

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-23918-2019 (O&M)
Decided on : 14.03.2024

JAI PRAKASH

.....PETITIONER

Versus

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. D. S. Patwalia, Senior Advocate with
Ms. Sehar Navjeet Singh Sandhu, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the petitioner has been denied the benefit of promotion to the post of Assistant Project Officer on the ground that the petitioner has not been found fit for promotion to the post of Assistant Project Officer.

Certain facts needs to be mentioned for correct appreciation of the issue in hand.

The petitioner was initially appointed as an Agriculture Inspector in the respondent-department on daily basis vide order dated 08.08.1989. Thereafter, the said appointment of the petitioner was converted into ad-hoc appointment on 16.05.1990 (Annexure P-2) and ultimately, on 31.03.1995, the services of the petitioner were regularized on the post of clerk. The petitioner was promoted to the post of Field Investigator on 04.07.1996, which promotion was withdrawn on the ground that the claim of all eligible employees was not considered while effecting the promotion of the petitioner to the post of Field Investigator and the order of reversion

was passed on 02.04.1998 (Annexure P-5). The said order dated 02.04.1998 (Annexure P-5) was challenged by the petitioner by way of filing of CWP No. 5382-1998 titled as **Jai Parkash v. District Rural Development Authority, Rewari** and while admitting the said petition, this Court vide order dated 21.04.1998 had stayed the operation of the order dated 02.04.1998 whereby the petitioner was reverted to the post of Clerk and the petitioner was allowed to continue to work on the post of Field Investigator.

While working on the post of Field Investigator, the petitioner became eligible for promotion to the post of Assistant Project Officer. For the promotion to the post of Assistant Project Officer, an employee having 10 years experience in the cadre of Field Investigator, was to be considered eligible. Though, the petitioner became eligible for promotion to the post of Assistant Project Officer in the year 2006, but the respondents-department decided to make promotion to the said vacant post in the year 2016.

In the year 2016, the claim of the petitioner for promotion to the post of Assistant Project Officer was considered but, the petitioner was not promoted to the said post on the ground that the promotion of the petitioner as a Field Investigator, which is feeder post, is still under litigation as the petitioner was continuing on the post of Field Investigator under the interim directions of the Court, other colleagues of the petitioner, who were working as Field Investigator were promoted to the post of Assistant Project Officer on 28.03.2017.

The writ petition being CWP No. 5382 of 1998 filed by the petitioner, came to be decided on 18.01.2018 and as the petitioner was continuing on the post of Field Investigator, the direction was issued to

allow the petitioner to continue on the said post without giving effect to the order of reversion dated 02.04.1998 (Anneuxre P-5) keeping in view the statement that the State does not intend to revert the petitioner henceforth.

After the promotion of the petitioner to the post of Field Investigator attained finality, the petitioner raised the claim for promotion to the post of Assistant Project Officer w.e.f the date when the similarly situated employees were promoted.

The respondents considered the claim of the petitioner and rejected the same so as to grant promotion to the petitioner from the date similarly situated employees were granted promotion to the post of Assistant Project Officer i.e. from 28.03.2017. However, the petitioner was found eligible for prospective promotion to the post of Assistant Project Officer from the year 2020.

The challenge in the present petition is to the order dated 10.09.2020, copy of which has been appended as Annexure P-15, by which, the claim of the petitioner for the grant of promotion to the post of Assistant Project Officer w.e.f. the date when the similarly situated employees were promoted i.e. 28.03.2017 has been rejected.

Learned senior counsel for the petitioner submits that while rejecting the claim of the petitioner for the promotion to the post of Assistant Project Officer from the date when the similarly situated employees were promoted i.e. from 28.03.2017, respondents took into the consideration the adverse remarks in the Annual Confidential Report of the petitioner for the year 2017-18 according to which, it was mentioned that the petitioner is not fit for promotion to the post of Assistant Project Officer. Learned senior

counsel for the petitioner further submits that there is no other embargo for promotion. Learned senior counsel for the petitioner argues that as the promotion of the similarly situated employees to the post of Assistant Project Officer was given effect on 28.03.2017, hence, the Annual Confidential Report of the petitioner which was considered for rejection his claim for promotion which was for the period starting from 01.04.2017 till 31.03.2018, hence, the said ACR for the period 2017-18 could not have been brought into operation as the promotion of the similarly situated employees was effected prior to 01.04.2017 and the record upto the year 2016-17 was only considered for evaluating the eligible employees.

Learned senior counsel for the petitioner further argues that the service record for the period of 10 years prior to effecting the promotion was to be seen in order to adjudge the fitness of the employee seeking promotion and there is no punishment which has been imposed upon the petitioner starting from the year 2006 till 2016, which service record was actually considered by the respondents qua the other similarly situated employees, who were found fit and promoted to the post of Assistant Project Officer on 28.03.2017 hence, the ground which has been given by the respondents-State so as to deny the benefit of promotion to the petitioner to the post of Assistant Project Officer w.e.f. 28.03.2017 is incorrect and is liable to be set-aside and appropriate directions be issued to consider the case of the petitioner for promotion to the post of Assistant Project Officer on the basis of his service record starting from the year 2006 till 2016 and also by ignoring the ACR for the period starting from 01.04.2017 till 31.03.2018.

Learned State counsel on the other hand submits that the total service record of the petitioner was required to be seen and keeping in view the short reply filed by the respondents and there are eight minor punishments which have been imposed upon the petitioner starting from the year 1994 till 2003, hence, keeping in view the total service record of the petitioner, the petitioner has rightly been found ineligible for promotion to the post of Assistant Project Officer w.e.f. 28.03.2017.

Learned State counsel further submits that when the actual consideration of the case of the petitioner was undertaken, the ACR for the year 2017-18 had already come on record, hence, it was incumbent upon the respondents -State to take the said ACR also into consideration so as to form an opinion as to whether the petitioner is to be promoted to the post of Assistant Project Officer from the date when, the similarly situated employees were promoted i.e. 28.03.2017 or not.

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

The only question which arise for the determination in this petition, is as to whether the petitioner who is claiming the promotion to the post of Assistant Project Officer from the date when the similarly situated employees were promoted, is entitled for the said benefit and his claim has been considered in a rightful manner by the respondents or not.

It is a conceded position that when the similarly situated employees were promoted to the post of Assistant Project Officer on 28.03.2017, the petitioner was not promoted on the ground that his promotion to the post of Field Investigator, which is the feeder post, is still

under litigation as the petitioner had been reverted vide order dated 02.04.1998 but was allowed to continue on the said post of Field Investigator under the interim order of this Court.

But after the said writ petition was disposed of on 18.01.2018, wherein, the respondents themselves gave statement before this Court that the petitioner will be allowed to continue as a Field Investigator and the order of reversion dated 02.04.1998 will not be given effect, the petitioner became entitled for the consideration of his claim for promotion to the post of Assistant Project Officer, w.e.f 28.03.2017, when he was considered for promotion.

Now, the question which arises is as to what service record of the petitioner could have been examined by the respondents so as to form an opinion as to whether the petitioner is fit for the promotion to the post of Assistant Project Officer or not w.e.f. 28.03.2017.

Once, the claim of the employees eligible for promotion was considered in the year 2016 and the service record of 10 years prior to the date of consideration was seen, the respondents were only required to see the service record of the petitioner from the year 2006 till 2016. It is also a conceded position that qua the other eligible employees record upto 2016 was only taken into consideration for adjudging their suitability.

It may be noticed that keeping in view the reply filed by the respondents, there is not even a single punishment has been imposed upon the petitioner within the period starting from 2006 to 2016. In the absence of any such punishment, it cannot be said that the service record of the petitioner is bad so as to reject the claim of the petitioner for promotion to

the post of Assistant Project Officer w.e.f 28.03.2017.

The action of the respondents in taking into consideration the ACR of the petitioner for the year 2017-18 in which it is stated that the petitioner is not fit for promotion, is wrong. Once, the similarly situated employees have been promoted on 28.03.2017, the right also accrues to the petitioner to seek consideration for promotion to the post of Assistant Project Officer from the said date i.e. 28.03.2017. The ACR for the year 2017-18 is for the period starting from 01.04.2017 till 31.03.2018, which period is much after the actual promotion of the similarly situated employees, which were given effect to on 28.03.2017. Once, the consideration for promotion to the post of Assistant Project Officer is to be given for a particular period, which period is prior to 01.04.2017, the ACR of the petitioner for the year 2017-18 has wrongly been taken into account for deciding as to whether the petitioner is eligible for the promotion to the post of Assistant Project Officer or not.

During the hearing, it has come on record that even the said ACR for the year 2017-18 was never communicated to the petitioner though, the same has been taken into account. It is a settled principle of law that no uncommunicated s ACR can be treated as adverse unless a chance is given to represent against the adverse remarks.

Keeping in view the above, the action of the respondents in considering the ACR for the year 2017-18 to deny the benefit of promotion to the petitioner to the post of Assistant Project Officer from 28.03.2017 is arbitrary and illegal.

Keeping in view the above facts and circumstances recorded

herein above, the impugned order dated 10.09.2020 (Annexure P-15) is set-aside to the extent that the petitionr was denied the benefit of promotion to the post of Assistant Project Officer from 28.03.2017 and the respondents are directed to reconsider the claim of the petitioner for promotion to the post of Assistant Project Officer w.e.f. 28.03.2017. While considering the said claim only the service record of the petitioner for the period of 10 years i.e. starting from the year 2006 to 2016 will be taken into consideration and the ACR of the year 2017-18 will not be taken into account.

Let the fresh consideration take place by the respondents within the period of 08 weeks from the date of receipt of certified copy of this order and in case, the petitioner is found eligible for promotion to the post of Assistant Project Officer, the said promotion be **given with effect from 28.03.2017 but notionally only**.

Further, the petitioner has already retired from service hence, in case, the petitioner is found eligible for the promotion to the post of Assistant Project Officer and the same is extended, his pensionary benefits be also recalculated and the revised pensioary benefits be also extended to the petitioner alongiwth arrears within the time frame granted hereinbefore,

The present petition is disposed of in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

14.03.2024
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Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/No