

2025:PHHC:159268



226.

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

CWP-3230-2022

Date of decision: 17.11.2025

Smt. Sushil Ahuja

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Dhiraj Chawla, Advocate,
for the petitioner.

Mr. Swapan Shorey, DAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking writ of certiorari for quashing the order dated 21.01.2022 (Annexure P-7) whereby the claim of the petitioner for promotion to the post of Nursing Sister has been rejected. Further, a writ of mandamus has been sought for directing respondent No.2 to promote the petitioner to the post of Nursing Sister w.e.f. 25.02.2014 i.e. when her juniors were promoted, with all consequential benefits including pay fixation, increments, revised retiral and pensionary benefits along with arrears thereon and interest.

2. Brief facts as have been pleaded in the present petition are that the petitioner was appointed as Staff Nurse on 15.07.1983 and retired as

such on 30.09.2020 from the Government Ayurvedic and Unani Swasth Kendra, Haibowal Kalan, Ludhiana. While the petitioner was in service, respondent No.2-Director, Department of Health & Family Welfare, Punjab, circulated seniority list of Staff Nurses working under its control vide letter dated 24.07.2007, wherein the name of the petitioner was figured at serial No.821 and her juniors, namely, Jaswinder Kaur, Sukhwinder Kaur, Raj Kaur and Santokh Kaur were placed at serial Nos.824, 839, 847 and 856 respectively. Yet another seniority list of Staff Nurses as on 01.01.2014 was circulated vide letter dated 02.01.2014 wherein the petitioner was placed at serial No.206 and her above said juniors were placed at serial Nos.209, 220, 227 and 231 respectively.

2.1 Respondent No.2-Director, Department of Health & Family Welfare, Punjab, vide letter dated 13.02.2014, circulated to all the concerned authorities including the Director Ayurveda Punjab, Chandigarh, directing them to send the Staff Nurses as per the schedule fixed on the basis of 2014 seniority list along with their educational qualifications and proof of midwifery training, so that their names could be considered for promotion to the post of Nursing Sister. It has been further averred that the said letter was issued to the District Ayurvedic and Unani Officer, Ludhiana, vide endorsement No.1431-1438, dated 19.02.2014 by the office of Director Ayurveda Punjab Chandigarh, and as per the said letter, the petitioner's schedule date was 21.02.2014 for appearing in the office of respondent No.2 on the basis of her seniority No.206 of 2014 seniority list.

It has been further averred that said letter dated 13.02.2014 issued on 19.02.2014 to the District Ayurvedic and Unani Officer, Ludhiana, did not reach before 21.02.2014 and it was not communicated to the petitioner and as a result thereof, the petitioner could not appear in the office of respondent No.2 and her case for promotion to the post of Nursing Sister could not be considered. It has further been averred that the petitioner had obtained said letter dated 13.02.2014 from the office of Directorate of Ayurvedic Punjab, Chandigarh, on 29.09.2020, pursuant to her representation dated 06.07.2020 (Annexure P-2), wherein she requested for promotion as Nursing Sister w.e.f. the date her juniors were promoted i.e. 25.02.2014 and she came to know about the said fact when she came across the provisional seniority list dated 24.06.2020 of Nursing Sisters wherein names of her juniors were mentioned.

2.2 It has been further averred that when no action was taken on her representation, she got served a legal notice dated 10.11.2020 upon the respondents seeking promotion as Nursing Sister w.e.f. 25.02.2014, but however, no action was taken on the said legal notice by the respondents, compelling her to approach this Court by filing CWP No.2353 of 2021 titled as *Sushil Ahuja Versus State of Punjab and another*, which was disposed of vide order dated 27.08.2021 by directing the official respondents to consider the legal notice dated 10.11.2020 by passing a speaking order within a period of one month. In pursuance to the said direction, the claim of the petitioner was considered and rejected by

respondent No.2 vide order dated 21.01.2022 and it is the said order which has been impugned in the present petition.

2.3 Reply by way of affidavit of Dr. Raman Sharma, Director Health Services (Family Welfare), Punjab, on behalf of respondents No.1 and 2, has been filed, wherein the above said factual position has not been denied. Para 5 of the reply reads as under:-

“That the contents of para 5 of the writ petition are admitted to the extent that the respondent No.2 issued a letter dated 13.02.2014 to various institutions including Director, Ayurveda, Punjab regarding promotion of Staff Nurses working in Health and Family Welfare, Punjab as Nursing Sisters. In this letter it was written that the Staff Nurses mentioned in this letter should appear before the office of respondent no.2 along with relevant documents/educational qualifications and proof of midwifery training. If they fail to appear before the respondent no.2 then after that their claim will not be entertained. It is pertinent to mention here that the petitioner did not appear before the respondent no.2 in accordance with the directions issued vide letter dated 13.02.2014. Therefore, the petitioner was not considered for promotion at that time.”

3. Learned counsel for the petitioner submits that the petitioner is senior to Jaswinder Kaur, Sukhwinder Kaur, Raj Kaur and Santokh Kaur, who were promoted as Nursing Sisters on 25.02.2014 and since the letter dated 13.02.2014, having endorsement dated 19.02.2014, did not reach the office of the petitioner on time where she was posted, and was never communicated to the petitioner, therefore, she could not appear along with her certificates for consideration for her promotion to the post of Nursing Sister in the office of respondent No.2. When the petitioner came to know about the said fact, she immediately submitted a representation dated

06.07.2020 (Annexure P-2) and got served a legal notice dated 10.11.2020 (Annexure P-5) upon respondents, which has now been rejected vide order dated 21.01.2022 (Annexure P-7). He further submits that since the petitioner is senior to the above said persons, so she had a prior right of promotion.

4. *Per contra*, learned State counsel submits that the claim of the petitioner has rightly been rejected vide order dated 21.01.2022 (Annexure P-7) as the petitioner did not approach the competent authority within a reasonable time after her alleged juniors were promoted. He further submits that the petitioner has already retired from service on attaining the age of superannuation on 30.09.2020. Therefore, there is considerable delay on the part of the petitioner for seeking promotion as Nursing Sister, which cannot be ignored and, therefore, the present writ petition is liable to be dismissed on the ground of delay.

5. I have heard learned counsel for the parties and perused the record.

6. There is no dispute with regard to the fact that the petitioner is senior to Jaswinder Kaur, Sukhwinder Kaur, Raj Kaur and Santokh Kaur as per 2007 and 2014 seniority lists. Therefore, she had a right for consideration for promotion. Her claim for promotion has not been considered by the official respondents in view of the letter dated 13.02.2014, having endorsement dated 19.02.2014, vide which, the petitioner was required to appear in the office of respondent No.2 on

21.02.2014. However, no document has been attached with the written statement and no averment has been made by the State to show that the said letter was brought to the notice of the petitioner and she did not appear in the office of respondent No.2 for consideration for her promotion to the post of Nursing Sister voluntarily.

6.1 So far as the issue raised by learned State counsel with regard to delay is concerned, it may be noticed that it is the case of the petitioner that when she came to know about the seniority list of Nursing Sister on 24.06.2020, she immediately submitted a representation dated 06.07.2020 followed by legal notice dated 10.11.2020 and still when no action was taken by the respondent authorities, she approached this Hon'ble Court by way of filing CWP No.2353 of 2021, which was disposed of vide order dated 27.08.2021 by directing the official respondents to consider the legal notice dated 10.11.2020 within a period of one month.

6.2 As per settled law, promotion is neither a vested nor fundamental right, however, consideration for promotion is a fundamental right. The Hon'ble Supreme Court in its judgment ***Ajit Singh Versus State of Punjab, 1999 (4) S.C.T. 1*** has held as under :-

“27. In our opinion, the above view expressed in Ashok Kumar Gupta, and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under

Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta, right from 1950.”

6.3 To the similar effect is the judgment passed by Hon’ble Supreme Court in ***Union of India and others Versus Sangram Keshari Nayak, 2007(3) S.C.T. 512***. The relevant portion of the said judgment reads thus :-

“7. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him.”

6.4 Further, in ***Union of India and another Versus Hemraj Singh Chauhan and others, 2010 (2) S.C.T. 421***, the Hon’ble Supreme Court has held as under :-

“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.”

6.5 The case of the petitioner was not considered when her juniors were promoted to the post of Nursing Sister. The petitioner cannot be made to suffer on account of inaction on the part of the respondents in not

circulating the letter dated 13.02.2014, having endorsement dated 19.02.2014, to her office and to the petitioner.

7. In view of above, the writ petition is allowed. The respondents are hereby directed to consider the case of the petitioner for promotion to the post of Nursing Sister w.e.f. 25.02.2014, the date when her juniors, namely, Jaswinder Kaur, Sukhwinder Kaur, Raj Kaur and Santokh Kaur were promoted. The petitioner shall be entitled to arrears for a period of 38 months prior to the filing of earlier petition, along with all consequential benefits including pay fixation and revision of pensionary benefits. The aforesaid benefits shall be calculated and released to the petitioner within a period of three months from the date of receipt of certified copy of this judgment.

(NAMIT KUMAR)
JUDGE

November 17, 2025
sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No