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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24545-2015
Date of decision: 30.01.2024

SANJEEV KUMAR

...Petitioner

VERSUS

HARYANA VIDYUT PRASARAN NIGAM LTD. AND ANOTHER
...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Ms. Nikita Goel, Advocate
for the respondents.

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, order or direction including a writ in the nature of mandamus directing the respondents to consider and promote the petitioner to the post of Chief Public Relations Officer (CPRO) by amending the H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 as being applicable to the petitioner since the said Rules do not provide any promotional avenues to the post on which the petitioner is appointed or in the alternative to direct the respondents to create a promotional avenue for the petitioner since he has been stagnant on the post of Information Assistant for a long period of time and with a further prayer to direct the respondents to amend the H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 in so far

as the same do not provide any promotional avenues for the post of Information Assistant and are also silent as to the feeder cadre for the post of Chief Public Relations Officer (CPRO).

2. The brief facts of the present case are that the petitioner was appointed as Lower Divisional Clerk (LDC) on 16.10.1987 on ad hoc basis in the Haryana State Electricity Board (HSEB) and thereafter, his services were regularized on 31.12.1990. The petitioner was an employee of Haryana State Electricity Board (HSEB), which thereafter became Haryana Vidyut Parsaran Nigam Limited (HVPNL) in the year 1999 when the Haryana State Electricity Board (HSEB) was bifurcated into four power utility organizations including the respondent No.1-Haryana Vidyut Parsaran Nigam Limited (HVPNL). However, before the aforesaid bifurcation, the petitioner vide Annexure P-3 dated 03.05.1995 was transferred as officiating Lower Divisional Clerk (LDC) against the vacant post of Publicity Supervisor in the office of Chief Public Relations Officer (CPRO), HSEB, Panchkula. Thereafter, in the year 1997, fresh post was created under the nomenclature of Information Assistant vide Annexure P-4 dated 06.10.1997 in the pay scale of Rs.1640/2900 under the Chief Public Relations Officer (CPRO), HSEB, Panchkula. The statutory Rules which were prevalent at that time and which are also prevalent till date as per the learned counsel for the parties are the H.S.E.B. Employees of Public Relations Wing, Regulations, 1991. Since these Regulations were of the year 1991, there was no mention of the post of Information Assistant because it was later on created in the year 1997 vide Annexure P-4. Consequent upon the creation of fresh post of Information Assistant, which otherwise did not find mention in the H.S.E.B. Employees of Public Relations Wing, Regulations,

1991, the petitioner was promoted to the aforesaid post of Information Assistant vide Annexure P-5 on 29.10.1997. In this way, the petitioner who was working as Lower Divisional Clerk (LDC) stood promoted to the freshly created post of Information Assistant vide Annexure P-5. Thereafter, the petitioner remained on the said post and he has been discharging his duties as Information Assistant till date.

3. The prayer of the petitioner in the present case is for seeking a direction to consider and promote the petitioner to the post of Chief Public Relations Officer (CPRO), which is a post that finds mention in the H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 but the source of promotion to the aforesaid post is from Public Relations Officer only and for that, 70% is by way of direct recruitment and 30% is by way of promotion. The further prayer of the petitioner in the present writ petition is that H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 be amended to the extent that the fresh promotional channel be created for the post of Information Assistant since that does not find mention in the Regulations of 1991 and consequently, the petitioner, who is the most suitable candidate be promoted to the post of Chief Public Relations Officer (CPRO) accordingly.

4. Learned counsel for the petitioner submitted that when the petitioner was promoted to the post of Information Assistant vide Annexure P-5 then at that point of time the said post was not a part of H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 and was not a source prescribed for promotion to the post of Chief Public Relations Officer (CPRO). He further submitted that the aforesaid post of Information Assistant was created in the year 1997 vide Annexure P-4 by a decision of the Board of Directors but it was

never made a part of the statutory Regulations of 1991 and therefore, there was no provision for providing any promotional avenue to the aforesaid post and it did not become a source for promotion to any higher post including that of Chief Public Relations Officer (CPRO) and in this way, the promotional channel of the petitioner was completely blocked. He also submitted that now it has been almost 27 years that the petitioner is working on the post of Information Assistant and the post has been stagnated only because of the wrongful action on the part of the respondents in not incorporating the post and not providing any promotional channel to the post of Information Assistant. He further submitted that the promotion is an incidence of service and the rights of the petitioner have been jeopardized only because of the negligence on the part of the respondents and therefore, appropriate directions be issued to the respondents either to amend the H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 to provide channel of promotion for the petitioner or in the alternative, he be directed to be appointed as Chief Public Relations Officer (CPRO). He further submitted that various representations were given to the respondents in this regard and particularly Annexure P-12 dated 02.05.2012, but till date no action has been taken by the respondents.

5. Learned counsel for the petitioner referred to a judgment of Hon'ble Supreme Court in **Raghunath Prasad Singh versus Secretary, Home (Police) Department, Government of Bihar and others, Civil Appeal No.2439 of 1982** to contend that reasonable opportunities for promotion should be available in every wing of public service especially to generate efficiency in service. He also referred to another judgment of Hon'ble Supreme Court in **State of Tripura and others versus K. K. Roy, Civil Appeal No.6253 of 1998**

and a judgment of Coordinate Bench of this Court in *Capt. Nirmaljit Singh Sandhu (Capt.) versus State of Punjab, 1994 (2) RSJ 3* to support his contentions.

6. On the other hand, Ms. Nikita Goel, Advocate for the respondents submitted that it is a case where the petitioner was already granted one promotional channel since he was appointed as Lower Divisional Clerk (LDC) and he was promoted to the post of Information Assistant and therefore, he availed of the promotion and it cannot be said that the petitioner was never promoted to any post. She further submitted that the argument which has been raised by the learned counsel for the petitioner that there has been a stagnation is also not sustainable in view of the fact that since there was no promotional channel from the post of Information Assistant to any higher post, the petitioner was granted the benefit of 1st Assured Career Progression with effect from 01.11.2007 and 2nd Assured Career Progression with effect from 04.03.2014 and the purpose of providing the aforesaid ACPs were only to counter the so called stagnation since there was no promotional channel. She also submitted that the petitioner is seeking a writ in the nature of mandamus for amendment of H.S.E.B. Employees of Public Relations Wing, Regulations, 1991, which is not permissible since it is a wisdom and prerogative of the State to effect any amendment and no such right vests in the petitioner to seek amendment of the aforesaid Regulations in order to suit his own convenience.

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

8. The only short point involved in the present case is that the petitioner, who was initially appointed as Lower Divisional Clerk (LDC) was promoted to the post of Information Assistant vide Annexure P-5 on 29.10.1997

and the aforesaid post of Information Assistant was a freshly created new post, which did not find any mention in H.S.E.B. Employees of Public Relations Wing, Regulations, 1991. As per the learned counsel for the parties, since it was a result of a decision of the Board of Directors, the same was not incorporated in the H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 nor any promotional channel was provided. The prayer in the present writ petition is for seeking amendment in H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 to provide promotional channel. The petitioner has also given various representations to the respondent-Nigam to provide promotional channel and to promote the petitioner in this regard but as per the learned counsel for the parties, no order has been passed on the same. Learned counsel for the petitioner has referred to various judgments of Hon'ble Supreme Court and by a Coordinate Bench of this Court as aforesaid that stagnation has to be avoided and reasonable opportunities of promotion should be given to a person, who is in public service especially to improve the efficiency in service. However, the argument of learned counsel for the respondents is that it is not a case that the petitioner was never promoted in his service career because he was appointed as Lower Divisional Clerk (LDC) and he was promoted to the post of Information Assistant and he has already availed of one promotion and even after he was promoted as Information Assistant in the year 1997 vide Annexure P-5, he has been granted two ACPs and the purpose of grant of ACPs to the petitioner is to counter the stagnation, if any.

9. After hearing learned counsel for the parties, this Court is of the view that the petitioner was promoted to the post of Information Assistant way back in the year 1997, which is almost 27 years ago and the mere fact that he

was given one promotion from the post of Lower Divisional Clerk (LDC) to the post of Information Assistant and thereafter, he stood stagnated for about 27 years will not mean that he can be deprived of his rights in this regard in the light of the aforesaid judgments as relied upon by learned counsel for the petitioner. Although, Assured Career Progression (ACP) is a good measure to counter stagnation but the law which has been laid down by the Hon'ble Supreme Court also has to be followed. Apart from the above, as per the learned counsel for the petitioner, various representations and requests were made to the respondent-Nigam especially vide representation dated 02.05.2012 (Annexure P-12) but no action has been taken till date. It was the duty of the respondent-Nigam to have at least considered and decided the representations and requests of the petitioner in any manner and in accordance with law but the same was not done.

10. Consequently, without expressing anything on merits, the present writ petition is disposed of with a direction to the respondents to take a conscious decision with regard to the rights of the petitioner, who was promoted to the post of Information Assistant in the year 1997 i.e. about 27 years ago for providing promotional avenues by taking suitable measures including measure for amendment of H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 in this regard in accordance with law and thereafter, to undertake the consequential exercises, if any, regarding consideration for promotion of the eligible candidates.

11. The aforesaid decision shall be taken by the competent authority of the respondent-Nigam in the light of the aforesaid judgments as relied upon by the learned counsel for the petitioner within a period of four months from today

and the same shall also be communicated to the petitioner. In case the petitioner is aggrieved of any adverse decision taken by the respondent-Nigam, then he shall be at liberty to challenge the same in accordance with law.

30.01.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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