

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13481-2021
Date of Decision : 14.02.2024

Asha Rani

...Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Ram Kumar Chauhan, Advocate for the petitioner.

Mr. Amarpreet Bains, AAG, Punjab.

AMAN CHAUDHARY, J.

1. The prayer in the present writ petition is for issuance of a writ in the nature of mandamus directing the respondents to grant promotion to the petitioner, thereby revising her pension and granting her all benefits arising thereto, from the date her juniors stood promoted.
2. Learned counsel submits that there was a recommendation to promote the petitioner vide letter dated 15.12.2017, Annexure P-1 to the post of Multi Health Supervisor wherein her name was mentioned at Sr. No.68 with Seniority No.416, however, she was not considered and a representation stating therein that her date of retirement was 30.04.2018, was submitted on 17.04.2018, Annexure P-2. Despite the aforesaid, the same was not acceded to. It is 10 days after her retirement, on 10.05.2018 persons junior to her were granted promotions.
3. Learned State counsel, on the other hand, refers to para No.2 of the reply stating therein that she was granted an extension in service w.e.f 01.05.2018 to 30.04.2019 vide office order No. E9(1)Pb-2018/2909-10 dated 18.09.2018,

Annexure R-1, wherein it was specifically mentioned that during the period of extension she would not be entitled for promotion and she had accepted those terms and conditions.

4. Having heard the learned counsel for the parties, there is found to be weight in the submissions made on behalf of the petitioner.

5. Undisputed facts as emanate from the pleadings are that the petitioner, being eligible was recommended for promotion against the vacant post of Multi Purpose Health Supervisor prior to her retirement, however, the same having not been granted, a representation prior to her attaining the age of superannuation was also submitted, still the DPC was not convened. Consequently, she retired on 30.04.2018, without receiving the consideration and benefit of promotion.

6. The right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under Article 16(1) of the Constitution of India, as held by Hon’ble the Supreme Court **Ajit Singh vs. State of Punjab**, (1999) 7 SCC 209 and reiterated in **Ajay Kumar Shukla and Ors. vs. Arvind Rai and Ors**, 2021 SCC OnLine SC 1195.

7. A profitable reference can be made to a judgment of the Division Bench of this Court in **Chaman Lal Lakhanpal vs. UPSC**, 1999(1) SCT 175, a case wherein the petitioner aggrieved against his non-consideration for promotion had been unsuccessful before the Central Administrative Tribunal, claimed that he though had become eligible to be considered for promotion to the Indian Administrative Service in the year 1987 and in the year 1992, meeting of DPC was not held, though prior to it was wherein the persons senior to him were considered. Thereafter, even from year 1994-95 onwards the meeting was not held, consequently, his consideration did not take place and petitioner, who was to retire

on 30.09.1998 from service, the Tribunal on that basis denied to give direction that by the time would be held he would stand retired. It was observed that, “The right to equality of opportunity in matters of promotion is guaranteed under Article 16 of the Constitution. The right cannot be stifled by an arbitrary failure to perform the duty imposed by statutory regulations. By merely choosing to avoid the meeting, a citizen cannot be denied the right to be considered.”. Further, held that, “It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules.”

8. In **State of Punjab vs. Jagjit Singh and another**, 2018(4) SCT 549, the Division Bench of this Court had observed that the State cannot take undue advantage of their own inaction and wrongs in granting regular promotions, which was a legitimate expectations in service career and in the meantime, the employees had unfortunately retired without getting formal tag of a regular promotion, directed promotion be granted retrospectively but on notional basis only and they be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. Interest of 7% per annum was also to be granted on arrears of pension and other retiral benefits.

9. Hon'ble the Supreme Court in **MP Singh Bargoti vs. State of Madhya Pradesh**, 2015 AIR SC 556, observing that the appellant therein was never considered by the DPC till he was in service or even thereafter when person junior to him in the combined gradation list was considered on basis of another subsequent gradation list and promoted, it was held that he suffered only on account of passage of time or innocuous delay and was held entitled to notional promotion and post retiral benefits by recalculating the same.

10. This Court is unable to agree with the stance of respondents, as the process for promotion of the petitioner had been initiated by a recommendation made on that behalf, however, no reason much less cogent, has come forward in the reply, for not convening of the meeting of the DPC prior to 30.04.2018.

11. Apparently within merely 10 days of the petitioner having retired, her juniors were considered and promoted on 10.05.2018. However, due to the inaction and inordinate delay on part of the Department, there being no impediment in holding of the meeting at the relevant time, injustice has been caused to the petitioner, she having been deprived of her legitimate right of consideration for promotion.

12. It is trite to say that the State must act reasonably and fairly. No employee should be made to suffer, for the default of the Department, as were the observations of Hon'ble the Supreme Court in **State of Maharashtra vs. Jagannath Achyut Karandikar**, 1989 Supp (1) SCC 393.

13. Learned State counsel is unable to cite any contrary law.

14. On a conspectus evaluation of the matter in light of the afore-referred dictum of law, this Court is persuaded to direct the respondents to consider the petitioner for promotion as a Multi Health Supervisor on a notional basis, for the purpose of pensionary benefits. Needful be done within a period of four weeks,

from the date when a web-print of this judgment is received by the competent authority.

16. The present writ petition is disposed of accordingly.

February 14, 2024
ps/mkamra

(AMAN CHAUDHARY)
JUDGE

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No