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

**CWP-22784-2025 (O&M)
Date of decision: 07.08.2025**

Jaswinder Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dhiraj Chawla, Advocate
for the petitioner (*through video conferencing*).

HARPREET SINGH BRAR, J. (ORAL)

1. Present civil writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* seeking quashing of the order dated 07.07.2025 (Annexure P-5), whereby claim of the petitioner for grant of notional promotion as Trust Engineer stands rejected.
2. Learned counsel for the petitioner, *inter alia*, contends that service conditions of the petitioner are governed by the Punjab Trust Services (Recruitment and Conditions of Service) Rules, 1978 and the Punjab Trust Services (Recruitment and Conditions of Service) Rules, 2015, as amended by notification dated 09.03.2021 (for short 'Rules of 2015'). The petitioner was



having Diploma in Horticulture from Punjab Agricultural University, Ludhiana and initially, he was appointed as Horticulture Supervisor in the year 1992 and thereafter, promoted to the post of Junior Engineer (Horticulture) w.e.f. 2007 and further to solitary post of Assistant Trust Engineer (Horticulture) on 19.12.2011. The next promotional post is Trust Engineer, which is governed by Rules of 2015 and for promotion to the said post, the petitioner became eligible for his consideration on completion of 06 years of service as Assistant Trust Engineer (Horticulture). Admittedly, the petitioner has completed the requisite 06 years of service on 19.12.2017 and he represented to respondent No.3 for creation of post of Trust Engineer (Horticulture) by making amendment in the Rules and acknowledging the petitioner's eligibility since 2017, resolution No.68 was passed by respondent No.3 on 02.02.2024 recommending creation of one post of Trust Engineer (Horticulture), which was approved and accordingly, one post of Trust Engineer (Horticulture) was created on 15.02.2024, as discernible from Annexure P-1. Further, during the intervening period, the petitioner retired on 31.05.2024 after attaining the age of superannuation and as such, he cannot be made to suffer due to administrative inaction on the part of the respondents, despite the petitioner's undisputed eligibility and repeated representations. It is further contended that the petitioner served a legal notice dated 15.11.2024 (Annexure P-3) upon the respondents, however, his claim was rejected wholly on erroneous grounds. As such, the petitioner is a victim of administrative



red-tapism.

3. Notice of motion.

4. Mr. Vikas Arora, DAG, Punjab, who is present in the Court, accepts notice on behalf of respondents No.1 & 2-State and Mr. Vikram Preet Arora, Advocate accepts notice on behalf of respondent No.3.

5. Learned State counsel as well as learned counsel for respondent No.3-Trust oppose the prayer made by the petitioner and justify the impugned order (Annexure P-5), by contending that the promotion cannot be claimed as a vested right. Further, the post of Trust Engineer (Horticulture) was created after retirement of the petitioner. As such, he cannot be granted notional promotion after retirement.

6. Having heard learned counsel for the parties at length and after careful perusal of record of the case with their able assistance, with the consent of the parties, present petition is taken up today for final disposal.

7. The criteria for promotion to the post of Trust Engineer (Horticulture) has been provided in Appendix 'B' of Rules of 2015, which reads as under: -

“7. Punjab Service of Trust Engineers

*From amongst the members of the Punjab Service of Trust Assistant Engineers, who possess B.E. Civil or AMIE Civil degree from a recognized university or institution and have an experience of working in this service for a minimum period of **six years.***



Provided that the existing members of the aforementioned services shall be entitled for promotion notwithstanding the aforesaid educational qualifications as a measure personal to them.”

8. The petitioner is mainly aggrieved against his non-consideration for promotion to the post of Trust Engineer (Horticulture). It is trite law that the State cannot take undue advantage of its own inaction and promotion is legitimate expectation of an employee in service career. Further, the petitioner had retired without getting regular tag of formal promotion.

9. The case of the petitioner is squarely by the judgment passed by the Division Bench of this Court in ***Prem Kumar Aggarwal Vs. State of Punjab and others, 2024 NCPHHC 12874***, speaking through Justice Aman Chaudhary, wherein following has been observed: -

*“7. 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) of the Constitution of India, as held by Hon'ble the Supreme Court **Ajit Singh vs. State of Punjab, (1999) 7 SCC 209** and reiterated in **Ajay Kumar Shukla and Ors. vs. Arvind Rai and Ors, 2021 SCC OnLine SC 1195**.*

*8. A profitable reference can be made to a judgement of the Division Bench of this Court in **Chaman Lal Lakhanpal vs. UPSC, 1999(1) SCT 175**, a case wherein the petitioner aggrieved against his non-consideration for promotion had been unsuccessful before the Central Administrative Tribunal, claimed that he though had become eligible to be considered for*



promotion to the Indian Administrative Service in the year 1987 and in the year 1992, meeting of DPC was not held, though prior to it was wherein the persons senior to him were considered. Thereafter, even from year 1994-95 onwards the meeting was not held, consequently, his consideration did not take place and petitioner, who was to retire on 30.09.1998 from service, the Tribunal on that basis denied to give direction that by the time would be held he would stand retired. It was observed that, "The right to equality of opportunity in matters of promotion is guaranteed under Article 16 of the Constitution. The right cannot be stifled by an arbitrary failure to perform the duty imposed by statutory regulations. By merely choosing to avoid the meeting, a citizen cannot be denied the right to be considered.". Further, held that, "It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules."

9. In *State of Punjab vs. Jagjeet Singh and another*, 2018(4) SCT 549, the Division Bench of this Court had observed that the State cannot take undue advantage of their own inaction and



wrongs in granting regular promotions, which was a legitimate expectations in service career and in the meantime, the employees had unfortunately retired without getting formal tag of a regular promotion, directed promotion be granted retrospectively but on notional basis only and they be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. Interest of 7% per annum was also to be granted on arrears of pension and other retiral benefits.

*10. Hon'ble the Supreme Court in **MP Singh Bargoti vs. State of Madhya Pradesh**, 2015 AIR SC 556, observing that the appellant therein was never considered by the DPC till he was in service or even thereafter when person junior to him in the combined gradation list was considered on basis of another subsequent gradation list and promoted, it was held that he suffered only on account of passage of time or innocuous delay and was held entitled to notional promotion and post retiral benefits by recalculating the same.”*

10. In view of the aforesaid judgment rendered by the Division Bench of this Court, wherein it has been held that even after retirement, an employee is entitled to be considered for notional promotion, present petition is allowed and the impugned order (Annexure P-5), rejecting the claim of the petitioner, is hereby set aside. Accordingly, respondent No.3 is directed to consider case of the petitioner for notional promotion to the post of Trust Engineer (Horticulture), in accordance with law.

11. It is made clear that if the petitioner is found suitable to be



promoted to the post of Trust Engineer (Horticulture), he be promoted to the said post notionally and other benefits accruing therefrom be granted to him, within a period of two months from the date of receipt of certified copy of this order.

12. With the aforesaid observations made and directions issued, the present writ petition stands disposed of.

13. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

07.08.2025
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No