

**CWP-2122-2021 (O&M)****-1-****235 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-2122-2021 (O&M)****Date of decision: 10.05.2024****GURJANT SINGH****...PETITIONER****VERSUS****STATE OF PUNJAB AND ORS.****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: Mr. Peeyush Gagneja, Advocate for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Rakesh Roy, Advocate for

Mr. Abhilaksh Gaind, Advocate for respondent No.3.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to grant him promotion to the post of 'Assistant Divisional Fire Officer', from the date, he became eligible for the said post, as per the notifications issued by the department or from the date his juniors have been promoted, with all consequential benefits.

2. It is the case of the petitioner that he joined as 'Fireman' on 12.11.1987. He has successfully completed the 'Sub-Officers Course' from 12.07.1993 to 31.12.1993 from the National Fire Service College, Nagpur and was awarded the certificate dated 12.07.1994 (Annexure P-2) and thereafter, he completed his 'Station Officers and Instructors Course' in the month of May, 2004 from the National Fire Service College, Nagpur and was awarded the certificate dated 29.11.2004 (Annexure P-3). He was promoted to the post of 'Sub-Fire Officer' on 03.06.1999 and he was further promoted as 'Fire Station Officer' on 05.07.2006. However, the said promotion order was withdrawn vide order dated 27.02.2007 and thereafter, the petitioner was promoted as 'Fire

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Station Officer' on adhoc basis vide order dated 24.10.2011 (Annexure P-5). Thereafter, the petitioner was regularly promoted as 'Fire Station Officer' vide order dated 13.10.2020 (Annexure P-6) w.e.f. 31.05.2020. The petitioner has filed the instant petition claiming promotion to the post of 'Assistant Divisional Fire Officer' from 23.10.2014, i.e. from the date when he became eligible for promotion for the said post.

3. The petitioner filed the present writ petition on 25.01.2021 and thereafter sought voluntary retirement w.e.f. 31.05.2021. The petitioner is seeking promotion to the post of 'Assistant Divisional Fire Officer' which is governed by the Rules known as "Punjab Municipal Corporation Services (Recruitment and Conditions of Service) (Amendment) Rules, 2020". The employee who is having two years experience on the post of 'Fire Station Officer' is eligible for promotion to the said post. The adhoc promotion of the petitioner as 'Fire Station Officer' was regularized w.e.f. 31.05.2020 and he voluntarily retired on 31.05.2021, therefore, he does not have two years experience as 'Fire Station Officer'. Further, the petitioner is claiming promotion w.e.f. the date of occurrence of vacancy of 'Assistant Divisional Fire Officer'. The said claim is totally misconceived as it is a settled law that no one has a right to claim promotion w.e.f. the date of occurrence of vacancy or attaining eligibility conditions.

4. In **“Union of India & Anr. vs Manpreet Singh Poonam Etc.”**, **2022(4) SCT 550**, the Hon’ble Supreme Court, has held as under:-

“16. It is trite law that once an officer retires voluntarily, there is cessation of jural relationship resorting to a "golden handshake" between the employer and employee. Such a former employee cannot seek to agitate his past, as well as future rights, if any, sans the



prescription of rules. This would include the enhanced pay scale. The Respondent in Civil Appeal No.517 of 2017 was rightly not considered in the DPC in 2012 since he was no longer in service at the relevant point of time. The High Court has committed an error in relying upon a circular, which has got no application at all, particularly in the light of our finding that we are dealing with a case of promotion simpliciter as against upgradation of any nature.

17. xxx xxx xxx xxx

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 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.”

20. Similarly, this Court in the case of **Ganga Vishan Gujrati and Ors. v. State of Rajasthan, (2019) 16 SCC 28** has held that:

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in **Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715**. The principle was reiterated by this Court in **State of Bihar v.**



Akhouri Sachindra Nath, 1991 Supp (1) SCC 334 and State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683. In Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267, this Court revisited the precedents on the subject and observed: (SCC pp. 281-82, para 45).

“45. ... (i) The effective date of selection has to be understood in the context of the Service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne



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in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

*This view has been re-affirmed by a Bench of three Judges of this Court in **P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693.**”*

5. It is not the case of the petitioner that any of his junior has been promoted to the abovesaid post while he was in service, although, in Para 11 of the petition, it has been stated that Sarv Sh. Srishti Nath, Lovepreet Singh Bolena and Nathu Ram were promoted to the post of Assistant Divisional Fire Officer vide order dated 29.09.2020, however, the petitioner cannot claim promotion w.e.f 29.09.2020 also, as he was regularized on the feeder post of Fire Station Officer on 13.10.2020 w.e.f. 31.05.2020.

6. In view of the above, this Court does not find any merit in the present writ petition for invoking jurisdiction under Articles 226/227 of the Constitution of India and consequently, the present petition is hereby dismissed, with no orders as to costs.

10.05.2024

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(NAMIT KUMAR)
JUDGE

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