

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102 CM-2218-CWP-2024 in/&
CWP-4500-2015
Date of Decision :03.04.2024

Nirmal Kumari Chatra ...Petitioner

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jasbir Mor, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-2218-CWP-2024

Present application has been filed for fixing the main petition at
an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Harish Nain, AAG, Haryana accepts notice and raises no
objection for the grant of prayer as made in the present petition.

Keeping in view the averments made in the application, present
application is allowed and the main writ petition is taken up for hearing.

CWP-4500-2015

1. In the present petition, claim of the petitioner, who was
working on the post of Superintendent is that she be granted promotion to
the post of Under Secretary by granting her benefit of relaxation under the

rules governing the service i.e. Haryana Secretariat Service (State Service Group-A) Rules, 1979 (hereinafter referred to as '1979 Rules').

2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. The petitioner joined as clerk with the respondent-department on 12.03.1981. She was further promoted to the post of Assistant on 31.12.1987 and, thereafter, on 12.01.2009, the petitioner was further promoted to the post of Deputy Superintendent and ultimately on 22.07.2009, she was promoted to the post of Superintendent.

4. It may be noticed that for further promotion from the post of Superintendent is the post of Under Secretary, which is governed by the 1979 rules. An employee should have 05 years experience on the post of Superintendent in order to become eligible for promotion. The grievance being raised by the petitioner is that though, the petitioner was given current duty charge of the post of Under Secretary by the respondents vide order dated 14.08.2012 but she was not given regular promotion to the said post of Under Secretary till she attained the age of superannuation and retired from service on 31.07.2013.

5. Learned counsel for the petitioner argues that prior to the retirement of the petitioner, the department had not given relaxation qua 05 years experience required for promotion to the post of Under Secretary but certain employees, who were having three and a half years experience, have already been promoted to the post of Under Secretary by giving benefit of relaxation under the 1979 Rules hence, said benefit of relaxation qua the 05 years experience should have also been given to the petitioner before her retirement so as to grant her regular promotion on the post of Under

Secretary.

6. Learned counsel for the petitioner submits that even after retirement, the employees have been given relaxation in required service for promotion to the post of Under Secretary hence, non-grant of promotion to the petitioner by giving relaxation qua 05 years experience is discriminatory and hence, the respondents are under an obligation to promote the petitioner to the post of Under Secretary before her retirement i.e. 31.07.2013.

7. Learned counsel for the respondents submits that benefit of relaxation cannot be claimed as a matter of right and the said jurisdiction to grant relaxation in Rules exists with the department, which can be extended keeping in view the administrative exigency and even if, the benefit of relaxation has been given to the employees on an earlier occasion when the petitioner was in service and even after the retirement of the petitioner, the same will not give right to the petitioner to claim relaxation as a matter of right.

8. Learned counsel for the respondents further submits that as per the reply filed by the respondents, the employees senior to the petitioner were working as Superintendent at the time when the petitioner retired as Superintendent on 31.07.2013, they were promoted on the post of Under Secretary in the year 2014 only and hence, once the employees senior to the petitioner have been promoted in the year 2014 i.e. after the retirement of the petitioner from service, the petitioner cannot claim promotion in preference to her seniors and that too by claiming benefit of relaxation under 1979 Rules.

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

10. First question, which is to be decided is as to whether an employee can claim relaxation in service Rules as a matter of right, even if, the same benefit of relaxation has been accorded by the department to other employees on an earlier occasion.

11. As per the settled principle of law, benefit of relaxation cannot be claimed as a matter of right. Hon'ble Supreme Court of India while deciding *Civil Appeal Nos.2250-2252-2020 titled as Dr. Thingujam Achouba Singh and others vs. Dr. H. Nabachandra Singh and others decided on 17.04.2020* has held that nobody can claim relaxation as a matter of right and the eligibility criteria will be within the domain of employer and no employee can seek benefit of relaxation as a matter of right. Relevant paragraph of the judgment is as under:-

“14. The High Court has also noticed that the experience for eligibility notified in the advertisement dated 16.08.2016 was not in conformity with the Medical Council of India Regulations. In reply affidavit filed before the High Court, while denying such allegation, it was pleaded that the qualifications and experience, as notified in the advertisement dated 16.08.2016, was in accordance with the “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended from time to time), framed by the Medical Council of India. It was the specific contention of the respondent authorities that as the RIMS is affiliated to C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. Manipur University, the requirement as prescribed by Medical Council of India for Director of affiliated hospital should be applied. Such plea is not accepted by the High Court on the ground that there is no proper pleading in this regard. A copy of the Regulations titled as, “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended upto 11th March 2017) issued by the Medical Council of India is placed before us. As notified in the said Regulations, the

academic qualifications and experience applicable for the post of Director of medical institutions differ from those applicable for the post of Director/Medical Superintendent of affiliated teaching hospital. For the post of Director in a medical institution, apart from the academic qualifications, ten years' experience as Professor/Associate Professor/Reader in a medical college, out of which at least five years should be as Professor in a department, is prescribed. However, for the post of Director/Medical Superintendent of the affiliated teaching hospital the required experience is ten years only. It is the specific case of the respondents that the RIMS is an affiliated teaching hospital. In view of such stand of the respondents it cannot be said that the experience for eligibility notified in the advertisement dated 16.08.2016 is contrary to the Regulations of Medical Council of India. So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause."

12. Keeping in view the settled principle of law as stated hereinbefore, the claim raised in the present petition that the petitioner be granted benefit of relaxation in the 1979 Rules governing the service for promotion to the post of Under Secretary by promoting her prior to the completion of 05 years of service as a Superintendent cannot be allowed.

13. Further question, which arises for determination is whether in

the facts and circumstances of the present case, petitioner can be granted promotion by granting her benefit of relaxation or not.

14. It is a conceded position that on the date when the petitioner retired from service, she was not working as senior most Superintendent in the department and there were other senior Superintendents and those senior Superintendents have been promoted to the post of Under Secretary only on 14.05.2014 i.e. after the retirement of the petitioner. That being the factual position, the petitioner who had already retired in the year 2013 cannot seek promotion in preference to her seniors.

15. Further, in case, prayer of the petitioner for promotion to the post of Under Secretary prior to her retirement is accepted, then petitioner will get promotion prior to her seniors namely, Rajender Kumar Sharma, Raghvir and Gurdial, who were promoted in the year 2014, which will create anomaly as the junior employee cannot be promoted in preference to his/her seniors hence, the said prayer of the petitioner cannot be accepted.

16. At this stage, learned counsel for the petitioner submits that the petitioner was given current duty charge of the post of Under Secretary on 14.08.2012 and she continued working on the said post till her retirement hence, the petitioner is entitled for the grant of salary of the said post.

17. Learned counsel for the respondents has not been able to dispute the said fact.

18. That being so, as per the settled principle of law that in case, an employee has discharged duty of a particular post, he/she is entitled for the salary of the said post hence, the petitioner is held entitled for salary of the post of Under Secretary for the period he has discharged the duties of the said post on current duty charge basis.

19. Let the respondents calculate the amount for which, the petitioner becomes entitled for, qua the period she discharged the duties of the post of Under Secretary on current duty charge basis and the same be released to her within a period of 08 weeks from the date of receipt of copy of this order.
20. Present petition stands disposed of in above terms.
21. Civil Miscellaneous application, if any, if also disposed of.

April 03, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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