

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CWP-27365-2016
Date of Decision : 12.02.2024

Iqbal Singh ...Petitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Rajinder Singh Rangpuri, Advocate for the petitioners.
Mr. Charanpreet Singh, AAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the instant writ petition is for directing the respondents to grant the notional benefits of the next promoted post to the petitioner, effective from June 2016, along with consequential benefits including fixation of pension and arrears.
2. Learned counsel would contend that the petitioner, while working as Inspector Cooperative Societies, was eligible for promotion to the post of Assistant Registrar, being at Serial No.10 with Seniority No.380 and was forwarded, as per Annexure P-5. He retired on 30.06.2016, after attaining the age of superannuation, however prior thereto, his junior was granted current duty charge of the said post on 18.04.2016, Annexure P-4, by ignoring him, for no justifiable reasons. No DPC was held before he retired, however, just 28 days thereafter, the persons depicted at Serial Nos.10 to 17 from General Category, his juniors, were granted promotion vide order dated 28.07.2016, Annexure P-11.

Reliance is placed upon the judgment of this Court in CWP-5148-2020 titled as **Vijay Kumar Bansal vs State of Punjab**, decided on 13.01.2023.

3. On the contrary, learned State counsel, while referring to reply dated 03.05.2017, raised a solitary ground that during the period of November 2015 to June 2016, no person junior to the petitioner was promoted and when the promotion was effected, by then, he had already superannuated.

4. Heard learned counsel on either side.

5. The contours of the legal controversy, which arise for consideration in the present writ petition, emanating from the pleadings are that the petitioner being eligible for promotion to the post of Assistant Registrar, was recommended for it, however, DPC was not convened, he thus submitted two representations for expediting the same, as he was nearing his age of superannuation. Be that as it may, he retired without having been considered.

6. The Constitution Bench of Hon'ble the Supreme Court in case of **Ajit Singh vs. State of Punjab** (1999) 7 SCC 209, while 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 fundamental right and the same has been reiterated in **Ajay Kumar Shukla and Ors. vs. Arvind Rai and Ors**, 2021 SCC OnLine SC 1195.

7. A profitable reference can be made to a judgment of the Division Bench of this Court in **Chaman Lal Lakhanpal vs. UPSC**, 1999(1) SCT 175, a case wherein the petitioner aggrieved against his non-consideration for promotion had been unsuccessful before the Central Administrative Tribunal, claimed that he though had become eligible to be considered for promotion to the Indian Administrative Service in the year 1987 and in the year 1992, meeting of DPC was

not held, though prior to it was wherein the persons senior to him were considered. Thereafter, even from year 1994-95 onwards the meeting was not held, consequently, his consideration did not take place and petitioner, who was to retire on 30.09.1998 from service, the Tribunal on that basis denied to give direction that by the time would be held he would stand retired. It was observed that, “The right to equality of opportunity in matters of promotion is guaranteed under Article 16 of the Constitution. The right cannot be stifled by an arbitrary failure to perform the duty imposed by statutory regulations. By merely choosing to avoid the meeting, a citizen cannot be denied the right to be considered.”. Further, held that, “It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules.”

8. In **State of Punjab vs. Jagjit Singh and another**, 2018(4) SCT 549, the Division Bench of this Court had observed that the State cannot take undue advantage of their own inaction and wrongs in granting regular promotions, which was a legitimate expectations in service career and in the meantime, the employees had unfortunately retired without getting formal tag of a regular promotion, directed promotion be granted retrospectively but on notional basis only and they be entitled to fixation of their pension and other retiral benefits as per the pay

deemed to have been drawn by them on the higher promotional posts. Interest of 7% per annum was also to be granted on arrears of pension and other retiral benefits.

9. Hon'ble the Supreme Court in **MP Singh Bargoti vs. State of Madhya Pradesh**, 2015 AIR SC 556, observing that the appellant therein was never considered by the DPC till he was in service or even thereafter when person junior to him in the combined gradation list was considered on basis of another subsequent gradation list and promoted, it was held that he suffered only on account of passage of time or innocuous delay and was held entitled to notional promotion and post retiral benefits by recalculating the same.

10. In **Vijay Kumar Bansal** (supra), this Court granted notional promotion to the petitioner therein, in view of the fact that the proposal for his promotion was made while he was in regular service, but DPC had not been held and he retired. Thereafter, the benefit was wrongly not extended to him on the premise that he had retired prior to the approval by the Department.

11. The submission of the learned State counsel cannot be countenanced, since the petitioner being senior, eligible and recommended prior to having superannuated, was entitled to be considered for promotion at the relevant time, especially in view of his case having been forwarded twice over, for which no cogent reason was provided.

12. However, due to the fault on part of the Department, in not holding the meeting and delaying the matter, during such time he retired, led to a situation, where not even a month had passed and his juniors were promoted. This inaction caused injustice to the petitioner, he having been deprived of his legitimate right of consideration for promotion, besides the tag of promotion.

13. Trite to say that the State must act reasonably and fairly. No employee should be made to suffer, for the default of the Department, as were the observations of Hon’ble the Supreme Court in **State of Maharashtra vs. Jagannath Achyut Karandikar**, 1989 Supp (1) SCC 393.
14. The learned State counsel has not been able to cite any contrary law.
15. The present case having been analysed, keeping in mind the explication of law referred to hereinabove, which clearly elucidate the proposition involved, persuade this Court to direct the respondents to consider the petitioner for promotion as Assistant Registrar, on a notional basis for the purpose of pensionary benefits. Needful be done within a period of four weeks, from the date when a web-print of this judgment is received by the competent authority.
16. The present writ petition is disposed of accordingly.

February 12, 2024
ps/ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/ reasoned :

Whether reportable :

Yes/No

Yes/No