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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18716-2017 (O&M)
Date of Decision: 02.07.2024

Shankar Dass Sharma

....Petitioner(s)

Versus

Sarva Haryana Gramin Bank and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.K. Verma, Advocate, for the petitioner.

Mr. G.S. Bajwa, Advocate, for the respondents.
(Through video conferencing).

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 07.11.2008 (Annexure P-16) and order dated 03.04.2017 (Annexure P-18) and the action of the respondents vide which the benefit of notional promotion towards retiral benefits of petitioner has been denied with a further prayer to direct the respondents to give benefit of notional promotion to the petitioner towards his retiral benefits and accordingly revise his retiral benefits along with arrears and interest @ 12 % per annum from the date of accrual till the date of realization.



2. Giving the brief facts of the present case, the learned counsel for the petitioner submitted that the petitioner joined as Junior Clerk-cum-Cashier on 03.03.1983 and thereafter his services were confirmed on 24.04.1984. Thereafter, he was promoted on 28.04.1987 to the post of Senior Clerk-cum-Cashier. Thereafter, the department conducted a Departmental Promotion Committee (DPC) for further promotion to the post of Officer Scale-I on 03.03.2001. The petitioner was called for interview on 05.04.2001 vide Annexure P-6 and he appeared for the interview on 12.04.2001 but his result was kept in a sealed cover. He was however suspended from service on 24.03.2001 on the basis of some allegations against him and thereafter a charge-sheet dated 23.05.2001 was served upon the petitioner vide Annexure P-8. Thereafter, the suspension of the petitioner was revoked on 12.02.2003 because there was a delay in the departmental proceedings. Thereafter, the petitioner was dismissed from service on 16.08.2003. The petitioner preferred a Statutory Appeal against the aforesaid order of dismissal before the appellate authority and the appeal was also dismissed. Thereafter, the petitioner filed a civil writ petition No.7132 of 2006 before this Court challenging the aforesaid order of dismissal and the order passed by the learned appellate authority. However, the aforesaid writ petition was disposed of by a Division Bench of this Court vide Annexure P-15 on 04.08.2008. He submitted that a Division Bench of this Court on the basis of disproportionate order of punishment directed that the order of penalty of dismissal stands substituted with order of penalty for compulsory retirement. Thereafter, vide Annexure P-16 all the retiral and pensionary benefits were



paid to the petitioner but the post on which he was dismissed from service and not on the promotional post regarding which his case was kept in sealed cover and now the present petition has been filed seeking notional promotion to the post of Officer Scale-I with all the consequential benefits thereon.

3. On the other hand, Mr. G.S. Bajwa, learned counsel appearing on behalf of the respondents through video conferencing submitted that the present petition is hit by the doctrine of delay and laches because after the aforesaid order was passed by a Division Bench of this Court in the year 2008, the benefits were granted to the petitioner immediately but the present petition has been filed in the year 2017 with a delay of about 9 years and there is no justification with regard to the delay. He also submitted that even otherwise also, the present petition is not maintainable in view of the fact that the subject matter of the present petition has already been finally concluded and decided by a Division Bench of this Court vide Annexure P-15 and the judgment has attained finality. He submitted that the petitioner has now in the present petition made a prayer that he be granted notional promotion from the date when the other similarly situated employees were promoted and his case was kept in sealed cover in the year 2001 but when the petitioner filed the earlier writ petition he had rather prayed in the petition for grant of all the consequential benefits, although no specific prayer was made for grant of notional promotion and no such relief has been granted by a Division Bench of this Court and now the prayer of the petitioner is not only misconceived but is also not maintainable being hit by



the doctrine of constructive *res judicata*. He submitted that even otherwise also, once a relief for consequential benefits has not been granted by a Division Bench of this Court, the same is deemed to have been rejected by the Division Bench and therefore, the present petition is not maintainable. He further submitted that apart from the above, it is a case where when the case of the petitioner was kept in a sealed cover by the DPC and thereafter charge-sheet was issued to him which culminated into the order of dismissal and his punishment has been sustained, but the nature of the penalty has been converted by a Division Bench of this Court from the order of dismissal to the order of penalty of compulsory retirement. He also referred to the operative part of the aforesaid judgment of Division Bench in which it was directed that the order of penalty of dismissal will stand substituted with the order of penalty for compulsory retirement and therefore, in this way, even if the result of the petitioner was kept in sealed cover it has culminated into the order of punishment and therefore, now he cannot turn around and seek notional promotion because the charge-sheet has culminated into the order of punishment. He has prayed for dismissal of the present petition.

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

5. When the petitioner was dismissed from service he filed a writ petition before this Court assailing the order of dismissal and also the order of the appellate authority. The prayer made in the earlier writ petition is also attached herewith as Annexure P-15 which is reproduced as under:-

“Civil Writ Petition under article 226 of the Constitution of India praying for issuance of a Writ in the nature of certiorari



for quashing the order dated 16.8.2003 (Annexure P-24) passed by respondent No.3 confirming the penalty of dismissal from service to the petitioner and order dated 30.9.2003 (Annexure P-25) passed by respondent No.2, in the appeal of the petitioner against the above said order, vide which the above said decision was upheld, and all consequential proceedings.

And for issuance of a Writ in the nature of Mandamus directing the respondents to take the petitioner back in service with all consequential benefits and to treat the period from dismissal of the petitioner and his rejoining as service period.

Any other Writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be issued in favour of the petitioner.”

6. The relevant portion of the judgment of a Division Bench of this Court is also reproduced as under:-

*“7. Normally, courts do not substitute punishment unless the same is shockingly disproportionate. At the same time, doctrine of proportionality being part of Article 14 of the Constitution, where punishment is too harsh, the punishment of dismissal may be liable to be interfered with. Though, normal course may be to set aside the order of dismissal and remand the matter for imposing lesser punishment, following the law laid down in **State of U.P vs. Jaikaran Singh, (2003) 9 SCC 228** and **State of U.P.v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276**, we consider it appropriate to direct that order of penalty of dismissal will stand substituted for order of penalty for compulsory reitirement.”*

7. A perusal of the aforesaid would show that the petitioner when



he earlier filed a writ petition by assailing the order of dismissal and also the order of the appellate authority, he also prayed for the consequential benefits but he did not pray specifically for grant of notional promotion. A Division Bench of this Court while deciding the writ petition converted the order of penalty of dismissal into the order of penalty for compulsory retirement. No consequential benefit was granted by a Division Bench of this Court. Therefore, this Court is of the considered view that now the present petition which has been filed only seeking the grant of notional promotion is not maintainable. Apart from the above, no justification has come forth from the counsel for the petitioner as to why there was a delay of about 9 years in filing of the present petition. However, during the course of arguments, learned counsel for the petitioner has submitted he had filed a representation which has been decided in the year 2017. However, this Court is of the considered view that filing of representation and a decision made thereafter cannot perpetuate the cause of action and therefore, there is no justification for the delay as well.

8. In view of the aforesaid facts and circumstances, the present petition is devoid of any merit and the same is hereby dismissed.

02.07.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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