

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-9727-2017 (O&M)
Date of decision: 01.05.2024

Lakhwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. B.S. Baath, Advocate for the petitioner.

Mr. Satnam Preet Singh, DAG, Punjab.

AMAN CHAUDHARY. J (Oral)

1. The prayer in the present petition is for quashing the order dated 18.03.2014, Annexure P-5, whereby the respondents have not given promotional benefits to the petitioner as Panchayat Officer, while further directing the respondents to re-fix his pension and gratuity, as also to release other retiral benefits to the him.
2. Learned counsel would submit that the petitioner was appointed as Panchayat Secretary and joined on 01.09.1980. He was placed at No. 1328 in the seniority list, Annexure P-2, which has not been disputed by the respondent-department. 17 of his juniors, at seniority numbers between 1329 till 1387, were granted promotions as Panchayat Officer, vide order dated 26.02.2013, Annexure P-1, whereas he was not considered, despite being eligible and with no disciplinary proceedings initiated against him. It was only on 30.04.2013, the day of his retirement, that he was granted promotion and the order was received by him at 04:12 P.M. Thereafter, he was denied promotional benefits vide letter dated 18.03.2014, Annexure P-5, without citing any cogent reasons. His representation

on 19.11.2015, seeking his promotion from the date of his juniors besides the claim as raised in the present petition, which was not responded to.

3. On the other hand, learned State counsel contends that since the petitioner has not performed duties and responsibilities of the post to which he was promoted, thus he cannot be said to have acquired any right to the higher pay scale etc.

4. Heard learned counsel on either side.

5. It may be accentuated at the outset that in case an employee is unable to see fructification of the legitimate expectation of promotion in his service career and retires without a formal tag thereof, on account of inaction by the state, a brooding sense of injustice would prevail upon him. Trite to say that no employee should experience such tribulations, as was also observed in **State of Maharashtra vs. Jagannath Achyut Karandikar**, 1989 Supp (1) SCC 393.

6. Proceeding to adjudicate the matter, the petitioner was eligible to be considered for promotion to the post of Panchayat Officer, but was overlooked while 17 of his juniors were promoted vide order dated 26.02.2013. As a matter of fact, his case came to be forwarded on 25.04.2013, however it was only on 30.04.2013, the date of his retirement, that he, after 4 pm, received his promotion orders, making it manifest that the petitioner was unable to perform duties on the promoted post.

7. A similar issue arose in **N.S. Ramakrishnan vs. University of Calicut**, 2018 SCC OnLine Ker 14387, wherein, the Vice Chancellor in principle agreed to grant promotion to the petitioner therein as per the directions of the Court in a writ filed by another employee. However, the same was not effected, on the legal opinion given by the Joint Director, Local Fund Audit, aggrieved thereby, he approached the High Court of Kerala whereafter, on the interim order passed by

the Division Bench, the University promoted him as Pool Officer as per proceedings dated 23.05.2016, without mentioning the date on which the same was to take effect. As per the Pay Fixation Order, the date of promotion was fixed as 31.05.2016, on which date he retired. He was held entitled to pensionary benefits of the promoted post, relevant paras whereof read thus,

“8. Accordingly, University can give promotion to an officer only from the date on which he assumes the duties of that post. No doubt, the provision as such would apply in the case of normal promotion granted to an officer. But here it is a case where the petitioner stands on an entirely different footing. The petitioner was denied promotion not on account of the fact that he was not prepared to assume the charge on the date but for a wrong legal advice given by the Joint Director, Local Fund Audit. The University has no case that even on the day on which the Vice Chancellor ordered for promotion, the petitioner was not prepared to assume the office. That be the case, Rule 23 clause (a) of Part I Kerala Service Rules could not apply in the matter of the petitioner.

9. No doubt, the principle of ‘no work no pay’ is the rule. But it is appropriate that the court has to invoke its discretion or jurisdiction to restore such rights of an officer who was denied the benefit of promotion on account of an illegal and an arbitrary action.

10. Since the petitioner had not worked in the post in which promotion was given, it may not be proper for this Court to give difference of salary from the date on which it was due. However, that will not stand as an impediment for this Court, considering his claim for notional promotion atleast from the date on which the Vice Chancellor had ordered the promotion. That be the case, the University shall reckon his service from 26.2.2015 notionally for the purpose of pensionary benefits in the post of Pool Officer. The petitioner's salary shall be refixed

from the above date for the purpose of service benefits except for salary. The petitioner shall be given pensionary benefits reckoning that he was promoted to the post of Pool Officer with effect from 26.2.2015.”

8. In **Ajit Singh vs. State of Punjab** (1999) 7 SCC 209, the Constitution Bench of Hon’ble the Supreme Court, after stressing on the importance of Articles 14 and 16(1) of the Constitution of India, observed that if eligibility and criteria for promotion are satisfied, however there still is no consideration for the same, then there is clear violation of fundamental right. A similar legal discourse was adopted in **Ajay Kumar Shukla and Ors. vs. Arvind Rai and Ors**, 2021 SCC OnLine SC 1195.

9. Circling back, it is due to the lackadaisical approach on part of the Department, instead of taking promptness to be adopted in cases of promotion, that the petitioner was prevented from serving on the higher rank, jeopardizing his entire retiral benefits, a labor of his lifelong years of service rendered dutifully.

10. The plank of argument of learned State counsel that the petitioner is not entitled to any resultant advantage on account of his promotion to the post of Panchayat Officer, it being on the last of his service, he did not perform the duties on it, to say the least is misconceived, as it is a case of giving the petitioner a short shrift by the Department by *firstly*, not considering him when his juniors were being promoted and *secondly*, despite recommendations having been made, the same were not taken to the logical end, by virtue of which he was handed over the order of promotion an hour before the closing of the office, thereby depriving him of working on the said post. The repercussions of such action are being faced by him on a monthly basis in terms of receiving a lesser pension than his entitlement. Thus, fairness and equity tilt the scales of justice in his favour.

11. On a conspectus evaluation of the facts and circumstances keeping in

mind the enunciation of law, the present petition is allowed. The order dated 18.03.2014, Annexure P-5, is hereby set aside. The respondents are directed to consider and promote the petitioner to the post of Panchayat Officer from the date that of his juniors, *albeit* on notional basis for the purpose of pensionary benefits, within a period of two months from when a web-print of this judgment is received by the competent authority.

(AMAN CHAUDHARY)
JUDGE

01.05.2024
Hemant

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