IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3371 of 2024

Date of decision: 06.05.2024

Satish Kumar ....Petitioner

Versus

State of Himachal Pradesh and another ...Respondents

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?[1] ***Yes***

For the petitioner	:	Mr. Hamender Singh Chandel, Advocate.
For the respondent	:	Mr. Pushpender Jaswal, Additional Advocate General for respondent No. 1.
	:	Mr. Chander Shekhar Thakur, Advocate for respondent No. 2.

Ajay Mohan Goel, Judge (*Oral*)

By way of this writ petition, the petitioner has primarily prayed for issuance of a direction to the respondents that he be considered for promotion against the post of Joint Secretary in respondent-Board against vacancy arising on 01.05.2023 with all consequential benefits.

2. The case of the petitioner is that he was appointed as a Clerk with Himachal Pradesh Board of School Education, in the year 1986. While in service, he gained promotions

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

against various posts. On 07.09.2015, he was promoted from the post of Superintendent to the post of Section Officer. Thereafter, he was promoted as an Assistant Secretary on 04.09.2019. Vide notification dated 05.08.2021 (Annexure P-4), the petitioner was promoted against the post of Deputy Secretary. From the said post, the next promotional post is that of Joint Secretary. As per Rules/Regulations, the post of Joint Secretary is to be filled in from amongst the Deputy Secretaries possessing three years of regular service or regular combined with continuous adhoc service, failing which, from amongst Deputy Secretaries possessing four years as Deputy Secretary and Assistant Secretary, with incumbent having two years of essential service as Deputy Secretary. Regulations/Recruitment and Promotion Rules to the post of Deputy Secretary are appended with the petition, as amended from time to time, as Annexure P-6.

3. According to the petitioner, one post of Joint Secretary fell vacant on 01.05.2023 after the retirement of Smt. Asha Lussai. The petitioner submitted representation for consideration of his case for promotion against the post of Joint Secretary. The petitioner retired on 31.05.2023 but his

case for promotion was not considered and delay in convening the DPC by the employer has deprived the petitioner from legitimate promotion. It is further the case of the petitioner that as certain amendments stood carried out by the Department of Personnel with regard to Joint Secretary (HPSS) Class-I, (Gazetted), Recruitment and Promotion Rules, 2000 and because there was no dissimilarity between the post of Joint Secretary in the Government departments as compared to the respondent-Board, therefore, the petitioner ought to have been promoted to the post of Joint Secretary in terms of this notification dated 06.09.2018 (Annexure P-7), and therefore, the act of the respondents of not promoting the petitioner to the post of Joint Secretary is bad in law.

4. Having heard learned Counsel for the petitioner and having perused the petition as well as documents appended therewith, this Court is of the considered view that there is no merit in this case. The prayer of the petitioner is for issuance of a direction to the respondent-Board that he be considered for promotion to the post of Joint Secretary against vacancy, which fell vacant on 01.05.2023. The Regulations governing promotion to the post of Joint

Secretary are appended with the petition as Annexure P-6. A perusal thereof demonstrates that there are two posts of Joint Secretaries in the establishment of the respondent-Board, which are to be filled in 100% by way of promotion. The promotion has to be made from amongst the Deputy Secretaries possessing 03 years regular service or regular combined with continuous adhoc service, if any, in the grade, failing which, by promotion from amongst Deputy Secretaries, possessing four years regular service or regular combined with continuous adhoc service, if any, combined as Deputy Secretary and Assistant Secretary, which shall also include essential service of two years as Deputy Secretary, failing both by promotion from amongst the Deputy Secretaries possessing nine years regular service or regular combined with continuous adhoc service, if any, combined as Deputy Secretary, Assistant Secretary, which shall also include essential service of one year as Deputy Secretary.

5. Coming to the facts of the present case, the petitioner in terms of the averments made in the writ petition was promoted to the post of Deputy Secretary on 05.08.2021. Before that he was promoted against the post of Assistant

Secretary on 04.09.2019. Annexure P-3 is the promotion order of the petitioner against the post of Assistant Secretary which is dated 04.09.2019 and Annexure P-4 is the order of promotion of the petitioner against the post of Deputy Secretary which is dated 05.08.2021.

6. Now in terms of the Regulations for the post of Joint Secretary in the establishment of respondent-Board, the post is to be filled in by way of promotion from amongst Deputy Secretaries, possessing three years regular service or regular combined with continuous adhoc service at the first instance. Admittedly, as the petitioner was promoted against the post of Deputy Secretary on 05.08.2021, he was not possessing three years regular service or regular combined with continuous adhoc service in the grade even as on the day when he superannuated. Now the 2nd category from which the promotion could have been effected as per the Regulations is from amongst the Deputy Secretaries, possessing four years regular service or regular combined with continuous adhoc service, if any, combined as Deputy Secretary and Assistant Secretary, which shall also include essential service of two years as Deputy Secretary. In view of the fact that the

petitioner was promoted against the post of Assistant Secretary only on 04.09.2019 and he superannuated on 31.05.2023, he was not possessing four years regular service or regular combined with continuous adhoc service as Deputy Secretary and Assistant Secretary, including two years essential service as Deputy Secretary as on the day when he superannuated. Now, coming to the third category, which is eligible for promotion to the post of Joint Secretary, the same is Deputy Secretaries possessing nine years regular service or regular combined with continuous adhoc service, if any, combined as Deputy Secretary and Assistant Secretary, which shall also include essential service of one year as Deputy Secretary. In the present case, what to talk of nine years regular service or regular combined with continuous adhoc service, the petitioner was not even having four years combined service against these two posts as on the day when he superannuated, as has been observed by me hereinabove. Thus, the fact of the matter is that as on the day, when the petitioner superannuated, he was not eligible as per the Regulations, for being considered for promotion to the post of

Joint Secretary and the petition indeed is completely misconceived.

7. It is settled law that no employee has a fundamental right of promotion and the fundamental right which stands conferred upon an employee is that of consideration for promotion in terms of the law laid down by Hon'ble Supreme Court of India in **Ajit Singh and Others (II)** *vs.* **State of Punjab and others**, *(1999) 7 SCC 209*. But natural, right of consideration will accrue upon an employee only when he or she gains eligibility for promotion as prescribed in the Recruitment and Promotions Rules/ Regulations. In the absence of an incumbent being eligible as per Recruitment and Promotions Rules/Regulations, no right of consideration for promotion stands conferred upon such an employee.

8. Now here despite the fact that the respondent-Board was having its Regulations for the post of Joint Secretary (Annexure P-6), the contention of the petitioner is that Annexure P-7, which is the notification issued by the Department of Personnel, Government of Himachal Pradesh, relating to the amendment that was carried out in the

Department of Personnel, Joint Secretary (HPSS) Class-I (Gazetted), Recruitment and Promotion Rules, 2000, should have been taken into consideration for promoting the petitioner to the post of Joint Secretary. This Court is of the considered view that this contention of the petitioner merits outright rejection. This is for the reason that when the petitioner was an employee of the respondent-Board, which was having its own Regulations governing promotion to the post of Joint Secretary, it is not understood as to how the petitioner can seek a writ of mandamus for issuance of a direction to the employer to promote him against the post of Joint Secretary by relying upon the Recruitment and Promotion Rules of some other department by ignoring the Regulations of the respondent-Board.

9. Before parting with the judgment, one more fact which needs to be highlighted is that the petitioner in terms of the averments made in the writ petition superannuated on 31.05.2023. This writ petition was filed in this Court on 22.04.2024, i.e. after 11 months. In other words, the petitioner never approached the Court, seeking issuance of a writ of mandamus against the employer for considering him

for promotion during the period when he was in service. He filed this writ petition after his retirement. On this count also, this Court is of the considered view that the petition is not maintainable because once an incumbent has superannuated, thereafter, he cannot approach a Court of law, seeking a direction against the employer to promote him retrospectively until and unless he can demonstrate that denial of promotion was on account of some malafides, while he was in service. Hon'ble Supreme Court of India in **State of Uttar Pradesh and others** *Versus* **Roshan Singh and others**, *(2006) 13 Supreme Court Cases 661*, has been pleased to observe that the petitioners filing writ petition after retirement could not have been granted the relief of promotion and the High Court committed a grave error of law and facts while granting such relief to the petitioner.

Therefore, in view of above discussion, as this Court does not find any merit in the present petition, the same is accordingly dismissed. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

May 06, 2024
(narender)