



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

CWP No. 23696 of 2016 (O&M)

Date of Decision : 07.08.2024

Raj Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Peeush Gagneja, Advocate for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance which is being raised by the petitioner is that he has not been granted promotion to the post of Senior Assistant on the ground that the petitioner was facing criminal proceedings though, before the retirement, the petitioner had already been acquitted by the Competent Court of Law in those specific criminal proceedings but upto the date of retirement, the petitioner was not granted the benefit of promotion, which act on the part of the respondents is arbitrary and illegal for the reason that the employees juniors to the petitioner had already been promoted on the post of Senior Assistant hence, the respondents are under obligation to consider the claim of the petitioner for promotion to the post of Senior Assistant with effect from the date the employees juniors to the petitioner have been promoted.



2. Learned counsel for the petitioner argues that during the service career, an FIR No. 09 of 2009 dated 29.04.2010 was registered under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 due to which the petitioner was not granted promotion to the post of Senior Assistant. Learned counsel for the petitioner submits that though, on 18.08.2011 (Annexure P-2) the promotion was granted but on the very next date on 19.08.2011 (Annexure P-3) the said promotion was withdrawn due to the pendency of the criminal case and ultimately vide order dated 31.10.2012 (Annexure P-4) the Competent Court of Law had acquitted the petitioner of the allegations alleged in the FIR No. 09 of 2009 dated 29.04.2010 and hence, the petitioner became entitled for promotion to the post of Senior Assistant with effect from the date employees juniors to the petitioner were promoted on the said post, which benefit was not being granted to the petitioner and consequently the petitioner filed the present petition claiming the said benefit and during the pendency of the present petition, the petitioner has retired on 28.02.2018.

3. Learned State counsel submits that though, it is a conceded fact that juniors to the petitioner have been promoted to the post of Senior Assistant but as, the petitioner was facing criminal proceedings, his claim for promotion was kept in the sealed cover when the promotion of the juniors were effected in August, 2011 and as the petitioner has not been acquitted in the criminal proceedings honourably but have only been given benefit of doubt, the petitioner cannot claim the promotion to the post of Senior Assistant with effect from the date employees juniors to him were promoted or to promote him by opening the sealed cover.



4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. From the facts, which have been narrated here-in-before, it is clear that the claim of the petitioner was considered along with the other eligible candidates for promotion to the post of Senior Assistant in the year 2011. As per the respondents, after consideration, the petitioner was promoted to the post of Senior Assistant on 18.08.2011 (Annexure P-2) but after realizing that the petitioner is facing criminal proceedings, the said order was immediately withdrawn on 19.08.2011 (Annexure P-3) and the claim of the petitioner was kept in the sealed cover to await the decision of the criminal case, which was pending against the petitioner. Now the petitioner has already been acquitted by the Competent Court of Law vide judgment dated 31.10.2012 (Annexure P-4). Once, the criminal proceedings have already come to an end and the petitioner has also been acquitted in those proceedings, the respondents are under obligation to grant the petitioner the benefit of promotion keeping in view the recommendations of the Departmental Promotion Committee (DPC) in pursuance to which the petitioner was initially promoted on 18.08.2011, which promotion was withdrawn on the very next day.

6. The argument of learned State counsel is that the petitioner has not been acquitted honourably, hence, the petitioner cannot claim promotion. It may be noticed that petitioner is not being proceeded against keeping in view any outcome of the criminal proceedings. The promotion was withheld due to the pendency of the criminal proceedings. Once, those criminal proceedings have already attained finality, the respondents cannot deny the



petitioner the benefit of promotion on the ground that the petitioner was not honourably acquitted. It is not the case that the respondents have initiated any departmental enquiry on the issue which related to the criminal proceedings. In the absence of any departmental proceedings initiated against the petitioner before his retirement, there is no valid justification with the respondents not to grant the petitioner the benefit of promotion with effect from the date employees juniors to him have been promoted.

7. No other argument is raised.

8. Keeping in view the above, the present petition is allowed. The respondents are directed to grant the petitioner the benefit of promotion keeping in view the recommendation of the DPC held in the year 2011, wherein, the assessment of the petitioner has already been done and by which the juniors of the petitioner were promoted. In case, the petitioner is found fit by the DPC, he be granted promotion with effect from the date employees juniors to him were promoted with all consequential benefits such as arrears of salary etc.

9. Learned counsel for the petitioner submits that as the petitioner was acquitted by the Competent Court of Law in the year 2012 and the petitioner remained in service upto the year 2018, the petitioner was not granted the benefit of promotion though, there was nothing against him after the date of acquittal so as to withhold his promotion. Learned counsel submits that as the petitioner has not been allowed to discharge the duties of the higher post during his service career, the arrears should also carry interest as the respondents have withheld the amount belonging to the petitioner.



10. Apart from this, a Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

11. Keeping in view the above, from the date of acquittal i.e. 31.10.2012, the petitioner will also be entitled for interest @ 6% per annum upto the date of actual payment of the arrears.

12. Let this order be complied with within a period of eight weeks of the receipt of copy of this order.

13. Pending miscellaneous application, if any, also stands disposed of.

August 07, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No