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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8359-1999 (O&M)
Date of Decision: 26.02.2024

H.K. Gosain

..... Petitioner

Versus

Chaudhary Charan Singh Haryana Agricultural University, Hissar & another
..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. B.S. Patwalia, Advocate,
for the petitioner.

Mr. Babbar Bhan, Advocate,
for respondent No.1.

Mr. Amrit Paul, Advocate,
for respondent No.2.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of *certiorari* for quashing the impugned order dated 01.06.1999 (Annexure P-14) with further prayer seeking writ in the nature of *mandamus* directing the respondents to consider and promote the petitioner to the post of Executive Engineer w.e.f. 01.06.1999, the date from which respondent No.2 has been ordered to be promoted with all consequential benefits.
2. The brief facts of the present case are that the petitioner was appointed as a Sectional Officer in the year 1965 in Chaudhary Charan Singh Haryana Agricultural University (hereinafter

referred to as 'University'). Thereafter, by way of direct recruitment, he was appointed as Sub Divisional Engineer on 03.06.1971. He completed his probation of two years on 02.06.1973. Thereafter, on 27.03.1981, on account of allegations levelled against the petitioner, he was suspended from service. However, the petitioner was reinstated on 07.05.1981 without prejudice to the disciplinary proceedings against the petitioner. Thereafter, a punishment order dated 21.02.1986 (Annexure P-1), was passed against the petitioner by the punishing authority whereby punishment of stoppage of two increments with cumulative effect was imposed, which was a major punishment. However, on the representation dated 21.04.1986 filed by the petitioner, aforesaid order of the punishment was modified vide order dated 03.06.1987 (Annexure P-2) to the extent of stoppage of two increments but without cumulative effect and thus it was reduced to a minor punishment.

3. Vide letter dated 04.05.1982 (Annexure P-3), the adverse remarks pertaining to his integrity recorded in the ACR for the period from 1981-82 were communicated to him. However, the said adverse remarks, on the representation moved by the petitioner, were modified by the Vice Chancellor of the University vide order dated 04.05.1995 (Annexure P-4) by incorporating that so far as the expunction of the remarks regarding integrity of the petitioner is concerned, the same were intact but it was modified only to the extent that he will not be denied the promotional scale. Thereafter, one warning was issued to the petitioner in some another complaint vide order dated 03.10.1994 (Annexure P-4/A) and vide order dated 05.02.1996 (Annexure P-4/B), another warning was issued to the petitioner to be careful in future. However the said warning was thereafter withdrawn vide order

dated 19.03.1998 (Annexure P-4/C). After that again, vide order dated 07.07.1998 (Annexure P-4/D), one more warning was issued to the petitioner.

4. The petitioner is stated to be senior to respondent No.2 vide Seniority List (Annexure P-10) and the seniority of the petitioner qua respondent No.2 is not in dispute rather the same has been admitted in the written statement. Vide Annexure P-11, a current duty charge (hereinafter referred to as 'CDC') for the post of Executive Engineer was given to respondent No.2. However, some recommendations were made by the Chief Engineer of the University that respondent No.2 should not be given the CDC, but instead of respondent No.2, the CDC should be given either to the petitioner or to some other Sub Divisional Engineer, namely, Sh. K.K. Bhatia. However, the CDC was still given to respondent No.2. Thereafter, vide impugned order dated 01.06.1999 (Annexure P-14), respondent No.2 stood promoted to the post of Executive Engineer and the aforesaid Annexure P-14 has been impugned in the present petition as well. However, during the pendency of the present petition, both the petitioner as well as respondent No.2 have already retired on attaining the age of superannuation. The petitioner retired on 31.01.2001 while respondent No.2 retired on 31.04.2002.

5. Mr. B.S. Patwalia, learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner has been wrongfully denied the promotion to the post of Executive Engineer and his junior i.e. respondent No.2 has been promoted vide Annexure P-14 on 01.06.1999. He further submitted that as per the statutory rules contained in the Calendar of

the University, there was nothing adverse against the petitioner so as to debar him from being promoted to the post of Executive Engineer and rather on merits, respondent No.2 could not have been promoted in view of the fact that even the Chief Engineer had recommended that respondent No.2 could not have been given the CDC and in his place, the petitioner should have been given the CDC but the petitioner has been ignored for the grant of promotion only on the ground that for the year 1981-82, there were adverse entries in the ACR against the petitioner. Learned counsel further refers to Annexure P-13, which is a letter dated 07.03.1986 pertaining to criteria for promotion/grant of selection grade and the amendment is so reproduced in Para No.17 of the writ petition. While referring to the aforesaid Rule, he submitted that as per Chapter-V of the Statute Classifications and the manner of appointment of the employees of the University has been provided and the post of Executive Engineer falls in the B-Grade post which is now Class-II post and as per Rule 5 of the Service Rules, the manner of appointment of 'Grade B' ministerial posts has been defined wherein it has been so provided that 25% vacancies shall be filled up on the basis of seniority-cum-merit out of the employees in a category who have qualified the Departmental Examination viz Clerks/equivalent and Accountants should have passed Lower Standard Examination and Assistants and Superintendents should have passed Higher Standard or State SAS Exam and seniority for this sub-clause shall be based on the date of qualifying the relevant examination. He submitted that so far as the petitioner is concerned, it is not the case of the University that he was not qualified or he has not passed any examination but the only reason for denial of promotion to the

petitioner was that there were some adverse entries vide Annexure P-3 for the period from 1981-82 which also stood modified by the Vice Chancellor to a limited extent. He further referred to the aforesaid para and submitted that the University had circulated the criteria for promotion and grant of selection grade vide Circular dated 11.12.1982 and the criteria for promotion and grant of selection grade was also defined. The aforesaid criteria is reproduced as under:-

- “(i). A person who, in the last 10 years, has 5 good or more than 5 good or better than average reports may be eligible for screening for promotion/Selection grade.*
- (ii) A person who got an adverse entry regarding his integrity in the last 10 years, should not be recommended for promotion/selection grade.*
- (iii) A person whose last report immediately preceding promotion/selection grade is exceedingly adverse should also not be considered for promotion/selection grade.*
- (iv) This would mean that the committee of the appointing authority as the case may be, in its judgment, decide whether the adverse entry is of a minor nature and in that case, the person will not be ignored for promotion/selection grade.”*

6. Learned counsel for the petitioner further submitted that a perusal of the aforesaid criteria would show that a person who in the last 10 years has five good or more than five good or better than average reports may be eligible for screening for promotion/selection grade. He further submitted that so far as the present petitioner is concerned, a DPC was held in the year 1999 when respondent No.2 was promoted to the post of

Executive Engineer vide impugned order dated 01.06.1999 (Annexure P-14). He further submitted that from the beginning of petitioner's career till his retirement all his service records were good except for one adverse ACR for the period 1981-82 which was more than ten years preceding the DPC. He further submitted that the aforesaid adverse entry could not have been made a ground for non-promotion of the petitioner, who otherwise was a senior. He also pointed out that the aforesaid Rules which have been so reproduced in Para No.17 of the petition have not been denied by the respondent-University by filing written statement.

7. Learned counsel for the petitioner further referred to Para No.21 of the petition wherein it has been specifically stated in sub-para (i) that the ACRs of the petitioner for the last 10 years were either Good or Very Good and in consonance with the Statutory Rules of the University that could not have weighed in the minds of the respondent-University to have ignored the petitioner for promotion. He also submitted that the aforesaid grounds taken by the petitioner in Para No.21 of the petition has not been denied by the University while filing reply in Para No.21 of the written statement and in this way, it is clear that the petitioner had a Good or Very Good ACRs for the preceding 10 years.

8. Learned counsel for the petitioner further submitted that the petitioner was also aggrieved by non-grant of second promotional scale and he filed a separate writ petition before this Court bearing CWP-19848-1998 which was decided by a Co-ordinate Bench of this Court on 28.09.2016. He submitted that since he was not granted second promotional scale only because of the fact that there were adverse entries against the petitioner for

the period of 1981-82, the aforesaid petition was allowed by a Co-ordinate Bench of this Court by observing that even otherwise also such minor aberration in the service record of the petitioner which was substantially cured by subsequent actions of the University cannot be taken to be against the petitioner. He submitted that non-grant of the aforesaid second promotional scale after completion of 12 years of service on the basis of aforesaid adverse ACR for the period 1981-82 was repelled by a Co-ordinate Bench of this Court in the aforesaid writ petition. He submitted that in view of the aforesaid facts and circumstances, rather the case of the petitioner would be covered by the aforesaid judgment especially in view of the fact that the aforesaid ACR could not have been relied upon by the respondent-University while ignoring the petitioner for promotion and also because of the reason that at the most, the ACRs of the last ten years preceding the DPC could have been seen but not for the period which was much more beyond the aforesaid period of ten years and in this way the petitioner has been wrongly ignored for grant of promotion.

9. Learned counsel for the petitioner also submitted that the promotion is an incidence of service and right of consideration for being promoted is also a Fundamental Right. He further submitted that once a right of consideration for being promoted is a Fundamental Right in view of the judgment of “*Ajay Kumar Shukla and others Vs. Arvind Rai and others*” (2022)12 SCC 579, then it would also mean that the consideration has to be in the teeth of the Statutory Rules and in accordance with law and the action of the respondent in arbitrarily ignoring the petitioner for grant of promotion is also violative of the Fundamental Rights of the petitioner incorporated

under Articles 14 and 16 of the Constitution of India. He submitted that now since both the petitioner and respondent No.2 have retired, the only prayer which now survives in the present petition is to direct the respondent No.1 to grant notional promotion from the date his junior i.e. respondent No.2 was promoted to the post of Executive Engineer vide Annexure P-14 and after fixing the notional pay to the promoted post, the necessary consequential retiral benefits/pensionary benefits be given to the petitioner along with interest.

10. On the other hand, learned counsels appearing on behalf of respondent No.1 and for respondent No.2 submitted that so far as the aforesaid judgment relied upon by the learned counsel for the petitioner wherein he filed a separate petition for grant of second promotional scale is concerned, the same is not in dispute and it has been so observed in the aforesaid judgment that the minor aberrations have a significant effect upon the rights of the petitioner for getting a second promotional scale. They also submitted that it is not in dispute that the reason for denial of the second promotional scale to the petitioner and the reason for denial promotion to the petitioner were identical and since now a Co-ordinate Bench of this Court has decided that the aforesaid reason is of no significance, then the ratio of that case would certainly apply in the present case.

11. I have heard the learned counsel for the parties.

12. The factual position as stated by the learned counsel for the petitioner with regard to the adverse entries against the petitioner and the Rule has not been denied by the learned counsels for the respondents and even in their respective written statements the same has not been denied. The

only issue involved in the present case is as to whether in the light of the Statutory provisions as reproduced in Para 17 of the writ petition and also in the light of the aforesaid judgment of a Co-ordinate Bench of this Court wherein the petitioner had sought second promotional scale, the petitioner would be entitled for grant of notional promotion from the date his junior i.e. respondent No.2 was promoted or not. It is a settled law that right to be considered for promotion is an incidence of service and it affects the Fundamental Rights. Whenever an action is taken by a Statutory Authority or an instrument of the State then the same is to be done in a reasonable manner and cannot be done in an arbitrary manner. In case, it is found that the action of the respondent is arbitrary, then the same can be corrected by judicial review. The only reason which has come up in the present case for denial of the promotion to the petitioner in the year 1999 was that the petitioner was having an adverse entry in the ACR for the period 1981-82, but as per the calendar and the circulars, last 10 years are to be seen for the purpose of promotion. The criteria for promotion as so reproduced in Para 21 of the present petition is seniority-cum-merit. So far as the seniority of the petitioner is concerned, the same is not in dispute and the petitioner was admittedly senior to the respondent No.2. So far as the merit aspect is concerned, the aforesaid reason was not a valid reason for the purpose of ignoring the petitioner for promotion since there was no adverse entry in last 10 years. Not only this, so far as respondent No.2 is concerned, as per the recommendation of Chief Engineer of the University, even when respondent No.2 was given the CDC, the said charge was advised to be not given to him because of some reasons but the same was recommended to be given to the

petitioner or another officer. Therefore, even so far as the merit aspect is concerned, the same also holds good for the purpose of considering as to whether at that point of time, the petitioner was entitled for grant of promotion or not. Be that as it may, even as per the respondents, the petitioner was ignored for promotion on the ground of his adverse ACR of the year 1981-82 which was beyond 10 years of the year 1999 when the DPC was conducted and respondent No.2 was promoted and therefore, it would have not been significant for the purpose of considering the merit of the petitioner. Even otherwise also, a Co-ordinate Bench of this Court has also considered this aspect of second promotional scale which has been allowed in the aforesaid writ petition bearing CWP-19848-1998.

13. In view of the totality of facts and circumstances of the present case, it is held that the petitioner was wrongly ignored by the respondent-University at the time when respondent No.2 was promoted vide Annexure P-14. Since the respondent No.2 has already retired, the prayer of the petitioner for quashing of the impugned order dated 01.06.1999 (Annexure P-14) has only become academic in nature and therefore, there is no need to pass any order for setting aside the aforesaid impugned order. However, the second prayer of the petitioner needs to be allowed wherein he has prayed that the petitioner be granted all the consequential benefits after being promoted. Since the petitioner has also retired in the year 2001, the aforesaid direction for promoting the petitioner would also become insignificant for the purpose of seeking the aforesaid direction. However, the petitioner will be certainly entitled for getting notional promotion from the date when the respondent No.2, who was junior to the petitioner was promoted and the

petitioner was ignored on that date.

14. Consequently, the present petition is partly allowed. The respondent-University is directed to grant notional promotion to the petitioner w.e.f. the date when the respondent No.2 was granted promotion and thereafter, to fix his pay on the aforesaid post of Executive Engineer and to grant all the consequential benefits by re-fixing the pensionary and retiral benefits to the petitioner and to pay to the petitioner along with interest @ 6% per annum (simple). The entire exercise be completed within a period of three months from today.

15. However, the petitioner shall not be entitled for any arrears of salary for the period from the date his junior i.e. respondent No.2 has been promoted till the date of his superannuation.

26.02.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

- 1. Whether speaking/reasoned: Yes/No
- 2. Whether reportable: Yes/No