

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

301

CWP-20929-2023 (O&M)
Date of decision: 01.03.2024

Manjit Singh ...Petitioner
Versus

State of Punjab and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Krishan Singh Dadwal, and
Mr. Naresh Kumar, Advocates for the petitioner

Mr. Charanpreet Singh, AAG Punjab

Mr. Karmanbir Singh, Advocate for respondent No.6

Mr. Dinesh K. Jangra, Advocate
for the applicant-proposed respondent Nos.7 to 11

AMAN CHAUDHARY, J.

1. The present writ petition under Articles 226/227 of the Constitution of India has been filed for, directing respondent Nos. 2 to 4 to produce the recommendations of the Departmental Promotion Committee (for short ‘the DPC’) held on 05.09.2023; setting aside the same as it relates to respondent No.6; directing respondent Nos. 1 to 4 to consider and promote the petitioner to the post of Joint Director; and restraining the official respondents from implementing the said recommendations.
2. Learned counsel would submit that the petitioner has been wrongly not granted promotion to the post of Joint Director, by considering him under the Physically Handicapped category, under which he was appointed on 07.11.1986 and was thereafter promoted upto the post of Chief Agricultural Officer. The premise thereof is a certificate issued by PGIMER, Chandigarh, upon verification on account of a complaint filed, as per which, his disability was assessed as 26%

and that of one Jagshir Singh was 25%. They both were served charge sheets on account of there being variation in disability certificates of the year 2013 and that issued by PGIMER, however, the same were filed vide order dated 24.05.2022, with regard to which emphatic submission was that his disability as per the above certificate was accepted to be more than 40% and therefore he was allowed to continue in service post his retirement on attaining the age of 58 years, which fell on 31.05.2022, though, no formal order was passed to that effect. Reference was also made to the observations that assessment made earlier will remain applicable in terms of Instructions dated 04.01.2018, by which all previous Instructions stood superseded and as per Section 102(2) of The Right of Persons with Disability Act, 2016, (hereinafter referred to as the '2016 Act'), the action taken under the repealed Act were deemed to have taken under corresponding provision of the said Act. The initial appointment though was based on a certificate dated 17.05.1985, wherein the disability was 10%, however, as per certificate dated 11.04.2013 issued by SMO, Moga, it was 42%. Further that, Jagshir Singh, was allowed to continue after having completed 58 years and was still considered by the DPC held on 25.10.2023 and was consequently promoted to the post of Deputy Director Agriculture vide order dated 11.01.2024.

3. Controverting the aforesaid, the learned State counsel stoutly submitted that the petitioner had initially produced the certificate of disability dated 17.05.1985, wherein it was assessed to be 10% and the same was duly entered into his service sheet, the original of which has been produced in Court. On a Court query, he responded that the Department had not sought any certificate from the petitioner after his appointment and there is no record as to when the certificate dated 11.04.2013 was submitted by him or the reason thereof. If the contention of the petitioner were to be accepted, that as per the Instructions of

2009, there could be no re-assessment done, in that situation, even the certificate of 2013 cannot be relied upon by him. It is incorrect for the petitioner to submit that Jagshir Singh had attained the age of 58 years, which as a matter of fact, he shall on 30.11.2026. Further that he has been promoted by considering his seniority in the General Category and stated on instructions from Sukhvir Singh, Superintendent Grade-II, O/o Director, Agriculture, Punjab that he shall not be granted the benefit of extension in age on account of being physically handicapped.

4. Learned counsel appearing on behalf of respondent No.6, while assiduously resisting the petition, stated that the petitioner was not even entitled to be granted extension in service in terms of Rule 3.27 of Punjab Civil Services Rules, Vol. I, Part I, requiring the disability suffered to be not less than 40%, much less be considered for promotion under the Physically Handicapped category in light of the certificate dated 17.05.1985, as per which his disability at the time of his appointment was 10%. The DPC has rightly considered respondent No.6 for promotion under the Physically Handicapped category, as he, at the time of entry into service had 40% disability, while now by the PGIMER, it also has been assessed to be 42%. Similarly situated employee, Harinderjeet Singh, medically examined by the Board of PGIMER along with the petitioner, was found to be having less than the prescribed 40% disability and was retired on 30.09.2022 on attaining the age of superannuation of 58 years, by rightly not granting the extension in service, whereas the petitioner was favoured by allowing him to continue. He relies on the judgment in the case of **Paramjit Goyal and others vs. State of Punjab**, CWP-20318-2016, decided on 04.10.2016, wherein it was held that it was well settled that writ petition is not maintainable for challenging the recommendations made for promotion, in absence of any order granting the same.

5. Learned counsel for the petitioner in rebuttal, submits that his prayer is not only for quashing the recommendations of the DPC after calling for the same, but also for his consideration and promotion being a handicapped person. He places reliance on the judgments of Hon'ble the Supreme Court in **Union of India and others vs. KPS Raghuvanshi**, (2017)3 SCC 334 to canvass that the DPC proceedings can also be challenged, if they are illegal and arbitrary.

6. Heard learned counsel on either side.

7. The genesis of the case is the percentage of disability of the petitioner, based on which, he is not only to continue in service until the age of 60 years as also be considered for promotion, which has been made subject matter of the present *lis*.

8. Indubitably, there is no denial by the petitioner and possibly could not be, of his appointment as Agriculture Inspector, vide order dated 17.11.1986, being based on the certificate dated 17.05.1985 submitted by him. A perusal of the original record produced before the Court reveals his signatures also having been appended thereto under the word 'candidate'. It has accordingly been duly entered into his service sheet also, a fact observed by the DPC also, in its proceedings dated 05.09.2023. This record is maintained by the Department in the ordinary course of business and it being more than 30 years old, even otherwise, the presumption of truth is attached thereto.

9. It may be accentuated that the certificate, which was the solitary basis of the petitioner's induction into service under the Physically Handicapped category depicted 10% disability, which in itself speaks volumes of his having been granted this undue benefit, thereby depriving a truly deserving candidate under the said category. If the foundation is weak, the edifice is bound to collapse.

10. Apropos the reason of submission of certificate of the year 2013, the

learned counsel for the petitioner was at a loss of words, be that as it may, a subsequent one procured, can by no stretch of imagination validate the appointment obtained on the basis of a certificate, which reflected 1/4th the requisite percentage of disability. There appears to be thus no justification whatsoever in accepting the same, over and above the 1985 certificate.

11. The plea urged by the petitioner to nullify the certificate issued by PGIMER, that there could be no reassessment after the initial appointment having been made based on a certificate, is counter productive to his case inasmuch as, he himself is heavily relying upon, the one of 2013, while he entered into service in the year 1986, based on a certificate of 1985, which though was conveniently not placed on record, as if non-existent. The petitioner is thus blowing hot and cold.

12. Insofar as, the reliance to Clause 102(2) of the 2016 Act is concerned, the same relates to the action that may have been taken, in this case namely; his appointment and previous promotions granted taking him to be a part of the Physically Handicapped category. Once the factum of he having taken the undue benefit of an invalid certificate is apparent, as regards the percentage of disability, in such an eventuality, the Department cannot be made to perpetuate the illegality by granting further benefit to him thereof, which stands eclipsed in the wake of the true facts that have surfaced. Fraud and justice do not dwell together.

13. A faint attempt was made in the reply filed by the petitioner to the application, whereby respondent No.6 had placed the certificate dated 17.05.1985 on record as Annexure R-6/10, to contend that the name of the father is not correctly mentioned therein, with a view to disown the same, lest it takes away the ground beneath the petitioner and in that vein, the authenticity thereof be disputed, till its vernacular was referred to. Even otherwise, it does not lie in his mouth to controvert the same, owing to it, his birth and existence in the Department.

14. The parity as sought to be drawn with Jagshir Singh cannot be countenanced in view of the law laid down by Hon'ble the Supreme Court in **R. Muthukumar vs. TANGEDCO**, 2022 SCC OnLine SC 15128 that, “A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.”

15. As is discernible from the prayer clause of the petition that quashing of recommendations of the DPC has been sought, but from a perusal of the said proceedings, it transpires, that a reference has been made therein to the service sheet of the petitioner, in which the certificate dated 17.05.1985 has been duly entered into, as also to the certificate of the year 2013 and the one issued by the PGIMER, which being all a matter of fact and record, thus, neither can these be termed as illegal nor arbitrary. Here, a gainful reference can be made to the judgment passed by Hon'ble the Supreme Court in **Mrs. Kunda S. Kadam vs. Dr. K.K. Soman**, AIR 1980 Supreme Court 881, which was followed by the Division Bench in **Ravinder Kumar vs. State of Haryana**, 1999 (1) RSJ 677, holding in essence that, till such time the recommendations do not culminate in an order of appointment, the writ petition has to be treated as premature.

16. As regards the endeavour of the petitioner of placing reliance on the order dated 24.05.2022, whereby the charge sheet was ordered to be filed, the observations made therein by Additional Chief Secretary being that, “the disability certificates submitted by both of the officers at the time of their appointment are valid”, is misconceived, as by, no means, can it be construed to have validated or accepted the certificate of 2013, it was not the one, by which he gained entry into service.

17. The ratio of the judgment referred to by the petitioner is not applicable to the present case, as the DPC proceedings are based on the facts and material patent on the record.

18. The three-pronged approach adopted by the Department, as regards those who stood on the same footing, of having been assessed by the PGIMER with disability less than 40%, is incomprehensible. The petitioner has been allowed to reap the benefit of extension in service, *albeit* admittedly there being no order to that effect, while Harinderjit Singh, was retired from service on 30.09.2022 at the age of 58 years, however, Jagshir Singh, has been granted promotion, purportedly under the general category.

19. On the anvil of the aforesaid discussion and as a fall out thereof, the present petition is found to be devoid of merit and is hereby dismissed.

20. Pending application, if any, shall stand disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

01.03.2024
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Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No