



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205

CWP-11543-2024

Date of decision: 19.12.2025

Suman Gupta

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. R.K. Arora, Sr. Advocate with
Mr. Jugam Arora, Advocate and
Mr. J.S. Bhogal, Advocate
for the petitioner.

Mr. Satnampreet Singh Chauhan, DAG, Punjab.

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India, seeking the following reliefs:-

- “a) *issue a writ in the nature of certiorari/mandamus quashing the impugned action of the respondents in not considering and granting the petitioner due regular promotion on the post of 'Senior Town Planner' against vacant posts prior to her retirement on 31.10.2023, on which the petitioner was also assigned officiating charge vide order dated 21.07.2023 (P-4) without filling the same on regular basis and the said vacant posts were filled on regular basis after retirement of the petitioner, as patently wrong, illegal, arbitrary, mala fide and unconstitutional;*
- b) *issue a writ directing the respondents to consider and grant the petitioner for regular promotion on notional basis with effect from the date she was assigned current duty charge of the post of Senior Town Planner vide order dated 21.07.2023 (P-4) and/or prior to her date of retirement against one of the vacant posts, as per her seniority and to grant*

the petitioner all consequential benefits including re-fixation of her post retirement benefits in the pay scale of the promotional post of Senior Town Planner with all consequential benefits in terms of various judicial pronouncements including the judgment reported as State of Punjab Vs. Jagjit Singh & Ors. 2018 (4) SCT 549 and LPA No.1703 of 2023 decided on 30.01.2024 titled Prem Kumar Aggarwal Vs. State of Punjab & Ors.;

- c) issue a writ in the nature of mandamus directing the respondents to grant the petitioner pay scale and emoluments of the higher promotion post of Senior Town Planner on which she has been asked to perform duties till her retirement on 31.10.2023 by quashing the clause regarding denial of financial benefits and accordingly grant the petitioner pension and other retirement benefits on the basis of fixed pay on the date of her retirement with all consequential benefits;*

xx xx xx xx xx”

2. The brief facts as have been pleaded in the petition are that the petitioner joined as Junior Draftsman in the Department of Town and Country Planning, Punjab, on 29.03.1990 on regular basis and was further promoted as Planning Draftsman on 23.12.2008. Thereafter, she was selected and appointed to the post of Assistant Town Planner through Punjab Public Service Commission, vide appointment letter dated 20.07.2010 and joined as such on 21.07.2010 (Annexure P-1). Thereafter, she was promoted as District Town Planner, vide order dated 08.10.2018 and joined on the said post on 18.10.2018. In the seniority list of the cadre of District Town Planner (Group A), dated 20.02.2020, she has been placed at seniority No.9 (Annexure P-2).

3. The next channel of promotion from the post of District Town Planner is to the post of Senior Town Planner in terms of the rules known as 'Punjab Town and Country Planning (Group A) Service Rules, 2017'. The relevant portion from the said Rules is as under:-

“5. Method of appointment, qualifications and experience - (1) Appointment to the post in the Service shall be made in the manner as specified in Appendix 'B':

Provided that if no suitable candidate is available for appointment to the Service by promotion either with requisite experience or with two-third part of the requisite experience or by direct recruitment, as the case may be, then appointment to the service shall be made by transfer of a person holding an alogous post under the State Government or Government of India.

(2) No person shall be appointed to a post in the Service unless he possess the qualifications and experience as specified against that post in Appendix 'B':

Provided that if any post in the Service is filled up by transfer, then in such a case qualifications specified for direct recruitment shall apply:

Provided further that if a post in the Service is specified to be filled up exclusively by promotion, then for filing up such a post by transfer, the qualifications specified for promotion shall apply:

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis and no person shall have any right to claim promotion on the basis of seniority alone.

APPENDIX – B

Sr.No	Designation of the post	%age of appointment by		Method, Experience and Qualification for appointment by	
		Direct Appoint-ment	Promo-tion	Direct Appoint-ment	Promotion
2.	Senior Town Planner	-	100%	-	From amongst the District Town Planners, who have worked as regular District Town Planner for a minimum period of seven years in the Directorate of Town and Country Planning, Punjab”

4. The aforesaid Rules of 2017 were further amended by notification dated 29.01.2020, whereby, against Sr. No.2 in Appendix-B, under the column captioned 'Promotion', the words '7 years' were substituted with the words '5 years'. The said amendment reads as

under:-

- “1. (1) *These rules may be called the Punjab Town and Country Planning (Group A) Service (First Amendment) Rules, 2020.*
(2) *They shall come into force on and with effect from the date of their publication in the Official Gazette.*
2. *In the Punjab Town and Country Planning (Group A) Service Rules, 2017, in Appendix 'B',-*
 - (i) *against serial No. 2, under column captioned as "Promotion", for the words "seven years", the word "five years" shall be substituted; and*
 - (ii) *against serial No. 3, under column captioned as "Promotion", for the words "eight years", the word "six years" shall be substituted.*

*Sd/-
SARVJIT SINGH,
Principal Secretary to Government of Punjab,
Department of Housing and Urban Development.”*

5. The petitioner was assigned current duty charge of the post of Senior Town Planner, vide order dated 21.07.2023, issued vide endorsement dated 24.07.2023 (Annexure P-4). She completed her 5 years of service as District Town Planner on 17.10.2023 and became eligible for promotion to the post of Senior Town Planner. The seniority number of the petitioner was 9 and the persons upto seniority No.6 were already promoted in the year 2021 and candidate at seniority No.7- Sh.Amrinder Singh had unfortunately died on 24.09.2019 and consequently, the petitioner was entitled to be considered being at Sr. No.2 in the list of eligible candidates for promotion. In pursuance thereto, she made a representation dated 18.09.2023 (Annexure P-5) for considering her case for further promotion to the post of Senior Town Planner prior to her retirement on 31.10.2023. However, the claim of the petitioner for regular promotion was not considered prior to her

retirement, despite the fact that she was allowed to officiate on the said post against vacant post as per her seniority. Thereafter, the respondents, vide order dated 13.03.2024, promoted 8 District Town Planners on the post of Senior Town Planner, which included many persons junior to the petitioner, who were having seniority No.10 to 17. With the above said grievance, the instant petition has been filed by the petitioner that her claim for promotion was not considered while she was in service.

6. Reply by way of an affidavit of Neeru Katyal Gupta, Director, Town and Country Planning, Punjab, on behalf of respondents No.1 and 2 has been filed, wherein it has been stated as under:-

“6. That most of the batchmates of the Petitioner would have acquired a minimum requisite experience of 5 years on the post of 'District Town Planner' for the promotion to 'Senior Town Planner' on 8.10.2023. So, the process for convening the meeting to the Departmental Promotion Committee was initiated by the office of the respondent on 3.10.2023.

7. That it is pertinent to mention here that the Petitioner acquired requisite experience of 5 years on the post of District Town Planner on 17-10-2023, which was just a few days before her date of superannuation, i.e. 31.10.2023. The petitioner was just assigned an additional duty to dispose of the official work in the office of Senior Town Planner, Patiala.

8. However, on 8.9.2023 a month before her superannuation the Petitioner submitted her Hearing Disability Certificate issued from PGIMER-Chandigarh to claim all the service benefit admissible to a disabled Government Employee, including her retirement at the age of 60 years (i.e. 31.10.2025) instead of 58 years (i.e. 31.10.2023).

9. It is also pertinent to mention here that PGIMER-Chandigarh issued Disability Certificate No. CH0170419650088025 to the petitioner on 24th April, 2023; but the petitioner submitted aforesaid certificate to the office of the answering respondents on 8th September 2023 after a gap of 6 months, wherein her temporary hearing disability was certified upto 41% disability for a period of 2 years and shall be valid till 28.4.2025, being

bilateral mixed hearing loss and was advised ear surgery for her treatment.

10. *Meanwhile, on 10.10.2023, the Petitioner submitted another Disability Certificate No. PB1810419650102799 Dated 9.10.2023 issued from the office of Chief Medical Officer, S.A.S. Nagar, wherein her hearing disability was certified as 53% Permanent Disability.*

11. *As the office of Respondent got two Disability Certificates from the Petitioner, both with different versions just before her superannuation and her promotion case, which aroused a suspicion, so, her case was referred to the Punjab Medical Board, S.A.S. Nagar, to re-examine the disability of the petitioner.*

12. *That thereafter, on 31.10.2023, the Medical Board of S.A.S. Nagar declared her hearing disability as 'Not Permanent'. The operative part of the decision of the Medical Board issued vide dated 31.10.2023 (**Annexure R-1**) is reproduced as below: -*

"It was observed that she has Large Central Perforation of the Tympanic Membrane in her left ear and the Right Tympanic Membrane is Intact. Since the said condition is treatable by surgery in the form of Mastoidectomy and Tympanoplasty the disability cannot be termed as Permanent. Further the patient is advised to undergo surgery for correction of her Left tympanic membrane and associated hearing impairment."

13. *That subsequently the claim of the petitioner to consider her as a handicap (Person with Disability) was rejected by the competent authority and decided to retire her from the Government Service on 31.10.2023 as the petitioner had attained the age of 58 years.*

14. *That it is also relevant to mention here that meanwhile, on 9.8.2023 the final seniority list of 'District Town Planner' cadre issued vide letter dated 20-02-2020 (**Annexure P-2**) was challenged, by raising some objections against it by Sh. Paramjit Singh (a batchmate of the petitioner). So, the meeting of Departmental Promotion Committee (DPC), was held after deciding the said objection and the name of Petitioner was also included in the panel of officers considered for promotion to the post of 'Senior Town Planner'.*

15. *Further, DPC could not be held due to the reason that petitioner submitted two Disability Certificate, one showing disability as temporary in nature, while other showing disability as permanent in nature. So, the necessity of verification of the disability certificates (as mentioned above in paras no. 8 to 11) were required, and*

the process of this verification got completed on 31.10.2023 (as mentioned above in para no. 12), which was the date of superannuation of the petitioner. So, the delay was on the part of petitioner.

16. That it is worth mentioning here that it is a settled principle of law that even if the posts are vacant and the employee is eligible, the jurisdiction to effect promotion remains with the employer. Nobody can claim promotion from the date of eligibility and on the ground that the posts are vacant. The only right an employee has for the consideration of his/her claim for the promotion.

17. That the Hon'ble Supreme Court in the case of Bihar State Electricity Board v/s Dharamdeo Das, observed that there is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules.

18. Moreover, the promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy. As the Petitioner is already superannuated, the petitioner is not entitled to any retrospective financial benefits associated to the promotional post in light of above said facts.”

7. In nutshell, the stand of the respondents in the written statement is that the petitioner only became eligible for promotion to the post of Senior Town Planner on 17.10.2023, when she acquired 5 years experience and after few days, she superannuated from service on 31.10.2023 and while she was in service, on 08.09.2023, she submitted her Hearing Disability Certificate dated 24.04.2023 issued from PGIMER, Chandigarh, wherein her temporary hearing disability was certified upto 41%, to claim all the service benefits admissible to a disabled Government Employee, including her retirement at the age of 60 years instead of 58 years. Thereafter, on 10.10.2023, the petitioner submitted another disability certificate dated 09.10.2023, issued from the office of Chief Medical Officer, SAS Nagar, wherein her hearing disability was certified as 53% permanent disability and since the

respondents got two disability certificates from the petitioner, both with different versions and that too just before her superannuation, which aroused a suspicion and consequently, the case of the petitioner was referred to the Punjab Medical Board, SAS Nagar, to re-examine the disability of the petitioner. On 31.10.2023, the Medical Board, SAS Nagar declared her hearing disability as 'not permanent', and consequently her claim to consider her as a handicap (Person with Disability) was rejected by the competent authority and decided to retire her from Government Service on 31.10.2023 as the petitioner had attained the age of 58 years. It has further been submitted in the reply that on 09.08.2023, final seniority list of District Town Planner cadre, issued vide letter dated 20.02.2020, was challenged, by raising some objections against it by Sh. Paramjit Singh (a batchmate of the petitioner) so the meeting of the Departmental Promotion Committee (DPC) was held after deciding the said objections and name of the petitioner was also included in the panel of officers to be considered for promotion to the post of Senior Town Planner. Further, Departmental Promotion Committee meeting could not be held due to the reason that petitioner submitted two disability certificates showing two different versions, so the necessity of verification of the disability certificates was required and the process of verification got completed on 31.10.2023 and the petitioner superannuated from service on 31.10.2023. While the petitioner was in service, no person junior to her was promoted and even the alleged juniors were promoted vide order dated 13.03.2024 i.e. after about six months from her retirement.

8. Learned Senior Counsel for the petitioner has argued that

petitioner became eligible for promotion to the post of Senior Town Planner on 17.10.2023 and the action of the respondents in not promoting her to the post of Senior Town Planner, while she was in service up to 31.10.2023, is patently illegal and arbitrary and she is entitled for promotion with all consequential benefits. Alternatively, it has been argued that that in the event of non-acceptance of the first prayer, the petitioner may be granted the pay scale for the post of Senior Town Planner from the date the petitioner was given the current duty charge i.e. 21.07.2023.

9. *Per contra*, Learned State counsel, while referring to the averments made in the written statement, has submitted that the petitioner only became eligible for promotion to the post of Senior Town Planner on 17.10.2023 and after 13 days she retired from service on 31.10.2023. She even submitted two disability certificates showing two different versions, for claiming extension in her age up to 60 years and the case of the petitioner was got re-examined from the Punjab Medical Board, SAS Nagar and it was found that she is not entitled for extension in service and the claim of the petitioner to consider her as a handicap (Person with Disability) was rejected by the competent authority and no person junior to her was promoted while she was in service. Therefore, the petitioner cannot claim the promotion as a matter of right and also not entitled to any retrospective financial benefits associated to the promotional post.

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

11. The issue which arises for consideration before this Court is as to whether the petitioner is entitled to be promoted to the post of

Senior Town Planner or not on 17.10.2023 on completion of five year experience as District Town Planner.

12. The facts are not in dispute that the petitioner became eligible for promotion to the post of Senior Town Planner only on 17.10.2023, when she acquired five year experience and while she was in service, on 08.09.2023, she submitted her hearing disability certificate dated 24.04.2023 issued from PGIMER, Chandigarh, wherein her temporary hearing disability was certified upto 41%, to claim all the service benefits admissible to a disabled Government Employee, including her retirement at the age of 60 years instead of 58 years. Thereafter, on 10.10.2023, the petitioner submitted another disability certificate dated 09.10.2023, issued from the office of Chief Medical Officer, SAS Nagar, wherein her hearing disability was certified as 53% permanent disability and since the respondents got two disability certificates from the petitioner, both with different versions and that too just before her superannuation, it raised a suspicion and, therefore, the case of the petitioner was referred to the Punjab Medical Board, SAS Nagar, to re-examine the disability of the petitioner, which declared her hearing disability as 'not permanent', and consequently her claim to be considered as a handicap (Person with Disability) was rejected by the competent authority and she was retired from Government Service on 31.10.2023.

13. This Court in ***Faqir Chand Chawla Vs. State of Punjab : 2013(4) S.C.T. 659***, while considering the similar issue, has held that mere recommendation for promotion does not confer any right. In the said case, the recommendations for promotion was made by the

D.P.C. prior to the date of retirement of the petitioner therein and the actual promotion order was issued after his retirement. However, he was not given promotion and it was held that the date of promotion would be the date on which the order of promotion is passed by the Competent Authority and thereafter, the petitioner is not entitled for notional promotion as Sub-Divisional Engineer from the date of recommendations of the D.P.C. as the Competent Authority approved the recommendations after his retirement.

14. To the same effect is the judgment of this Court in ***Raj Kumar Sharma and others Vs. State of Punjab and others : Law Finder Doc Id #2427561***. In the said case similar issue was raised by the petitioners therein for issuance of directions to the respondents to grant notional promotion w.e.f. the date when the D.P.C. recommended their names and it was held that report of the D.P.C. is only recommendatory and the final decision is required to be taken by the Competent Authority and the promotions cannot be ordered from the date when vacancy arises.

15. The Hon'ble Supreme Court in its recent judgment dated 27.11.2024 passed in ***Government of West Bengal and others Vs. Dr. Amal Satpathi and others : 2024 INSC 906*** has held that the promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of vacancy or the date of recommendation. In the said case, the respondent namely Dr.Amal Satpathi became eligible for promotion to the post of Chief Scientific Officer. The department initiated the promotion process and the Public Service Commission in its meeting dated 29.12.2016

recommended his name for promotion. However, the department received the final approval for promotion on 04.01.2017 but by that time he had already superannuated on 30.12.2016. He submitted representation to the department claiming promotion and promotional benefits. Since the said benefits were not granted by the department, he filed Original Application before the Tribunal and the Tribunal had held that the promotion cannot be granted retrospectively after the retirement of the Government employee, however the Tribunal acknowledged that respondent No.1 had been duly recommended for promotion before his superannuation, which was only delayed due to procedural obstructions beyond his control, therefore, while actual promotion was not acceded to, however, he was entitled for grant of notional financial benefits of the promotional post w.e.f. 31.12.2016 to ensure pensionary benefits commensurate with the promotional post. The said order of Tribunal was challenged before the Calcutta High Court and the said writ petition was dismissed by concurring with the Tribunal. The said judgment of the High Court was challenged before the Hon'ble Supreme Court and the same was reversed and it was held as under :-

*“19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of **Bihar State Electricity Board and Others v. Dharamdeo Das 2024 SCC OnLine SC 1768**, wherein it was observed as follows:*

"18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or

when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in **Ajay Kumar Shukla v. Arvind Rai (2022) 12 SCC 579** where, citing earlier precedents in **Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty (1991) 2 SCC 295** and **Ajit Singh v. State of Punjab (1999) 7 SCC 209**, a three-Judge Bench observed thus:

41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in **Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty** in para 4 of the report which is reproduced below:

'4.....There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'

42. A Constitution Bench in **Ajit Singh v. State of Punjab**, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27:

'Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with

individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1).

*27. In our opinion, the above view expressed in **Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P. (1997) 5 SCC 201**, and followed in **Jagdish Lal [Jagdish Lal v. State of Haryana (1997) 6 SCC 538**, 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 the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier 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 [Ashok Kumar Gupta v. State of U.P.]**, right from 1950.'*

*"20. In **State of Bihar v. Akhouri Sachindra Nath 1991 Supp (1) SCC 334**, it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in **Keshav Chandra Joshi v. Union of India 1992 Supp (1) SCC 272**, where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in **Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P. (2006) 10 SCC 346**, in the following words:*

*'37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in **Keshav Chandra Joshi v. Union of India** held that when*

promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime."

(emphasis supplied)

20. In the instant case, it is evident that while respondent No.1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision.

21. While we recognize respondent No.1's right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion

was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.

22. As a result of the above discussion, the judgment dated 1st February, 2023 passed by the High Court of Calcutta and the judgment dated 26th June, 2019 passed by the Tribunal are unsustainable in the eyes of law and are hereby reversed and set aside.”

16. Now, coming back to the facts and circumstances of the present case, it may be noticed that the petitioner only became eligible for promotion to the post of Senior Town Planner on 17.10.2023 and within 13 days of becoming eligible, she retired from service on 31.10.2023. During this period also, her claim for extension in service for two years on account of being person with disability, was considered by the respondents and rejected accordingly. No person junior to her was promoted while she was in service and even the alleged juniors were promoted after six months from the date of her superannuation. As per settled law, promotion is neither a vested nor fundamental right. Only consideration for promotion is a fundamental right. There is nothing wrong in the action of the respondents in not promoting her to the post of Senior Town Planner.

17. However, as far as the claim of the petitioner seeking pay and allowances for performing the duties and responsibilities of the post of Senior Town Planner is concerned, her claim merits acceptance and the same is squarely covered by a judgment of this Court in ***CWP No.7312 of 2016 titled as 'Baldev Krishan Sharma v. State of Haryana and others', decided on 17.11.2018***, which has been upheld by a Division Bench of this Court in ***LPA No.1497 of 2019 titled as 'State of Haryana and others v. Baldev Krishan Sharma (deceased)***

through its LRs', decided on 06.09.2019 and further upheld by the Hon'ble Supreme Court in *SLP(C) No.8217 of 2020 titled as 'State of Haryana and others v. Baldev Krishan Sharma (deceased) through its legal representatives', decided on 09.07.2020*. The judgment in *Baldev Krishan Sharma's case (supra)* has been followed by this Court in its order dated 27.02.2024 passed in *CWP-11754-2020 titled as 'Ishwar Chander and another Vs. State of Haryana and others'*.

The said order reads as under :-

“1. Learned counsel for the petitioners argues that the petitioners were given promotion to the post of higher post of Section Officer on the stop gap arrangement dated 01.03.2021 and 01.05.2012 (Annexures P-1 and P-2 respectively) with the clear intent that the petitioners will not be granted the benefit of higher post but as the said stop gap arrangement is continued for a period of seven years and the petitioners discharged the duties of the higher post, keeping in view the settled principle of law, the respondents were under an obligation to grant the petitioners the benefit of the pay for the post of Section Officer, duty of which the petitioners had discharged on stop gap arrangement.

2. Learned counsel for the petitioners places reliance upon the decision of this Court in *CWP No.7312 of 2016 titled as Baldev Krishan Sharma Vs. State of Haryana and others, decided on 17.11.2018 (Annexure P-6)* wherein, the similarly situated employees of the same Department have been given the benefit as being claimed by the petitioners in the present petition.

3. Learned counsel for the petitioners submits that the benefits as being claimed by the petitioners, have already been allowed in favour of the petitioner in *Baldev Krishan Sharma's case (supra)* but the same has not been extended to the petitioners on the ground that the petitioners never approached this Court for the grant of relief which was extended to the petitioner in *Baldev Krishan Sharma's case (supra)*.

4. Learned counsel for the respondents, on the other hand, submits that the petitioners were asked to discharge the duties of the post of Section Officer as stop gap arrangement. Learned counsel for the respondents further submits that once the petitioners have never been promoted as Section Officer on regular basis, the petitioners cannot be allowed the benefit of same pay scale

as being extended to the Section Officer and therefore, the claim of the petitioners is liable to be rejected.

*5. With regard to the grant of same benefit, as being claimed by the petitioners in **Baldev Krishan Sharma's case (supra)**, learned counsel for the respondents concede the said factum.*

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. Once, a benefit which is being claimed by the petitioners has already been extended to similarly situated employees by this Court, which judgment has already been accepted by the respondents, it was incumbent upon the respondents to grant the same benefit to the similarly situated employees rather than forcing them to approach this Court.

*8. Keeping in view the conceded fact that the petitioners are similarly situated employees as the petitioner in **Baldev Krishan Sharma's case (supra)**, the present writ petition is also allowed in terms of **Baldev Krishan Sharma's case (supra)**."*

18. In view of the foregoing reasons, the claim of the petitioner for promotion to the post of Senior Town Planner is rejected, however, she is held entitled for the pay scale for the post of Senior Town Planner with effect from 21.07.2023, the date she was given current duty charge, till the date of her retirement i.e. 31.10.2023 and the necessary benefits shall be calculated and released to her within a period of three months from the date of receipt of certified copy of this order.

19. The present petition stands disposed of in above terms.

19.12.2025

Vinay

(NAMIT KUMAR)
JUDGE

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