

CWP-9003-2018 & connected cases            1

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(201)

CWP-9003-2018  
Date of Decision : December 19, 2024

Krishan Kumar Chopra

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(2)

CWP-11701-2021

Krishan Kumar Chopra

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(215)

CWP-19700-2022

Krishan Kumar Chopra

.. Petitioner

Versus

State of Punjab and others

.. Respondents

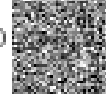
CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:     Mr. Aman Bansal, Advocate, for the petitioner (s)  
                  in all petitions.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1.            By this common order, three writ petitions, the details of which  
  
have been given in the heading, are being disposed of as all these petitions  
  
involve the same question of law on similar facts.

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2. In CWP No.9003 of 2018 and CWP-11701-2021, the claim being raised by the petitioner is that he is eligible for the post of Professor in Istri Rog and Bal Rog hence, he should be promoted to the post of Professor in the Ayurvedic Department. During the pendency of the said petitions, the petitioner has retired from service on 30.11.2017 at the post of Assistant Professor.

3. After the retirement, petitioner namely Krishan Kumar Chopra was granted retrospective promotion on 24.12.2018 (Annexure P-11) but the same was withdrawn vide order dated 21.06.2022 (Annexure P-16) on the ground that the petitioner had already retired prior to the date of passing of the order of promotion and the withdrawal of the promotion is the subject matter of CWP No.19700 of 2022.

4. Learned counsel for the petitioner argues that the petitioner was the senior most employee entitled for promotion to the post of Professor in the Ayurvedic Department, which benefit was not being granted to him despite the fact that the petitioner was eligible and the posts were available in the promotional cadre.

5. Learned counsel for the petitioner further submits that while considering the said fact, the petitioner in CWP No.19700 of 2022, Krishan Kumar Chopra was granted promotion to the post of Professor though after he had already retired from service.

6. Learned counsel for the petitioner further submits that once the promotion was granted to the post of Professor though after retirement, the same could not have been withdrawn by the respondents and therefore, the

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respondents be directed to restore the promotion of petitioner Krishan Kumar Chopra, which was given to him though retrospectively but after retirement.

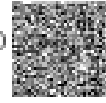
7.            Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that no right exist with an employee to claim benefit of promotion even if, he/she is eligible and the promotional posts are available.

8.            Learned State counsel submits that only right of consideration is available but there is no allegation that any employee junior to the petitioner was promoted till the petitioner was in service hence, the claim of the petitioner to seek promotion even after his retirement is not permissible hence, promotion granted to petitioner Krishan Kumar Chopra after his retirement, was found to be incorrect and contrary to the settled principle of law and the said promotion being void was rightly withdrawn.

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

10.           The question which arise for determination is whether, a claim can be raised for promotion by an employee on the ground that the post is available in the promotional cadre and the employee is eligible.

11.           As per the settled principle of law, promotion cannot be claimed as a matter of right and only consideration for the same can be claimed. In the present case, no consideration took place for promotion during the service career of the petitioner so as to deny the claim of promotion to the petitioner. Once, the respondents in their wisdom, decided

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not to make any promotion, no direction could have been given to the respondents to initiate the process of promotion so as to promote the employees concerned. Giving direction for promotion by holding DPC is within the domain of the respondent-State only and they have to exercise the said discretion keeping in view the necessity of the personnel to perform the duties of the promotional post.

12. Further, it is not the case that anyone junior to the petitioner has been promoted so as to deny him the claim. Unless and until any junior has been promoted to a higher post ignoring the senior, no claim can be raised for retrospective promotion.

13. It is a conceded position that the petitioner has not discharged the duties of the higher post till his retirement and even qua the order of promotion which was passed after the retirement hence, the benefit of promotion has rightly been withdrawn from the petitioner as not admissible keeping in view the fact that the petitioner has already retired from service.

14. Further, as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal having Diary No.43488 of 2023 titled as Government of West Bengal and others vs. Dr. Amal Satpathi and others, decided on 27.11.2024***, no retrospective promotion can be given after retirement. The relevant paragraph of the said judgment is as under:

*“21. While we recognize respondent No.1's right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal*

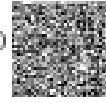
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*precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.”*

15. Learned counsel for the petitioner has raised an argument that in the ***Dr. Amal Satpathi’ case (supra)***, there was a Rule which has been interpreted whereas, in the present case, no such Rule exist in the present case. The said argument has also been noted by this Court while passing order in ***CWP No. 2909 of 2019 titled as Surinderjit Singh and others vs. Guru Nanak Dev University and another, decided on 18.12.2024.***

16. It has been held that the Rule 54 (1) (a) of the West Bengal Service Rules, which has been reproduced in paragraph 17 of the judgment in ***Dr. Amal Satpathi’ case (supra)***, only states that the benefit of the promotional post can only be given in case a person assumes the duties of the same and discharged the higher responsibilities. The said Rule does not say that no promotion can be made after the retirement. The Rule has been interpreted by the Hon’ble Supreme Court of India to mean that once an employee has not discharged the duties of the higher post during the service career, retrospective promotion cannot be granted so as to grant promotion and the benefits of the higher post.

17. That being so, keeping in view the facts and circumstances of the present case, no interference is called for in these writ petitions.



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18.            Accordingly, the writ petitions are dismissed.

19.            A photocopy of this order be placed on the file of other  
connected cases.

**December 19, 2024**  
*harsha*

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

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