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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-24205-2014 (O&M)****Date of Decision : 11-09-2024****PRITAM SINGH****.....Petitioner****VERSUS****STATE OF PUNJAB AND ORS****.....Respondent(s)****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. R.S Manhas, Advocate with
Mr. R.S Pathania, Advocate
for the petitioner.

Mr. Satnampreet Singh Chauhan, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the promotion to the post of Senior Ayurvedic Physician was granted to the petitioner after retirement vide order dated 31.05.2011 (Annexure P-3) with retrospective effect from 31.12.2010.

Learned counsel for the petitioner submits that the petitioner was allowed the said promotion w.e.f 31.12.2010 hence, the petitioner should have been asked for the option with regard to the increment to be given on the promotion, which option was never asked and when the same was exercised by the petitioner, the same was rejected on the ground that the same has been exercised 8 months after passing of the order of promotion.

Learned counsel for the petitioner submits that initially, despite the petitioner being eligible, the benefit of promotion was not given, which act on the part of respondents led to the filing of the CWP No.8772 of 2011

and it is only when direction was given by this Court, the petitioner was given retrospective promotion from 31.12.2010 to the post of Senior Ayurvedic Physician hence, while fixing the pay in the promotion cadre, the petitioner should have been given the option to opt for the increment, which benefit was never extended and when the option was exercised, the same was rejected as time barred and therefore, the respondents are liable to be directed to give the petitioner the option for fixation of his salary in the promoted cadre.

Learned counsel for the respondent on the other hand submits that the promotion order as Senior Ayurvedic Physician was passed on 31.05.2011 (Annexure P-3) and his pay was re-fixed vide order dated 25.06.2012 (Annexure P-4) keeping in view the direction given by this Court in CWP No.8772 of 2011 and the petitioner never raised any option hence, his salary was fixed accordingly and the option which the petitioner exercised after a period of 8 months on 09.02.2013, could not have been taken into account being time barred and therefore, the present petition may kindly be disposed of.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

Once, the petitioner was promoted keeping in view of the directions given by this Court in CWP No.8772 of 2011, the respondents were under obligation to seek option of the petitioner with regard to fixation of his salary especially when he had already retired from service. Nothing has come on record that before fixing the salary of the petitioner on

25.06.2012 (Annexure P-4), any option was offered to the petitioner. In the absence of any such option given, the unilateral fixation of the salary cannot be accepted.

It may be noticed that in case the petitioner would have been in service, he would have been given the option, which option has not been given to him on the ground that the petitioner had already retired from service by the time, the promotion to the post of Senior Ayurvedic Physician was granted. Once, retrospective promotion has been granted, to the petitioner for 31.12.2010 to the post of Senior Ayurvedic Physician, the respondents were under obligation to seek the option of the petitioner for fixation of his salary which was beneficial to him. The respondent unilaterally fixed the salary of the petitioner and thereafter, rejected the exercised option on the ground of delay and latches, which is incorrect and cannot be accepted.

Impugned order dated 12.08.2013 (Annexure P-8) is set aside and the respondents are directed to consider the option of the petitioner dated 09.02.2013 as a valid option and thereafter fix his salary. In case, after the fixation of his salary as per the option dated 09.02.2013, the petitioner is entitled for any benefit, the same will be extended to the petitioner including the revision of his pay as well as pensionary benefits as well as the pension. The arrears, in case found admissible to the petitioner on account of such revision, be extended to the petitioner within a period of 8 weeks from the receipt of copy of this order.

No other argument is raised.

Hence, the present petition is allowed.

Pending application, if any, also stands disposed of.

11-09-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
 Whether reportable: YES/NO