



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-10207-2026
Date of Decision : 06.04.2026

Surinder Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

CORAM: HON’BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. K.K. Thakur, Advocate for the petitioners.

NAMIT KUMAR, J. (ORAL)

1. The petitioners have filed the instant petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ of mandamus directing the respondents to grant the benefit of notional promotion to the post of Senior Assistant to the petitioners w.e.f. the date the vacancy in the cadre of Senior Assistant was available.
2. Learned counsel for the petitioners submits that the petitioners were appointed in the respondent-department as Peons on different dates. During their service tenure, they were promoted to the post of Clerk and thereafter, to the post of Junior Assistant from time to time as per their eligibility. The service particulars of the petitioners are as under :-

Sr. No.	Seniority No.	Name	Date of Appointment as Peon	Date of promotion as Clerk	Date of retirement and Post
1.	480	Surinder Kumar	19.05.1995	28.01.2009	31.01.2025 Junior Assistant
2.	459	Kashmir Singh	13.08.1986	07.01.2009	31.01.2023 Junior Assistant
3.	485	Ravinder Kumar	19.10.1991	05.02.2009	31.01.2023 Junior Assistant



4.	489	Naranjan Singh	29.05.1997	07.01.2009	31.01.2023 Junior Assistant
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He further submits that in the year 2021, 77 posts of Senior Assistant were sanctioned in the Regional Office, out of which 36 posts were filled and 41 posts were lying vacant and these posts were to be filled amongst the Clerks and Junior Assistants. He further submits that total 37 Junior Assistants including the petitioners, from the regional office, gave their consent for further promotion to the post of Senior Assistant, however, the respondent-department, vide office order dated 13.12.2021 (Annexure P-5), promoted 19 employees to the post of Senior Assistant by using the method of pick and choose policy and the names of the petitioners were not considered for promotion. He further submits that the cases of the petitioners for promotion to the post of Senior Assistant were under consideration, however, in the meantime the petitioners reached at the age of superannuation and retired from service on 31.01.2023 & 31.01.2025. The petitioners have submitted various representations as well as legal notices to the respondents seeking notional promotion to the post of Senior Assistant but no action has been taken on the same. He further submits that as the posts of Senior Assistant were vacant, while the petitioners were in service, the action of the respondents in not promoting them to the said post is patently illegal and arbitrary and the petitioners are entitled for promotion with all consequential benefits. In support of his contention, he has placed reliance upon the judgment passed by a Division Bench of this Court in ***LPA No.1584 of 2025 titled as ‘Bharat Bhushan Vs. State of Punjab and others’ decided on 07.03.2026.***



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3. I have heard learned counsel for the petitioners and perused the relevant documents.

4. Admittedly, the petitioners were appointed in the respondent-department as Peons on different dates. During their service tenure, they were promoted to the post of Clerk and thereafter, to the post of Junior Assistant from time to time and retired as such, on attaining the age of superannuation, on 31.01.2023 & 31.01.2025. The case of the petitioners is that while they were in service, 41 posts of Senior Assistant were lying vacant in the respondent-department and being fully eligible, the petitioners along with the other Junior Assistants gave their consent for promotion to the post of Senior Assistant and the respondent-department, vide office order dated 13.12.2021 (Annexure P-5), promoted 19 employees to the post of Senior Assistant and did not consider the petitioners for the said promotion. However, perusal of order dated 13.12.2021 (Annexure P-5) shows that no person junior to the petitioners was promoted to the post of Senior Assistant.

5. The petitioners are claiming notional promotion solely on the ground that the posts of Senior Assistant were lying vacant while they were in service. 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.



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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."*

6. Now, coming back to the facts of the present case, the petitioners had already retired from service, on attaining the age of superannuation, on 31.01.2023 and 31.01.2025. The claim of the petitioners that they are entitled for notional promotion as the posts of Senior Assistant were lying vacant while they were in service is not sustainable in the eyes of law. As per settled law, promotion is neither a



vested nor a fundamental right. Only consideration for promotion is a fundamental right.

7. The judgment relied upon by learned counsel for the petitioner in ***Bharant Bhushan's case (supra)*** is not applicable and clearly distinguishable to the facts of the present case. In ***Bharant Bhushan's case (supra)***, the name of the petitioner was recommended by the D.P.C. at Sr. No.1 for promotion to the post of Chief Engineer, but the said recommendations were not given effect ostensibly on the ground that restructuring of the department was to be done, the total posts stood reduced to 10 and as 12 posts already stood filled, no further promotion could be accorded. However, subsequently, after superannuation of the petitioner on 31.03.2021, two persons, namely Gurinder Singh and Kamal Kant, whose names were reflected in the D.P.C. recommendation list, were promoted to the post of Chief Engineer. Therefore, it has been held that the action of the respondents not to promote the petitioner before his superannuation was not bona fide and the recommendations of the D.P.C. had been cancelled only to defeat the legitimate right of the petitioner to promotion in terms of the recommendations of the D.P.C. So far as the present case is concerned, there are no recommendations of the D.P.C. for promotion of the petitioners, and they are claiming notional promotion solely on the ground that the posts of Senior Assistant were lying vacant while they were in service.

8. A Division Bench of this Court in ***Union Territory, Chandigarh Administration and others Vs. Tarlochan Singh and others : 2014(3) SCT 330*** after considering the judgment of Hon'ble



Supreme Court in ***Union of India and others Vs. K.K. Vadera and others : AIR 1990 Supreme Court 442; T.N. Administrative Service Officers Assn. Vs. Union of India : 2000(3) S.C.T. 424*** and ***Nirmal Chandra Sinha Vs. Union of India : 2008(2) S.C.T. 675***, has held that an employee is not entitled to seek promotion from the date of occurrence of vacancy. In the said judgment, it has been held as under :-

*“19. In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer is to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises. However, in case, an Officer is given Current Duty Charge or promoted on adhoc basis, he shall be entitled to the pay of the promoted post as has been held in **Arindam Chattopadhyay’s case (supra) and State of Haryana Vs. P.K. Grover (1983) 4 SCC 291.***

20. In view of the consistent well established principles of law as enunciated in the above mentioned judgments, we find that the direction of the Tribunal holding that the applicants are entitled to be promoted from the day the vacancy arose is clearly not sustainable in law. Consequently the present writ petition is allowed and the impugned order dated 15.3.2012 passed by the Tribunal is set aside.”



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9. Further, petitioner No.2-Kashmir Singh had earlier approached this Court claiming the same relief by filing CWP No.26838 of 2023 (Kashmir Singh Vs. State of Punjab and others) which was dismissed as withdrawn, vide order dated 30.11.2023, passed by this Court. Although, the said fact has been mentioned in para 20 of the instant petition, however, it has not been mentioned that while withdrawing the earlier petition, no liberty was granted to the petitioner for filing fresh petition and to conceal this material fact, it appears that the petitioner intentionally not attached the copy of the order dated 30.11.2023 passed in the earlier petition bearing No.CWP-26838-2023 with the instant petition. Moreover, once the earlier petition filed by petitioner No.2 claiming the same relief had been withdrawn by him without seeking liberty for filing fresh petition, the instant petition is not maintainable qua him.

10. In view of the above discussion and settled principles of law, the instant petition is hereby dismissed with costs of Rs.25,000/- to be deposited with High Court Lawyers Welfare Fund within a period of four weeks from today, failing which the same shall be recovered as arrears of land revenue.

06.04.2026
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No