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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CWP-3155-2024 (O&M)
Date of Decision:08.04.2026

Rajinder Kaur

.....Petitioner

Versus

The Municipal Corporation, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sehaj Bir Singh, Advocate and
Ms. Muskan Gill, Advocate for the petitioner.

Ms. Armaan Saggar, Advocate for the respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226 and 227 of the Constitution of India, seeking the issuance of a writ in the nature of *certiorari* to quash the order dated 24.01.2024 (Annexure P-20), by which the petitioner's claim for promotion to the post of Superintendent Grade-II was rejected. The petitioner also seeks a direction to promote her from the post of Senior Assistant to Superintendent Grade-II in accordance with the recommendations dated 01.10.2021 of the Departmental Promotion Committee and to grant all notional benefits with effect from 01.10.2021.
2. Learned counsel appearing on behalf of the petitioner while

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giving brief facts of the present petition submitted that the petitioner was appointed as a Clerk on 15.12.1988 in the office of Public Health Circle of UT Chandigarh vide Annexure P-1. Thereafter some of the employees including the present petitioner were transferred to the Municipal Corporation, Chandigarh in 1996 vide Annexure P-2. Thereafter, vide Annexure P-4, the petitioner was promoted as Senior Assistant and vide Annexure P-7, the seniority list was circulated with regard to the clerical staff in which the petitioner was at seniority No.3. Two of the petitioner's seniors, namely Nirmal Devi and Kawal Jeet, were promoted to the post of Superintendent Grade-II (Rent Wing) vide Annexures P-8 and P-9 dated 11.10.2018 and 21.10.2020 respectively. The petitioner was the senior-most to be promoted to the post of Superintendent Grade-II (Rent Wing). Thereafter, vide Annexure P-10 on 01.10.2021, a meeting of the departmental promotion committee was held in which it was recorded that as per the seniority list, the petitioner was senior-most and there was nothing adverse against her. In this way, the petitioner was found fit for promotion to the post of Superintendent Grade-II in the Rent Wing of Public Health Circle, M.C. Chandigarh. This departmental promotion committee was held on 01.10.2021 vide Annexure P-10, but the petitioner did not receive any promotion order, and on 31.10.2021 i.e. after 30 days, she retired on attaining the age of superannuation. In this way, prejudice was caused to the petitioner as the respondent-Municipal Corporation ought to have promoted her after the departmental promotion committee



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recommended her and found her fit, but they waited for 30 days and after her superannuation, no promotion was effected. He submitted that there was no dispute regarding the petitioner's eligibility, but because of the 30-day delay on the part of respondent-MC, she was not promoted, therefore, the petitioner is entitled to the grant of notional promotion either from the date of conducting of the departmental promotion committee meeting or from her date of retirement and after granting notional promotion, all financial benefits, including retiral benefits, may also be granted.

3. Learned counsel for the petitioner has referred to a judgment of Hon'ble Supreme Court in ***Ajit Singh and others (II) vs. State of Punjab and others (1999) 7 SCC 209*** to contend that the right to be considered for promotion is not only a statutory right but also a fundamental right. He submitted that due to the delay on the part of the respondent-Municipal Corporation, the petitioner was not promoted, and therefore she is entitled to notional promotion from the aforesaid dates along with all other financial benefits. He further referred to a judgment of this Court in ***Prem Kumar Aggarwal vs. State of Punjab & Ors., LPA No. 1703-2023, decided on 30.01.2024*** in this regard.

4. On the other hand, learned counsel appearing on behalf of the respondents, while referring to the reply filed by the respondent-Municipal Corporation, submitted that there is no dispute regarding the fact that on 01.10.2021 a meeting of the departmental promotion committee was held in which the petitioner was found suitable. Thereafter, on 08.10.2021, the

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tentative seniority list was submitted to the Chief Engineer. On 21.10.2021, the file was placed before the Commissioner, Municipal Corporation, for consideration. The Commissioner raised certain queries regarding the report and sent the file to seek requisite replies on 22.10.2021. Thereafter on 23.10.2021 and 24.10.2021 were Saturday and Sunday and the comments regarding the queries were prepared and sent on 25.10.2021. Further clarification was required regarding the same, which was conveyed on 27.10.2021, and in reference to the clarification sought on 27.10.2021, the reply was prepared on 29.10.2021. However, on 31.10.2021, the petitioner retired on attaining the age of superannuation. He submitted that there was no delay on the part of the respondent-Municipal Corporation, as some time was required for administrative purposes to pass an order, during which various queries were raised by the Commissioner. He further submitted that after the retirement of the petitioner on 31.10.2021, the petitioner was not entitled to promotion even by way of notional promotion.

5. Learned counsel for the respondents, while substantiating her arguments, referred to a latest judgment of the Hon'ble Supreme Court in ***Government of West Bengal & ors. Vs. Dr. Amal Satpathi & Ors., 2024 SCC OnLine SC 3512*** and submitted that in view of the ratio of the aforesaid judgment, the petitioner was not entitled to grant of any notional promotion after her retirement. She submitted that as per the aforesaid judgment, even though the petitioner's case was recommended for promotion before her retirement, she was not appointed to the post by the



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competent authority, which does not confer any right to seek promotion. The right available to the petitioner is only the right to be considered for promotion, which is a fundamental right, whereas the right to promotion itself is not a fundamental right. She also referred to another judgment passed by a Coordinate Bench of this Court in ***Krishan Kumar Chopra Vs. State of Punjab and others, CWP-9003-2018, decided on 19.12.2024***, to contend that once an employee has retired without being promoted, the employee cannot seek retrospective promotion, nor can any financial benefits be granted. She further submitted that an employee does not have an absolute right to promotion, and the only right available is to be considered for promotion, while promotion becomes effective only on assuming the duties of the promotional post, and not upon the occurrence of a vacancy or recommendation.

6. I have heard the learned counsels for the parties.

7. The issue involved in the present case is whether the petitioner has any right to be promoted to the post of *Superintendent Grade-II* in view of the fact that the departmental promotion committee recommended her name and found her suitable in its meeting dated 01.10.2021, but no promotion order was passed before the petitioner attained the age of superannuation on 31.10.2021.

8. Another issue involved in the present case is whether the petitioner, who had not worked on the post of Superintendent Grade-II, was entitled to any notional promotion or financial benefits or not.



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9. Some of the dates and facts of the present case are not in dispute. Admittedly, the petitioner was considered for promotion by the DPC vide Annexure P-10 dated 01.10.2021 and was found fit for promotion. However, after a period of 30 days, she attained the age of superannuation on 31.10.2021 and retired. No promotion order was passed regarding the petitioner. As per the reply filed by the respondents, the matter was dealt with by the competent authority, but no promotion order was issued, and in the meantime, she retired on 31.10.2021. The law with regard to the aforesaid proposition can be seen from the latest judgement of Supreme Court in ***Government of West Bengal's case (Supra)***. The relevant paragraphs of the aforesaid judgment are reproduced 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 v. Dharamdeo Das, 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



where, citing earlier precedents in **Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty and Ajit Singh v. State of Punjab** 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 v. State of U.P. and followed in Jagdish Lal v. State of



Haryana 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, right from 1950.’

“20. In State of Bihar v. Akhoury Sachindra Nath, 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 I 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’ Association (Direct Recruit) v. State of U.P. 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).”

10. During the course of arguments, learned counsel for the petitioner tried to distinguish the aforesaid judgment by submitting that in that case there was another Rule governing the service conditions of employees, which provided that when an employee is appointed to officiate in a post higher than his substantive pay, he is not entitled to the benefits in this regard. However, the principle of law laid down in the judgment shows that promotion becomes effective only from the date it is granted and not from the date any vacancy arises or post is vacated. There is recognition of right of being considered for promotion which is not only statutory right but also a fundamental right. However, at the same time, there is no fundamental right for promotion itself. A Coordinate Bench of this Court in ***Krishan Kumar Chopra’s case (supra)*** also dealt with the aforesaid



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issue. The relevant portion of the aforesaid judgment is also reproduced as under:-

“11.As per the settled principle of law, promotion cannot be claimed as a matter of right and only consideration for the same can be claimed. In the present case, no consideration took place for promotion during the service career of the petitioner so as to deny the claim of promotion to the petitioner. Once, the respondents in their wisdom, decided not to make any promotion, no direction could have been given to the respondents to initiate the process of promotion so as to promote the employees concerned. Giving direction for promotion by holding DPC is within the domain of the respondent-State only and they have to exercise the said discretion keeping in view the necessity of the personnel to perform the duties of the promotional post.”

11. So far as the judgment relied upon by learned counsel for the petitioner in **Ajit Singh’s case (Supra)** is concerned, there is no dispute regarding the proposition that the right to be considered for promotion is a fundamental right. However, in the present case, the petitioner was duly considered for promotion by the Departmental Promotion Committee on 01.10.2021 but was not actually promoted, and after 30 days she attained the age of superannuation and retired on 31.10.2021. So far as the judgment relied upon by learned counsel for the petitioner in **Prem Kumar Aggarwal**



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vs. State of Punjab & Ors., LPA No. 1703-2023, decided on 30.01.2024, is concerned, the facts of that case are distinguishable, as the appellant of that case was not considered before his superannuation and then he was on extension when DPC was conducted. The aforesaid judgment is distinguishable on facts.

12. The ratio extracted from *Government of West Bengal & Ors. vs. Dr. Amal Satpathi & Ors. (supra)* and *Krishan Kumar Chopra vs. State of Punjab and others (supra)* shows that no benefit of promotion can be granted because the right to promotion itself is not vested in the employee, and therefore, she cannot claim any notional promotion retrospectively along with financial benefits.

13. The other argument raised by learned counsel for the petitioner that judgment in *Government of West Bengal & Ors. vs. Dr. Amal Satpathi & Ors. (supra)* would not be applicable on the facts and circumstances of the present case and is distinguishable, is not sustainable in view of the fact that principle of law has been laid in the aforesaid judgment and the mere fact that a specific rule in that case, is not present in this case, would not make any difference.

14. Otherwise, it is not a case that a long period was consumed after the recommendation made by the Departmental Promotion Committee. Only 30 days elapsed from the date of the committee meeting to the date of her retirement. This period has been explained in the reply filed by the respondent-Municipal Corporation.

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15. In view of the above, the present petition is devoid of any merit and consequently, the same is hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

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