



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2358 of 2020
Decided on: 11.12.2024

Poonam Rani

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rajiv Rathore, Advocate
for Mr. Ishan Sharma, Advocate for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. S.S. Gill, Advocate
for Mr. Kshitij Sharma, Advocate
for respondents No.3 and 4.

NAMIT KUMAR J. (Oral)

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking a writ of mandamus, directing the respondents to promote the petitioner to the post of Accountant, which is lying vacant since 2015, retrospectively from the date when she became eligible.
2. The brief facts as have been pleaded in the petition are that the petitioner was initially appointed as Auction Recorder on 20.09.1983 and was further promoted to the post of Mandi Supervisor-cum-Fees Collector vide order dated 02.05.2013 and the next channel of promotion is to the post of Accountant and the said post became vacant in the year 2015 and the petitioner was given the current duty charge of the vacant post of Accountant on 21.03.2016. The post of Accountant is

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filled 100% by promotion from amongst the Mandi Supervisors-cum-Fees Collectors, who have an experience of three years and have qualified the departmental examination. The petitioner passed the departmental examination on 06.06.2016 and became eligible for promotion and submitted a representation dated 04.11.2019, claiming promotion to the post of Accountant, however, she was not given promotion to the said post. Hence, this writ petition.

3. Written statement on behalf of respondents No.2 to 4 has been filed wherein it has been stated that the petitioner passed the departmental examination on 06.06.2016, which was required for promotion to the post of Accountant and she never approached respondent No.4 for her promotion to the post of Accountant. During the service tenure of the petitioner, a letter dated 02.12.2016, was served upon the petitioner to take the charge of the post of Accountant and to give clarification regarding the pending work but the petitioner refused to receive the same and she orally requested that she does not want to take charge of the post of Accountant due to her bad health. Respondent No.4 again vide letter dated 06.01.2017, directed the petitioner to take charge of the post of Accountant as she was senior most employee but she again refused to receive the said letter. The petitioner was due to retire on 31.01.2020 and, vide letter dated 04.11.2019, she approached respondent No.4, for her promotion to the post of Accountant just to get the retirement benefits on the post of Accountant. Thereafter, the case of the petitioner was considered and she was promoted to the post of



Accountant vide order dated 31.01.2020.

4. Learned counsel for the petitioner submits that since the petitioner was eligible for promotion, therefore, she was required to be promoted to the said post from the date of occurrence of vacancy in the year 2015 or at least on 06.06.2016, when she passed the departmental examination and the action of the respondents in promoting the petitioner only w.e.f. 31.01.2020 instead of 06.06.2016, is totally illegal and arbitrary and, therefore, a direction may be issued to the respondents to promote the petitioner to the post of Accountant from 06.06.2016.

5. Per contra, learned counsel for respondents No.3 and 4 submit that the petitioner has no vested right of promotion with effect from the date, she became eligible for promotion and it is the employer to decide as and when the promotional post is to be filled. He further submits that in the present case, the petitioner even avoided to take charge of the post of Accountant and at the fag end, she submitted a representation on 04.11.2019, claiming promotion to the post of Accountant, and she has been promoted on 31.01.2020 and, therefore, the instant petition has been rendered infructuous.

6. I have heard learned counsel for the parties and perused the record.

7. The facts are not in dispute that the petitioner initially joined as Auction Recorder on 20.09.1983 and was further promoted to the post of Mandi Supervisor-cum-Fees Collector on 02.05.2013 and she became eligible for promotion to the post of Accountant on



06.06.2016, when she passed the departmental examination and thereafter, she approached the respondents on 04.11.2019, seeking promotion to the post of Accountant. Thereafter, she has already been promoted to the said post on 31.01.2020 and has also retired from the said post on the same day.

8. It is a well settled proposition of law that promotion is not a fundamental right, however, consideration for promotion is a fundamental right as has been held by the Hon'ble Supreme Court in **“Ajit Singh vs State of Punjab”, 1999(4) SCT 1.**

9. Equally, it is well settled that neither the promotion can be claimed from the date of occurrence of vacancy nor from the date of acquiring eligibility. The petitioner has already been promoted to the post of Accountant on 31.01.2020 and she has no vested right of claiming promotion from the date of occurrence of vacancy or acquiring eligibility. It is not the case of the petitioner that any of her junior has been promoted to the post of Accountant prior to the date of her promotion.

10. The Hon'ble Supreme Court in **Nirmal Chandra Sinha vs Union of India & Ors, 2008(2) SCT 675** has held that a promotion takes effect from the date it is granted, and not from the date the vacancy occurs or the post is created. The operative part of the said judgment, reads as follows:-

7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation



of the post vide Union of India and others v. K.K. Vadera and others, 1989 Supp (2) SCC 625, State of Uttarakhand and another v. Dinesh Kumar Sharma, 2007(1) SCT 393 : 2007(1) SCC 683, K.V. Subba Rao v. Government of Andhra Pradesh, 1988(2) SCC 201, Sanjay K. Sinha & others v. State of Bihar and others, 2004(3) SCT 512 : 2004(10) SCC 734 etc.

11. Similarly, the Hon'ble Supreme Court in **Union of India & Anr. vs Manpreet Singh Poonam etc., 2022(6) SCC 105**, has held that a vacancy alone does not give an employee the right to a retrospective promotion, especially when the rules for promotion include a prescribed selection process. Promotions and related benefits are governed by the specific rules for that promotion, not by rules for a different post or future promotions. The relevant portion from the said judgment, reads thus:-

18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. In the present case, the authority acting within the rules has rightly granted promotion after clearance of

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DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

19. *This Court in the case of **Union of India v. KK Vadhera and Ors., 1989 Supp (2) SCC 625** has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that:*

"5....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

12. To the same effect is the judgment of Division Bench of this Court in **Union Territory, Chandigarh Administration and**



others vs Tarlochan Singh and others, 2014(3) SCT 330, wherein it has been held as follows:-

*19. In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer is to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises. However, in case, an Officer is given Current Duty Charge or promoted on adhoc basis, he shall be entitled to the pay of the promoted post as has been held in Arindam Chattopadhyays case (supra) and **State of Haryana v. P.K. Grover, (1983) 4 SCC 291 : AIR 1983 Supreme Court 1060.***

13. Lastly, the Hon’ble Supreme Court in **I. Chuba Jamir and others vs The State of Nagaland and others, 2010(1) SCT 183**, held that mere eligibility does not confer any right for promotion.

14. In view of the foregoing discussion and abovesaid authoritative enunciation of law by the Hon’ble Supreme Court and this Court, the present petition is dismissed.

(NAMIT KUMAR)
JUDGE

11.12.2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No