

CWP-13104-2000 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13104-2000 (O&M)
Date of Decision :09.12.2024

Karnail Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Puneet Bhushan, & Mr. Rohit Sharma, Advocates
for the petitioners.

Mr. Charanpreet Singh, AAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present petition, the grievance being raised by the petitioners is that they are not being granted benefit of further promotion to the post of Senior Technical Assistant, which is causing prejudice to them and hence, appropriate direction be issued to the respondents to grant the petitioners benefit of promotion to the said post as the petitioners are fully eligible.

Upon notice of motion, the respondents have filed the reply wherein, it has been stated that initially a decision was taken in the year 1997 to close down the Quality Marking Centers as well as the Industrial Development Centers where the petitioners are working and also to abolish the temporary posts which were available and were lying vacant so that no

financial distress is caused to the State.

Learned counsel for the respondents-State further submits that in the year 1997, vide Annexure R-1, again a review was made to give certain period of time whether the Industrial Development Centers as well as Quality Marking Centers are needed or not and up to the year 2000, the temporary posts were allowed to continue but on 23.07.2001 (Annexure-R/IV), the Governor of Punjab was pleased to pass an order abolishing all the vacant posts in the Quality Marking Centers and Industrial Development Centers with immediate effect therefore, the claim that the posts of Senior Technical Assistant were vacant so as to consider the claim of the petitioners for promotion is incorrect as the respondents have categorically stated in para-14 of the written statement that there was no post of Senior Technical Assistant lying vacant so as to consider the claim of the petitioners.

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

As per the settled principle of law, the promotion cannot be claimed as a matter of right and only a consideration can be claimed.

In the present case, prayer of the petitioners is that the posts of Senior Technical Assistant are lying vacant and the petitioners have not been granted any promotion and hence, the respondents be directed to promote the petitioners on the said post.

Firstly, the said prayer cannot be granted as no direction can be given by the Court to an employer to fill any vacant post. The jurisdiction to fill the post depends upon the requirements for which only an employer can take a decision and not the Court. In case, any promotion is being made, the



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petitioners can only raise claim for consideration so that their rights to get promotion as per the rules governing the service are not infringed.

Further, the respondents in the present case are on record to say that there is no post of Senior Technical Assistant lying vacant as all the said posts had already been abolished by the respondents. Once, all the posts, on which the petitioners are seeking promotion have already been abolished by the respondents with the orders of the Governor of Punjab, which fact has been established by the respondents, no direction can be given for promotion against abolished posts.

Learned Senior counsel appearing for the petitioners has placed reliance upon the judgment of the Coordinate Bench of this Court in **CWP-2567-1992 titled as Sant Ram vs. State of Punjab, decided on 03.02.2004** to support the claim of the petitioners.

It may be noticed that in the said case, the question decided was different from the present case as in the said case the department was not framing rules to make it clear to the employees as to who is eligible and how many posts are there in the promotional cadre. It was under these circumstances, a direction was given to the department to frame rules so as to ensure transparency in functioning and to minimize bickering among the employees that they should know as to how their seniority is to be determined and what are their avenues for promotion. No direction was ever given by the Court to make promotion on the ground that posts are lying vacant.

Similar is the case being relied by learned Senior counsel for the petitioner in **W.P. 11022-2003 titled as Krishnaiah vs. Government of Andhra Pradesh , decided on 13.08.2006,** which is the judgment of the

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Andhra Pradesh High Court.

The last judgment which is being relied upon by the learned Senior counsel for the petitioners is by the Hon'ble Supreme Court of India in Civil Appeal No.699-1985 titled as The Director, Lift Irrigation Corporation Ltd and others vs. Pravat Kiran Mohanty, decided on 12.02.1991.

It may be noticed that in the said case, the dispute was with regard to the seniority after the merger of the two departments and not the claim for promotion qua the posts which are lying vacant hence, the said judgment is not applicable in the facts and circumstances of the present case.

No other argument has been raised.

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

Civil miscellaneous application pending if any is also disposed of.

December 09, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No