

LPA-1327-2018

2024:PHHC:149801-DB



**217 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-1327-2018 (O&M)

Date of Decision: November 14, 2024

Shiv Kumar

..... Appellant

Versus

PSPCL and another

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Mr. Kapil Kakkar, Advocate for the appellant.

Mr. Akshay Rawal, Advocate for respondent/PSPCL.

LISA GILL, J.

1. This appeal has been filed for setting aside order dated 03.07.2018 whereby CWP-15769-2018 filed by appellant (writ petitioner) has been dismissed.

2. Appellant (Writ Petitioner) filed CWP-15769-2018 seeking direction to respondents to promote him to the post Assistant Engineer w.e.f. from 29.10.2013, when persons junior to him were promoted. He further sought setting aside of order dated 30.10.2014 whereby communication dated 13.03.2014 was withdrawn. It was pleaded that appellant was appointed as Junior Engineer with respondent- PSPCL on 10.05.2010. Grievance raised is

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that appellant should have been considered for promotion by Departmental Promotion Committee (DPC) in the meeting which culminated in office order dated 30.09.2013. His case was not considered for promotion by the said DPC due to adoption of alleged incorrect method for calculating benchmark for promotion. It was further pleaded that grading of his ACR to be 'below average' for the period of 15.06.2010 to 27.12.2010 was directed to be assumed to be 'average' as per order dated 13.03.2014, which was illegally withdrawn vide order dated 30.10.2014. It was further stated that name of appellant did not figure in the promotion order dated 30.09.2013 as it was wrongly presumed that he had not achieved the required benchmark. It was stated that information had been sought by appellant under RTI Act. Appellant was promoted to the post of Assistant Engineer from Junior Engineer on 30.06.2015 whereas he should have been granted promotion with effect from 29.10.2013. Various representations, it is stated, were submitted by him but no action was taken. CWP-15769-2018 was filed by appellant in February 2018.

3. Learned Single Bench noted that appellant's ACR for the year 2010-11 was graded 'below average' by the Reporting Officer and affirmed by accepting Authority. Appellant preferred an appeal. Appellate Authority vide order date 13.03.2014 directed remarks to be read as 'average' in the ACR for 2010-11. However, on reconsideration, vide order dated 30.10.2014, order dated 13.03.2014 was withdrawn and ACR for the year 2010-11 reverted to 'below average'. Appellant was ignored for promotion to the post of Assistant Engineer in October 2013 on account of not fulfilling the required benchmark. Learned Single Bench found the writ petition to be devoid of any merit besides being hit by delay and latches. Writ petition was dismissed while observing as under:-

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“ Petitioner by filing the present writ petition is (i) seeking retrospective promotion to the post of Assistant Engineer w.e.f. October 2013 & (ii) as also laid challenge to the order dated 30.10.2014 (P-14) whereby the adverse remarks in the ACR for the year 2010-11 were restored to be read as “Below Average”.

After hearing counsel for the petitioner at length, no ground for invoking the writ jurisdiction is made out on the ground of delay and laches. It is conceded that even a Civil Suit would not be maintainable to challenge the order dated 30.10.2014 (P-14) whereby the adverse ACR was restored much less extraordinary writ jurisdiction under Article 226. Although an oral effort/argument has been made to suggest that the benchmark due for consideration for promotion in October 2013 were not correctly computed, however, no material has been placed to substantiate the same. Even otherwise the claim qua retrospective promotion would also be hit by principle of delay and laches as it is settled position of law that in case of even statutory appeals are not decided within reasonable time, the writ jurisdiction has to be invoked at the most within one year of the filing of the statutory remedy. Present writ petition has been filed concededly after four and a half years.”

4. Aggrieved therefrom, present appeal has been filed by appellant (writ petitioner).

5. Learned counsel for appellant vehemently argues that impugned order dated 03.07.2018 has been incorrectly passed by learned Single Bench without considering the controversy in its correct perspective. It is submitted that for the sake of argument even if the claim to retrospective promotion is to be ignored, question of expunging of adverse remarks should have been considered by learned Single Bench. Appellant had immediately submitted his representation challenging adverse remarks and order dated 13.03.2014 was

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correctly passed by the authorities for appellant's ACR for the period 2010-2011 to be average instead of below average. Withdrawal/revocation of this decision vide order dated 13.03.2014 without assigning any reason whatsoever is clearly an arbitrary and illegal exercise. It is, thus, prayed that this appeal be allowed.

6. Learned counsel for respondent-Corporation has opposed the appeal while stating that impugned order dated 03.07.2018 has been correctly passed after considering the entire facts and circumstances. Dismissal of appeal is sought.

7. We have heard learned counsel for parties but do not find any ground to cause interference. Factual matrix of appellant being visited by ACR of 'below average' in the year 2010-11 and passing of subsequent orders on 13.03.2014 and 30.10.2014 is a matter of record. It is also undeniable that appellant was ignored for promotion in the year 2013. Writ petition has been filed with prayers as are detailed in the forgoing paras. It is apparent that appellant chose to remain silent for long years for which there is no explanation, leave alone a reasonable one forthcoming. It is a settled position of law that claims qua seniority should not be entertained at a belated stage. Gainful reference in this regard can be made to decision of Hon'ble the Supreme Court in **Bharat Coking Coal Ltd. and others vs. Shyam Kishore Singh (2020) 3 SCC 411; Union of India and others vs. N. Murugesan and others (2022) 2 SCC 25; State of Orissa and another vs. Laxmi Narayan Das (Dead) through LRs and others 2023 LiveLaw (SC) 527 and Bichitrananda Behera vs. State of Orissa and others 2023 AIR (SCC) 5064.**

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8. Learned counsel for appellant is unable to point out any illegality, infirmity or perversity in the impugned order dated 03.07.2018 passed by learned Single Bench which calls for interference by this Court.

9. No other argument has been addressed.

10. This appeal is, accordingly, dismissed with no order as to costs.

(LISA GILL)
JUDGE

(DEEPAK GUPTA)
JUDGE

November 14, 2024
Rts

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