IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(219) **CWP No. 947 of 2020**
Date of Decision : 15.05.2024

Om Parkash

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Suresh Kumar Bhardwaj, Advocate for
Mr. Suresh Kumar Yadav, Advocate for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

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Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that the petitioner claimed promotion to the post of Excise & Taxation Officer (ETO) from the year 2006, which was not granted to him and ultimately, the petitioner retired on attaining the age of superannuation on 31.10.2010.

2. Thereafter, in the year 2019 vide order dated 30.01.2019 (Annexure P-2), the petitioner was extended the promotion to the post of Assistant Excise & Taxation Officer (AETO) from the due date i.e. 10.10.2006 under 3% reservation for the physically handicapped employees. After getting promotion on the said post, the petitioner claimed further promotion to the post of Excise & Taxation Officer

(ETO). The said benefit has been declined by the respondents to the petitioner on the ground that an Assistant Excise & Taxation Officer (AETO) has to pass a departmental examination to be eligible for promotion to the post of Excise & Taxation Officer (ETO) which has not been passed by the petitioner, hence, he cannot be granted further promotion though, his juniors, who were appointed as Assistant Excise & Taxation Officer (AETO) after 10.10.2006, had already been promoted during the period, the petitioner remained in service i.e. upto 31.10.2010. Aggrieved against the said order, the petitioner has filed the present petition claiming promotion to the post of Excise & Taxation Officer (ETO).

3. Learned counsel for the petitioner argues that once the promotion as Assistant Excise & Taxation Officer (AETO) has been granted to the petitioner after retirement but retrospectively from 10.10.2006, the petitioner remained in service upto 31.10.2010 hence, the respondents are liable to consider the claim of the petitioner to the post of Excise & Taxation Officer (ETO) from the date an employee junior to the petitioner has been promoted by exempting the petitioner from passing of the departmental examination.

4. Learned counsel for the respondents submits that once in order to become eligible for promotion as Excise & Taxation Officer (ETO), an Assistant Excise & Taxation Officer (AETO) has to pass a departmental examination, which the petitioner has not passed, the

petitioner cannot be considered for promotion as Excise & Taxation Officer (ETO). Learned counsel for the respondents further submits that the said claim is barred by delay and laches.

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

6. It is a conceded position that prior to the retirement of the petitioner on 31.10.2010, the petitioner was not granted promotion on the post of Assistant Excise & Taxation Officer (AETO). It is only after 09 years of his retirement keeping in view the representation which the petitioner had filed to the department concerned in his service career, the respondents decided to give the petitioner the promotion under the reserved category of physically handicapped as Assistant Excise & Taxation Officer (AETO) from 10.10.2006.

7. Once, the said promotion has been granted, then only the petitioner becomes eligible for further promotion as Excise & Taxation Officer (ETO) but by the time the said promotion was granted to him, the petitioner has already retired from service and had no chance to clear the said departmental examination. Had the petitioner been granted the promotion at the time when he became eligible in the year 2006, the petitioner could have cleared the said examination in order to claim further promotion as Excise & Taxation Officer (ETO) before retirement on 31.10.2010.

8. In the absence of any valid opportunity given to the petitioner to clear the said departmental examination for further promotion, the respondents cannot be allowed to say that as the petitioner has failed to clear the departmental examination for promotion to the post of Excise & Taxation Officer (ETO), he become ineligible.

9. In the facts and circumstances of the present case, being an exceptional case, the respondents have to invoke the exemption clause to secure the justice for the petitioner, who was denied his valid promotion upto the date of his retirement.

10. Let the respondents consider the claim of the petitioner for promotion to the post of Excise & Taxation Officer (ETO) with effect from the date person juniors to him were promoted by invoking the exemption clause available under the rules governing the service so as to grant exemption to the petitioner from passing the departmental examination in the facts and circumstances of the present case and in case, petitioner is found eligible in all other aspects for promotion, he be promoted as ETO from the date his junior was promoted, in case the said date comes before the retirement of the petitioner i.e. 31.10.2010. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

Petition is allowed in above terms.

May 15, 2024 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

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