



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-11538-2000 (O&M)

Date of decision: 27.02.2025

Dhanpati Malik

...Petitioner

VERSUS

The State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. R.K. Malik, Sr. Advocate with
Mr. Kartikey Chaudhary, Advocate for the petitioner(s).

Mr. Tapan Kumar, DAG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

Challenging the order dated 02.06.2000 whereby respondent No.2-The Director Women & Child Development, Haryana has imposed a condition that the petitioner shall not be entitled to any actual disbursement of financial benefits towards arrears from 14.11.1990 to 12.01.2000 and would only be entitled to arrears from the date he was promoted as Programme Officer, the petitioner has approached this Court.

Learned senior counsel appearing on behalf of the petitioner contends that the petitioner was appointed as Child Development Officer in March, 1985. Certain candidates who were not even qualified for the said post were however selected and were shown senior to the petitioner. Certain candidates filed CWP-1333-1985 as well as LPA-466-1988 that were heard together and appointment of the unqualified candidates who selected



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alongwith the petitioner and were higher in seniority were declared illegal on the ground of not being in conformity with law. However, taking into consideration that by the time the matters came to be finally decided, a substantial time had elapsed, the Division Bench held that the appointment should not be quashed at such belated stage but their seniority be fixed at the bottom of the batch. The SLP filed by the aggrieved persons was dismissed by the Hon'ble Supreme Court, hence, the judgment of the Division Bench of this Court became final. Consequently, the seniority was re-determined by the Government vide letter dated 20.07.1999 (Annexure P-1). Resultantly when the seniority list was finalised vide order dated 20.07.1999, the seniority position of the petitioner was changed from 20 to 10. The claim of the petitioner was also considered for promotion from the date her junior was promoted. The promotion order was thus passed and she was promoted as Programme Officer w.e.f. 14.11.1990. He submits that even though the promotion order of the petitioner as a Programme Officer w.e.f. 14.11.1990 had been passed by the Government, however, respondent No.2- The Director Women & Child Development, Haryana, thereafter, imposed certain additional conditions including that the petitioner would not be entitled to any financial benefits from 14.11.1990 to 12.01.2000 on actual basis and such benefits shall only be extended to her on notional basis.

It is argued by the learned Senior counsel for the petitioner that the order of promotion having been passed by the Government, respondent No.2-Director Women & Child Development, Haryana was not the competent authority to take a decision as to the consequential benefits and



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whether to release them on actual or notional basis and the same had to be taken by the Government alone. He also places reliance on a judgment of Division Bench of this Court passed in CWP-3709-1998 titled as **Daya Nand Vs. State of Haryana and another**, which had relied on the judgment of the Hon'ble Supreme Court in the matter of **State of Haryana Vs. O.P. Gupta etc.** reported as **1996 (7) SCC 533**, to hold that where a benefit of promotion had been wrongly denied to a person, the consequential benefits on actual basis cannot be denied to him.

Responding to the arguments advanced above, learned State counsel, however, contends that the person who was originally above the petitioner in the seniority list had to be promoted w.e.f. 14.11.1990. On account of the order passed by the Division Bench in CWP-1333-1995 and LPA-466-1988, such persons had to be moved to the tail end of the feeder cadre i.e. the Child Development Officer, hence, the post in the promotional quota fell vacant. It was in the said circumstances that a fresh order of promotion was passed in favour of the petitioner albeit w.e.f. the date when a post in the promotional quota became available. He thus submits places reliance on the judgment of this Court in the matter of **Ram Murti Sharma Vs. Punjabi University, Patiala and others**, reported as **2020 (1) SCT 422** to contend that where retrospective promotion is granted on account of change of seniority, the arrears of salary can't be granted from deemed date of promotion.

He, however, is not in a position to dispute that the order (Annexure P-3) had been passed by the Director, Women & Child



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Development, whereas the order of promotion had been passed by the Government. The decision as regards the entitlement of the petitioner to financial benefits and/or any other condition that may be imposed on the promotion of the petitioner, was thus within the domain of the Government.

Under the given circumstances, while this Court holds that the order (Annexure P-3) imposing a condition restricting the allowances could not have been passed by the Director, since it was only in the domain of the Government, hence, the writ petition is **partly allowed** and the impugned order is **set aside**. The matter is remanded and the respondent-State is directed to treat the instant writ petition as a representation and to take a decision on the claim made by the petitioner about actual disbursement of the benefits w.e.f. the date of promotion i.e. 14.11.1990 to 12.01.2000, after granting an opportunity of hearing to the respective parties and considering the position in law.

Let the needful be done within a period of 04 months of receipt of a certified copy of this order.

Pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

27.02.2025
Mangal Singh

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