, the respondents have declined the grant of benefit of retrospective promotion to the post District Fisheries Officer in favour of the petitioners. Once, an opinion has been formed by the department after noticing the facts and that too with open mind, the Court cannot sit over it as an appellate authority to adjudge whether the department should have exercised its power to relax the rules in favour of the petitioners or not especially when the competent authority having jurisdiction to grant relaxation is the employer. Once, the State Government being an employer after noticing all the facts have declined to exercise its power so as to give benefit of relaxation of rules so as to acquire certain course/qualification from Calcutta, this Court will not like to interfere in the same.

Learned counsel for the petitioner-Dharmendra Singh has argued that prior to the year 2014 when he had undergone the required course as envisaged under law, he has not been given any opportunity hence, he is entitled for the benefit of retrospective promotion to the post of District Fisheries Officer by the grant of relaxation.

In reply as well as in the impugned order, it has come on record that in the year 2007, an offer was made to the employees to undergo the training course at Calcutta. It is also a matter of fact which has come on record that an opportunity was also given to petitioner-Dharmendra Singh to undergo the training course but he refused to undergo the said course in the said year. That being so, once an opportunity was available with the petitioner to undergo a particular course in the year 2007 but he chose not to avail the said opportunity even if for a particular year only, he cannot be allowed to say that he did not had any opportunity to undergo the training

course prior to year 2014. Hence, once the petitioner-Dharmender Singh had a opportunity to undergo the training course in year 2007 and he did not avail the said opportunity, no grievance can be raised by the petitioner-Dharmendera Singh that no opportunity was afforded to him to pass the course prior to the year 2014 hence, ground taken by the respondents in the impugned order for refusing the exercise of its power for the grant of relaxation of 1980 Rules in favour of the petitioners cannot be treated as arbitrary and illegal in the facts and circumstances of the present case.

As far as petitioner-Sikander Singh Sangwan is concerned though, it has already come on record that petitioner-Sikander Singh Sangwan was not given any offer to undergo the training course prior to the year 2014 but it is a matter of fact that one Kashmir Singh, who was junior to the petitioner and said Kashmir Singh underwent the training course in the year 2007 and nothing has come on record that petitioner-Sikander Singh Sangwan ever challenged the said action that the person lower in seniority has been allowed to undergo the said course ignoring him. Once, the petitioner never challenged the said action of the department of the year 2007, it can be very well presumed that petitioner was not interested to pursue the said course in the year 2007 hence, the said fact which has been taken as a ground by the respondents while declining his claim cannot be treated as arbitrary and illegal.

Further, another fact which needs to be noticed is that petitioners are claiming benefit of retrospective promotion, it is a settled principle of law that retrospective promotion cannot be granted from the date when the employee is not eligible for the grant of the same. In the present

case, it has already come on record that under 1980 Rules, qualifications have been prescribed, as reproduced hereinabove, and the employee is required to acquire the same before being declared eligible for promotion as District Fisheries Officer and concededly the said qualification has been acquired by the petitioners in the year 2014 only and became eligible in the year 2015, from which date the petitioners have already been granted benefit of promotion as District Fisheries Officer hence, grant of retrospective promotion to the petitioners will mean grant of promotion to a candidate from a date when he/she was not eligible for the same, which is impermissible under law.

Keeping in view the facts and circumstances noticed hereinbefore, no ground for interference by this Court is made out and both the writ petitions are accordingly dismissed.

Civil miscellaneous application pending, if any, also stands disposed of.

September 22, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No