

221

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-23368-2016
Date of Decision: 08.04.2024

Ram Niwas

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Singal, Advocate,
for the petitioner.

Mr. Narinder S. Behgal, AAG, Punjab.

Mr. Padamkant Dwivedi, Advocate,
for respondent No.3.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India praying for issuance of a suitable writ, order or direction especially in the nature of *mandamus* for directing the respondents to promote the petitioner as ‘Clerk’ with effect from the date of promotion of his junior employee, namely, Pinki Rani i.e. with effect from 29.09.2016 with all consequential benefits that flows therefrom.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner joined as an Assistant Receptionist in the respondent-Department on 01.05.2006 in response to appointment offered vide Annexure P-1 wherein he joined on the aforesaid post which was a newly created post in Class-IV category and thereafter, he is working on the

aforesaid post. He further submitted that the petitioner was appointed on the aforesaid special post in view of the fact that the petitioner is 75% blind and the post was meant for a disabled person (blind). He submitted that the services of the petitioner are governed by the provision of Haryana Local Bodies Department (Group D) Service Rules, 1996. He further submitted that the petitioner was fully eligible for being promoted from Class IV to Class III and regarding his seniority he has also attached the Seniority List as Annexure P-3 and while referring to the same, he submitted that he is shown to be at serial No.25 in the Seniority List and two more persons, namely, Pinki Rani and Amarjeet Singh are at serial No.26 and 27 in the Seniority List and therefore, are junior to the present petitioner. He submitted that both the aforesaid persons, who were also Class-IV employees, have been promoted to the post of Clerk on 29.09.2016 vide Annexure P-6, but the petitioner despite being senior to the aforesaid two employees has not even been considered for promotion. He further submitted that right to be considered for promotion is a Fundamental Right in view of the judgment of Hon'ble Supreme Court in "**Ajay Kumar Shukla and others Vs. Arvind Rai and others**" (2022)12 SCC 579. The relevant paras of the aforesaid judgment are reproduced as under:-

"41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd. and Others vs. Pravat Kiran Mohanty in para 4 of the report which is reproduced below: (SCC p. 299)

"4... There is no fundamental right to promotion, but an employee has only right

to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified.”

42. A Constitution Bench in case of Ajit Singh (2) vs. State of Punjab, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27: (SCC p. 227-28)

“Articles 14 and 16(1): is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that:

"there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The

said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment.

Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1)

** * * **

27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guarantee to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that 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) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950."

(emphasis in original)

43. This Court in *H.M. Singh v. Union of India*, again reiterated the legal position, i.e. right to be considered for promotion as a fundamental right enshrined under Article 14 and Article 16 of the Constitution of India. The relevant extract from paragraph 28 is reproduced below: (SCC p. 686)

"28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly

depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.”

3. Learned counsel for the petitioner further submitted that the petitioner could not have been denied the right of being considered for being promoted and therefore, has prayed for his promotion to the post of Clerk which is a Class-III post. Learned counsel submitted that Right to Equality under Article 14 of the Constitution of India has been violated. He also submitted that another person of the same designation i.e. Assistant Receptionist, who was working in the Municipal Corporation, Rohtak has been promoted to the post of Clerk on 05.01.2021 vide Annexure P-11.

4. On the other hand, Mr. Padamkant Dwivedi, learned counsel for respondent No.3 submitted that the reason as to why the petitioner was not considered for promotion is that as per the Service Rules there is no post prescribed in the Service Rules in the cadre of Assistant Receptionist and as per the Rule 11 as reproduced in Para No.4 of the present writ petition, the feeder channel for the post of Clerk-cum-Registration Clerk is that of a Restorer or Peon whereas the petitioner was neither a Restorer nor a Peon

and therefore, he could not have been considered for promotion to the post of Clerk because he does not fall in the category of any feeder channel.

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

6. It was by way of a special arrangement that a post was created for the petitioner in the cadre of Assistant Receptionist. A perusal of Annexure P-7 would show that a decision was taken by the Director, Town Development, Haryana regarding appointments of blind persons under the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and in pursuance of the aforesaid decision a post was specially created for the disable person (blind) and the petitioner was appointed vide Annexure P-1 as Assistant Receptionist but as per the learned counsel for the respondents, since he did not fall in the category of the feeder channel for being promoted to the post of Clerk, which was not considered. This Court is of the considered view that the aforesaid action *ex facie* does not appear to be in accordance with law on the ground that the mere fact that the petitioner was not in the feeder channel either because of non-amendment of the statutory rules or otherwise and his right of being considered for being promoted has been denied to him. In case, there was no feeder channel then some decision had to be taken at the time when the post was specially created but it is not clear as to whether any amendment had been effected or not. The action of the respondents would not only affect the right of the petitioner for being promoted but it also affects the provisions of the aforesaid provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is also the case of the counsel for the petitioner

that vide Annexure P-1 similarly situated person, who was also on the post of Assistant Receptionist, has been promoted as Clerk by the Municipal Corporation, Rohtak vide Annexure P-11.

7. In view of the aforesaid facts and circumstances, it is directed that the Principal Secretary-cum-Financial Commissioner, Department of Urban Local Bodies, Haryana shall hold a meeting with the Commissioner, Municipal Corporation, Sonapat and in order to resolve the aforesaid issue will take a conscious decision not only considering the rights of the petitioner for being promoted and avoiding any stagnation but also in the light of the aforesaid Annexure P-7 and also the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The order shall be passed within a period of four months from today.

8. The present petition stands disposed of.

08.04.2024 (JASGURPREET SINGH PURI)
Bhumika JUDGE

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