

2025:PHHC:071072



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

**209**

**CWP-12152 of 2018  
Date of Decision: 22.05.2025**

**ILAM SINGH CHAUHAN**

... Petitioner

**VERSUS**

**STATE OF HARYANA AND ANOTHER**

... Respondents

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

Present: Mr. Daman Dhir and Mr. Raman Dhir,  
Advocates for the petitioner.

Mr. Rahul Dev, Addl. A.G., Haryana.

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**VINOD S. BHARDWAJ, J. (ORAL)**

The instant writ petition has been filed seeking the setting aside of the order dated 20.04.2016 passed by the Principal Secretary to the Government of Haryana, Department of Urban Local Bodies, whereby the claim of the petitioner for promotion to the post of Chief Fire Officer was declined.

Learned counsel for the petitioner submits that the petitioner superannuated from the Indian Air Force on 31.08.1989 and holds a Bachelor of Arts (Honours) degree and had also qualified the LL.B. examination during his service in the Air Force in the year 1988. He was thereafter selected and appointed as Fire Station Officer on an ad hoc basis on 11.10.1990 by the Government of Haryana through the State Soldier Board. The services of the petitioner were, however, terminated in the year 1991, whereupon he approached this Court by filing CWP No. 9225 of 1991. The said writ petition was disposed of by this Court vide order dated 20.06.1991, directing the respondents not to

terminate the services of the petitioner until the appointment of a regular incumbent.

Subsequently, the petitioner was regularized as a Fire Station Officer w.e.f. 01.04.1993. He was deputed as Fire Officer on 23.03.1995, but was later repatriated to the post of Fire Station Officer in December 1996. The said action of repatriation of the petitioner by the respondents was challenged by filing CWP No. 7097 of 1997, which was allowed by a detailed judgment rendered by a Division Bench of this Court on 26.05.1998. It was held therein that the petitioner's experience in the Air Force, specifically in the domain of fire-fighting, entitled him to be considered for promotion to a higher post. The Special Leave Petition filed against the said judgment was dismissed on 25.09.1998. Accordingly, the petitioner was then promoted as Fire Officer on 26.10.1998.

It is further contended that on 09.05.2000, the Government of Haryana issued a notification amending the Haryana Municipal Building Byelaws, mandating that fire protection equipment be installed in accordance with the provisions of the National Building Code of India, 1983 (Part IV), as amended from time to time. The preparation and approval of the Fire Safety Plan thereunder were to be undertaken by the Chief Fire Officer. However, as no regular Chief Fire Officer had been appointed in the respondent Department, and the petitioner being the only Fire Officer in the Department, he became eligible for promotion to the said post. This fact was also recorded in the Office Note dated 10.08.2001, which stated that the Fire Officer (Headquarter) had to ensure proper fire safety arrangements in multi-storeyed buildings in the State of Haryana, in conformity with the National Building Code of India, 1983.

Learned counsel further submits that on 12.03.2003, one post of Chief Fire Officer in the pay scale of ₹8000–13500 was sanctioned in the respondent Department. Notwithstanding that the petitioner was posted at Headquarter, Chandigarh, as Fire Officer, the respondents still issued a letter dated 11.08.2004 inviting applications for the said post on deputation basis. It is contended that the Department had not framed any recruitment rules for the post of Chief Fire Officer. The petitioner, being fully eligible and suitable for the said post, submitted a representation dated 27.07.2004 to respondent No. 2, i.e., the Director, Urban Local Bodies Department, Haryana, seeking promotion to the post of Chief Fire Officer. However, no action was taken thereupon, despite repeated reminders.

It is further submitted that the petitioner was later placed under suspension by the respondents w.e.f. 13.08.2007 in connection with the issuance of a 'No Objection Certificate' and the approval of a Fire Fighting Scheme. Aggrieved by the said action, the petitioner filed CWP No. 14489 of 2007 before this Court. During the pendency of the said writ petition, he was reinstated on 27/30.06.2007, hence, the writ petition was rendered infructuous and disposed of as such on 24.07.2008 by a Division Bench of this Court.

The petitioner continued to make representations seeking promotion to the post of Chief Fire Officer. However, in the absence of any decision thereupon, he finally filed CWP No. 2957 of 2009, which was disposed of with a direction to the respondents to consider his representation by passing a speaking order within three months. Vide order dated 14.05.2009, the respondents rejected the petitioner's claim for promotion, citing that he was found guilty of having issued a 'No Objection Certificate' and of having approved a Fire Fighting

Scheme at his own level, without obtaining approval from the Competent Authority, thereby unlawfully exercising such authority. It was further stated that an inquiry under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, was pending as of that date, and until the inquiry was concluded, promotion could not be granted. The petitioner submitted another representation on 29.05.2009 for review of the said decision, but the same was also declined.

It is also contended that without properly appreciating the record, the disciplinary authority directly issued a charge-sheet dated 05.03.2008, alleging that the NOC had been issued without any authority vested in him.

A detailed reply was furnished by the petitioner to the said charge-sheet, yet an Inquiry Officer was appointed to report on the charges. It is submitted that the inquiry report was never furnished to the petitioner, although it is learnt that the charge concerning the issuance of the NOC was not proved. However, with respect to a second charge—pertaining to the issuance of a certificate in District Sonapat—the charge was found to be partially proved.

Upon conclusion of the inquiry under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987, the petitioner was awarded a penalty of strict warning vide order dated 12.11.2009.

Learned counsel for the petitioner has contended that following the imposition of a minor penalty of a strict warning upon the petitioner vide order dated 12.11.2009, he once again submitted a representation to the respondent-Department, seeking promotion to the post of Chief Fire Officer. However, instead of considering the said representation on its merits, another charge sheet dated 31.12.2009 was served upon him on 12.01.2010, pertaining to the selection of candidates for the Fire Fighter Course conducted in November 2005. It is

further pointed out that a similar charge sheet was also issued to the Chairman of the said Committee. An inquiry into these charges was undertaken by the Chief Engineer, which eventually culminated in the issuance of a warning.

It is alleged that the petitioner was still subjected to a sustained course of victimization, ultimately culminating in an order of his compulsory retirement from service vide order dated 27.05.2010, issued on 02.06.2010. Aggrieved thereof, the petitioner instituted CWP No.15564 of 2010 before this Court. During the pendency of the writ proceedings, the respondent-authorities considered the petitioner's claim for salary for the period of suspension and resolved that the said period be treated as leave of the kind due. The aforesaid writ petition finally came to be allowed vide judgment dated 04.08.2011, wherein this Court quashed the order of compulsory retirement and imposed a cost of Rs.50,000/- upon the respondents.

It is submitted that pursuant to the said order, the petitioner moved an application seeking permission to rejoin duty on the post of Fire Officer. Despite the clear directive, no action was still taken thereupon. The petitioner again submitted a representation dated 01.09.2011 reiterating the same prayer. Eventually, a communication dated 25.11.2011, endorsed on 14.12.2011, was sent to the petitioner.

Thereafter, the petitioner submitted two further representations dated 30.04.2012 and 21.08.2012 respectively, seeking promotion to the post of Chief Fire Officer, having been exonerated of the charges that had earlier been made the basis for the rejection of his claim at the time of passing of the order dated 14.05.2009. However, the respondent-authorities still paid no heed to the petitioner's repeated requests.

The petitioner thus approached this Court by way of CWP No. 1112 of 2013, praying for issuance of a direction to the respondents to promote him to the post of Chief Fire Officer w.e.f. 12.03.2003, i.e., the date on which the post was sanctioned, along with all consequential benefits. It is stated that the petitioner, in the meanwhile, had superannuated from service on 30.11.2012.

The said writ petition was disposed of by this Court vide judgment dated 18.05.2015, directing the respondents to consider the petitioner's claim for promotion to the post of Chief Fire Officer as on 10.01.2007, keeping in view the fact that there were no adverse remarks against him. Certified copies of the order were duly supplied to the respondent-authorities with a request to ensure compliance. However, in the absence of any follow-up action, the petitioner filed COCP No. 3053 of 2015.

In response thereto, the respondents passed an order dated 20.04.2016 and placed the same on record, whereupon the aforementioned contempt petition was disposed of as infructuous, albeit with liberty granted to the petitioner to challenge the said order dated 20.04.2016. Hence, the present petition.

Learned counsel has vehemently assailed the legality and validity of the order dated 20.04.2016, wherein the petitioner was held ineligible for promotion to the post of Chief Fire Officer on the ground that he did not possess the essential qualification of "graduation from a recognized university with science or its equivalent with knowledge of Hindi up to matriculation standard." It is urged that the said conclusion is grossly misconceived, inasmuch as the qualification prescribed by the Director General, Civil Defence and Fire Services, Ministry of Home Affairs, Government of India, only requires a degree—

preferably in science—from a recognized university or an equivalent qualification.

The petitioner, it is submitted, possesses B.A. (Honours) degree along with the Advanced Diploma from the National Fire Service College, Nagpur, which remains undisputed. It is thus submitted that the reliance placed by the respondents on the absence of a degree specifically in the science stream is wholly misplaced, as the relevant notification stipulates the science degree only as a preferable, and not a mandatory, qualification.

The impugned rejection of the petitioner's eligibility for promotion, therefore, suffers from a patent misreading and misconstruction of the applicable statutory requirements. The writ petition, hence, has been instituted to assail the said order and to secure consequential reliefs arising therefrom.

Learned State Counsel, on the other hand, does not dispute the chronology of sequences noticed above, however, he contends that the post of Chief Fire Officer was required to be filled up from the candidates having the following qualification and criteria:

- "1) *A degree preferably in Science from a recognized University or equivalent.*
- 2) (a) *Advance Diploma of National Fire Services, Nagpur.*  
*Or*  
(b) *Bachelor or Engineering (Fire) from a recognized University.*  
*Or*  
(c) *Passed Membership Examination of the Institution of Fire Engineers or equivalent."*

It is contended that the petitioner was not eligible for consideration for promotion to the post of Chief Fire Officer prior to June 2006, inasmuch as

he acquired the qualification of B.A. (Honours) from Punjab University, an LL.B. (Professional) from Gujarat University, and the Advanced Diploma from the National Fire Services College, Nagpur, only in June 2006. It is further submitted that the petitioner was involved in multiple disciplinary actions and inquiries in relation to various matters concerning the Fire Department, and that his overall service image was perceived as doubtful in the estimation of the respondent-Authorities due to numerous irregularities attributed to him.

The respondent-Department, while modernizing and strengthening the fire services in the State of Haryana, was in the process of formulating relevant legislative measures, including a comprehensive set of Acts and Rules. In the interim, the department resolved to fill the newly created post of Chief Fire Officer through deputation or transfer from other departments. To that extent, a communication dated 11.08.2004 was circulated to the Heads of Departments in the States of Haryana, Punjab, and surrounding States, inviting applications accompanied by biodata and Annual Confidential Reports (ACRs). However, no applications were received, and consequently, the post remained vacant.

Owing to the persistent vacancy and in the absence of any eligible candidate, the Department—through a single-file system—moved a proposal before the Government in the year 2007, seeking consideration of the petitioner's name for the said post. The matter was deliberated upon extensively; however, owing to the pendency of disciplinary actions and the petitioner's failure to meet the essential educational qualifications, his name was not considered for promotion. It is submitted that the requirement of basic qualifications had remained unaltered and that the petitioner's non-fulfilment thereof justified the denial of his eligibility.

Pursuant to the directions issued by this Court vide order dated 28.02.2020, the respondents were called upon to produce the applicable Rules for filling the post of Chief Fire Officer. In compliance, an affidavit was filed by Shri Mahavir Kaushik, Special Secretary to the Government of Haryana, Urban Local Bodies Department, stating that the petitioner's service was governed by the Haryana Fire Office Subordinate Service (State Service Class-II) Rules, 1972. It was averred therein that the said Rules contained no provision for the post of Chief Fire Officer. The creation of the post was carried out vide Government Memo dated 26.03.2003, albeit without laying down any academic qualifications or promotional criteria at that juncture.

Hence, the respondent-Department had taken the decision to fill the newly created post through transfer/deputation based on the qualifications communicated via Circular dated 11.08.2004. The petitioner's application was considered and subsequently rejected on the ground that he did not fulfil the requisite qualifications stipulated therein. It was also emphasized that promotion is not a vested right but a privilege subject to the discretion of the employer.

It was categorically asserted that no person had been promoted or appointed to the post of Chief Fire Officer either during the tenure of the petitioner, who superannuated in 2012, or even thereafter, till the date of filing of the affidavit on 22.05.2024.

Subsequently, when the matter was heard at some length on 06.09.2024, learned State Counsel submitted that the Haryana Service Rules of 2016 also did not recognize the post of Chief Fire Officer. This Court, thereupon, directed the State to place the 2016 Rules on record. In compliance, an affidavit was filed by Shri Satya Narain, Under Secretary to the Government of Haryana,

Urban Local Bodies Department, Chandigarh, annexing the relevant Service Rules of 2016 for Group A and Group B categories. It was specifically stated therein that no post of Chief Fire Officer had been provided for in the said Rules.

It is also noted that the petitioner has not filed any counter-affidavit in response to the averments made in the affidavits filed by the respondent-Authorities pursuant to the queries put to them by this Court.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The pivotal issue that emerges for consideration before this Court pertains to the validity of the order dated 20.04.2016 passed by the respondent-Authorities, whereby the petitioner's claim for promotion to the post of Chief Fire Officer was declined. The said denial was premised on the ground that the petitioner did not possess the essential qualification of holding a Bachelor's Degree in Science or its equivalent from a recognized university.

It stands admitted that the petitioner is in possession of a B.A. (Honours) degree from Punjab University and an LL.B. (Professional) degree from Gujarat University. The respondents, however, have placed reliance on the qualification criteria purportedly circulated by the Director General, Fire Services, Ministry of Home Affairs, Government of India vide communication dated 11.08.2004, and have interpreted the reference therein to a Bachelor's Degree in Science as a *mandatory* qualification, thereby excluding the petitioner from consideration.

This Court finds such interpretation to be fundamentally flawed. A plain reading of the said communication indicates that the degree in Science was

mentioned as a *preferable* or *desirable* qualification, and not as an essential or mandatory requirement. The attempt by the respondent-Authorities to elevate a preferential qualification to the pedestal of an indispensable criterion amounts to a clear misappreciation and misconstruction of the eligibility.

It is trite law that where a qualification is prescribed as desirable or preferable, the same cannot, by any interpretative exercise, be construed as mandatory and to exclude otherwise eligible candidates. The reasoning advanced by the respondents equating a preferential qualification to be a threshold eligibility condition is, therefore, legally untenable and unsustainable.

Insofar as the argument advanced by the learned State Counsel regarding the petitioner's involvement in various departmental proceedings and inquiries is concerned, this Court finds that such allegations form no part of the rationale underlying the impugned order dated 20.04.2016. The said order is founded solely on the alleged lack of essential qualification, and not on any adverse service record. Consequently, the said contentions are of no relevance to the adjudication of the present lis and merit no further deliberation at this stage.

This brings the Court to the next question—whether a writ of mandamus ought to be issued at this stage directing the respondent-Authorities to promote the petitioner, pursuant to the selection process as it then stood. Upon careful consideration, this Court is of the opinion that, in the peculiar facts and circumstances of the case, no such positive direction can be issued at this stage.

It is an admitted position on record that till as late as May 2024, no appointment has ever been made to the post of Chief Fire Officer. Further, neither the Haryana Fire Office Subordinate Service (State Service Class-II) Rules, 1972, nor the Haryana Group A and Group B Service Rules, 2016, prescribe the

existence of such a post or lay down any statutory qualification or promotional criteria for the same. Only an administrative approval was granted to fill up the post of Chief Fire officer and despite the initiation of process to fill up the same, no person was ever appointed to the said post. Since the Service Rules governing the service conditions did not provide for such post, hence, it could not be said to be a part of promotional avenue provided to an employee under the law. It at best is an appointment by selection and is not a promotional cadre with Fire Officer being the feeder post. Unless the Rules provided for a promotional avenue and that is an illegal denial of promotion, an order to promote cannot be passed even if the reasons assigned for treating the petitioner as ineligible are held to be flawed. The Court of Law protects and restores the rights which accrue in favour of a person and are snatched or denied. Court would not assume or create accrual of rights to be promoted to a post which is not the promotional post for the petitioner because he is held eligible.

In view of the above, the petitioner cannot contend that merely by virtue of being the sole eligible candidate—or by being recommended in isolation—he was entitled, as a matter of right, to be promoted and appointed to the said post.

It is by now a trite proposition of law that an employee has, at best, a right to be considered for promotion and there exists no absolute or vested right to claim promotion, save where such right emanates from statutory service rules or binding executive instructions. In the present case, the post of Chief Fire Officer, though sanctioned, remained unfilled and continued to be treated as vacant due to the absence of any corresponding provision under either the

Haryana Fire Office Subordinate Service (State Service Class-II) Rules, 1972 or the subsequently notified Service Rules of 2016.

This legal escape, to a limited extent, lends credence to the stand adopted by the respondent-State. However, this Court cannot remain oblivious to the overarching impression that the decision rendered by the respondent-Authorities was vitiated by an erroneous and misdirected interpretation of the applicable qualifications as conveyed through the communication dated 11.08.2004.

The rejection of the petitioner's candidature, on the sole premise that he did not hold a bachelor's degree in Science—when the said requirement was, in fact, only of a preferential nature—amounts to a misconstruction of the governing criteria. Such a misapplication of the eligibility condition strikes at the root of the administrative decision and cannot be countenanced.

Nevertheless, the consequence of such an erroneous rejection does not, ipso facto, warrant a positive direction from this Court to appoint or promote the petitioner, particularly when the post remained unfilled throughout and was not governed by any enforceable statutory rule.

Be that as it may, it is held that even though the petitioner cannot be directed to be promoted retrospectively w.e.f. the date when his eligibility was declined on the ground of having not possession the requisite/ essential qualification, yet, the interest of justice can be well served by suitably the compensating the petitioner for the mental agony and harassment that he had to suffer on account of rejection of his eligibility for wrong reasons. The respondent-Authorities are accordingly directed to pay a compensation of

Rs.2,00,000/- to the petitioner for unnecessary litigation and for depriving him of his consideration at the relevant time for reasons that were unsustainable.

The petition stands disposed of in above terms.

Let the amount of compensation be disbursed in favour of the petitioner within a period of three months of receipt of certified copy of this order.

**MAY 22, 2025.**

*Rajender*

**(VINOD S. BHARDWAJ)  
JUDGE**

*Whether speaking/reasoned* : *Yes/No*

*Whether reportable* : *Yes/No*