

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1429-2023 (O&M)
Date of decision:-05.03.2024

Sikandar Singh Sangwan
...Appellant(s)

Versus

State of Haryana and others
...Respondent(s)

LPA-2019-2023 (O&M)

Dharmendra Singh
...Appellant(s)

Versus

State of Haryana and another
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Suryaveer Surjewala, Advocate,
 for Mr. Sunil K. Nehra, Advocate,
 for the appellant in LPA-1429-2023.

Mr. Anurag Jain, Advocate,
with Mr. Rahul Dahiya, Advocate,
Ms. Deepika Rani, Advocate,
for the appellant in LPA-2019-2023.

Mr. Deepak Balyan, Additional Advocate General, Haryana.
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G.S. SANDHAWALIA, A.C.J. (ORAL)

1. The present Letter Patent Appeals challenge the order dated 22.09.2023 passed by the learned Single Judge, whereby CWP-29549-2022 and CWP-20446-2023 filed by the writ petitioners (appellants herein) were dismissed.
2. The learned Single Judge rejected the prayer as such, whereby the appellants were claiming retrospective promotion on the post of District Fisheries Officer from a date when they were not eligible having not passed

the requisite one year training in Fisheries from the Central Indian Fisheries Research Institute, Barrackpore, Calcutta as per the Haryana Fisheries Group-B Service Rules, 1980.

3. The learned Single Judge did not grant the relief of relaxation claimed on the ground that it could not be claimed as a matter of right and the employer could grant relaxation after appreciating the facts and circumstances of each case as to whether any prejudice had been caused to any employee or class of employees. Reliance was also placed upon the judgement of the Apex Court in ***Dr. Thingujam Achouba Singh and others Vs Dr. H. Nabachandra Singh and others*** 2020(20) SCC 312. The claim having been rejected, which was subject matter of challenge in the writ petitions, the learned Single Judge came to the conclusion that the Court was not to sit as an appellate authority to adjudge whether the department should have exercised its power to relax the rules.

4. It is noticed that in the case of Dharmender Singh, an offer had been made to him to undergo the training course at Calcutta and he had refused to undergo the said course and only having passed the course in the year 2014, he was given promotion with effect from 16.07.2015. As regards Sikander Singh Sangwan, it is noticed that in the year 2014, one Kashmir Singh, who was junior to him, had undergone the training course and apparently it seems that the said junior took the benefit having the requisite qualifications and was selected by way of direct recruitment to the higher post. Resultantly, inference was drawn by the learned Single Judge that Sikander Singh Sangwan having not challenged the action of the department, in sending Kashmir Singh to undergo the training, he was not interested to pursue the course in the year 2007. The writ petitions filed by Dharmender Singh and Sikander Singh Sangwan were accordingly dismissed.

5. A perusal of the order dated 14.12.2022 (Annexure P-8) which was subject matter of challenge in the case of Sikander Singh Sangwan would go on to show that his appointment was made on 01.07.1994. A letter dated 08.08.2007 had been issued by the Director Fisheries, wherein several Fisheries Officers had been informed that as per seniority list they were eligible to be sent for one year training at Calcutta and Dharmender Singh's name had also figured therein. However, out of eight officials, only one official, namely, Chander Shekhar had given his option to undergo the said training. Sikander Singh Sangwan and Kashmir Singh were also eligible for the training having completed ten years' service. However, Kashmir Singh made a request to undergo the training at his own, whereas Sikander Singh Sangwan never opted. Thereafter, from 2008-2009 to 2013-2014, the Central Institute of Fisheries Education did not conduct the training. In the year 2014, eight District Fisheries Officers were directly recruited by the Haryana Public Service Commission and thereafter Sikander Singh Sangwan and Dharmender Singh as such took training in the year 2014-2015 and got promoted on 17.07.2015. After a gap of seven years, Sikander Singh Sangwan started representing as to the grant of promotion with retrospective effect which was rejected by taking opinion from the learned Advocate General, Haryana.

6. Apparently, in the intervening period, Sikander Singh Sangwan filed CWP-18538-2022 seeking directions to promote him on the basis of the representation dated 24.03.2022. The learned Single Judge disposed of the writ petition vide order dated 23.08.2022 directing the respondent-authorities to look into the representation without taking into consideration that the issue of promotion had long died way-back in the year 2015 when the appellant had got promotion and had not agitated for it at an earlier point of time.

The representation mantra as such has been castigated by the Apex Court in ***The Government of India and another Vs P. Venkatesh*** 2019(15) SCC 613, wherein it has time and again held that 'dispose of the representation' mantra creates only a fresh round of litigation. Thus, the cause of action which had long stood buried in the waters was revived by the order dated 23.08.2022 and the order dated 14.12.2022 was passed leading to the unnecessary litigation which we are now forced to deal with.

7. The position regarding Dharmender Singh also remains the same. As noticed, he also filed CWP-10860-2023 pleading for a decision on his representation dated 21.03.2022 after having earned promotion in the year 2015 and the order as such for deciding the representation was passed by the learned Single Judge on 25.07.2023 leading to the order being passed by the authorities on 18.07.2023 (Annexure P-9). The reasoning as such given in the said order was that it is after seven years from the date of promotion the grouse had been raised. It is settled principle that the issues of seniority are to be agitated at the earliest. Reference can be made to the judgement of the Apex Court in ***P.S. Sadasivaswamyy Vs State of Tamil Nadu***, 1975(1) SCC 152 in this context, which has been followed in ***Shiba Shankar Mohapatra and others Vs State of Orissa and others***, 2010(12) SCC 471 and ***Union of India and others Vs C. Girija and others***, 2019(15) SCC 633.

8. In such circumstances, apart from what has been held by the learned Single Judge, for additional reasons also, we are of the considered opinion that a belated attempt was made to get the relief of promotion with retrospective effect inspite of the fact that the matter was stale. The observations made by the Apex Court in ***P.S. Sadasivaswamyy's*** case (supra) are also to the effect that on account of promotion, rights of others are affected

and present is the classic case of the employees seeking retrospective promotion not having the eligibility at that point of time on the ground of relaxation.

9. In such circumstances, the findings recorded by the learned Single Judge suffer from no infirmity which may warrant our interference in appeals.

10. Resultantly, there is no merit in the appeals which are accordingly dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

05.03.2024
Amodh Sharma

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