



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

214

CWP-16926-2017

Date of decision: 01.04.2026

Inder Raj Bhatia

.....Petitioner

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. S.K. Rattan, Advocate for the petitioner.

Mr. Satnampreet Singh Chauhan, DAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, for claiming the following reliefs :-

“xxx xxx xxx xxx xxx

b. issue an appropriate writ, order or direction especially in the nature of certiorari quashing the impugned order dated 21.03.2017 issued vide endorsement dated 21.06.2017 (P-16) being a non speaking order by which appeal filed by the petitioner to promote him notionally as Panchayat Officer has been rejected/consigned to file without giving any reason and without considering the facts, which is arbitrary, illegal and not sustainable in the eyes of law as proceedings for promotion as Panchayat officers by departmental promotion committee/ Respondent No.2 were started doing his service and before his retirement i.e. 30.04.2006 (P-2 & P-3) and his juniors were promoted vide order dated 11.10.2006 (P-4) but petitioner was not considered as his case for promotion was not forwarded by Respondent No.3 to Respondent No.2 on the ground of false F.I.R registered against the petitioner, in which petitioner has been acquitted vide order dated 23.05.2014 (P-1) and also keeping in view the settled law that even if any charge sheet/ inquiry/court case is pending against the employee, DPC must consider his case for promotion and result can be kept in the seal cover, and the employee can be promoted even after retirement, with all consequential benefits, in the interest

justice.

c. Further issuance of a writ, order or directions in the nature of Mandamus directing the respondents to promote the petitioner notionally as Panchayat Officer as his juniors were considered & promoted vide order dated 11.10.2006, (P-4) as proceedings of Departmental Promotion Committee (DPC) were started during his service and before his retirement i.e. 30.04.2006 (P-2 & P-3) keeping in view the settled law that even if any charge sheet/inquiry/ court case is pending against the employee, DPC must consider his case for promotion and result can be kept in the seal cover and if found fit, would be entitled to be promoted with all consequential benefits from the date he was entitled to be considered and promoted and to grant revised pension and other pensionary benefits accordingly, along with the interest @12 % P.A, in the interest of justice.

xxx xxx xxx xxx xxx”

2. Learned counsel for the petitioner submits that the petitioner was appointed as Panchayat Secretary and joined as such on 23.08.1974 at Panchayat Samiti, Phillaur, District Jalandhar. While he was in service, an FIR No.22 dated 07.06.2004 was registered against the petitioner, under Section 409 of IPC and Section 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, at Police Station Vigilance Bureau, Ludhiana, wherein the petitioner has been acquitted by the learned Special Court, Ludhiana, vide order dated 23.05.2014 (Annexure P-1). He further submits that the petitioner was eligible for further promotion to the post of Panchayat Officer and the department, vide its letter dated 11.01.2006 (Annexure P-2), directed all the Executive Officers/Zila Parishads to send the service record of the Panchayat Secretaries from seniority No.541 to 620 for promotion against 22 vacant posts of Panchayat Officers. Since the department received record of only few Panchayat Secretaries, the department issued a warning letter dated 01.03.2006 and sent another letter dated 11.05.2006 to the Executive Officers/Zila Parishads to send the record

of Panchayat Secretaries from seniority No.541 to 620 for promotion against 22 vacant posts of Panchayat Officer. After receiving the record of all the Panchayat Secretaries from the Executive Officers/Zila Parishads, the department considered the case for promotion of Panchayat Secretaries to the post of Panchayat Officers on 21.08.2006 (Annexure P-3), and since during this period the petitioner retired from service on attaining the age of superannuation on 30.04.2006, he was not promoted and persons junior to him were promoted, vide orders dated 02.10.2006 (Annexure P-4). He submits that since the petitioner was fully eligible and his record was also sought for considering his case for further promotion to the post of Panchayat Officer, however, due to inaction on the part of the respondents, the name of the petitioner was not forwarded to the Departmental Promotion Committee and for the said reason, the petitioner was denied his promotion. In support of his contention, he has placed reliance upon a judgment of a Division Bench of this Court in ***Chaman Lal Lakhanpal v. Union Public Service Commission : 1999(1) S.C.T. 175.***

3. Learned State counsel, while referring to the averments made in the written statement, submits that since the record from all the Panchayat Samities/Zila Parishads was not received, therefore, they were issued warning letter dated 01.03.2006 and sent another letter dated 11.05.2006, for sending the record of the Panchayat Secretaries for considering their claim for promotion. However, in the interregnum, the petitioner stood retired on 30.04.2006 and, therefore, could not be promoted.

4. I have heard learned counsel for the parties and perused the

record.

5. 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."

6. Now, coming back to the facts of the present case, it is evident that the requisite record of the Panchayat Secretaries, including that of the petitioner, was sought from the Executive Officers/Zila Parishads for consideration of their claim against 22 vacant posts of Panchayat Officers, vide letter dated 11.01.2006. However, since the department received the record of only few Panchayat Secretaries, therefore, a warning letter dated 01.03.2006 followed by another letter dated 11.05.2006 was issued to the Executive Officers/Zila Parishads to forward the complete record of Panchayat Secretaries from seniority No.541 to 620. However, in the interregnum, the petitioner retired from service upon attaining the age of superannuation on 30.04.2006. The

department thereafter considered the cases for promotion of Panchayat Secretaries on 21.08.2006 i.e., much after the retirement of the petitioner. Furthermore, it is not the case of the petitioner that any person junior to him was promoted during his service tenure. As per the settled law, promotion is neither a vested nor fundamental right.

7. In view of the above-said discussions and settled principles of law, the instant petition is hereby dismissed.

01.04.2026

Vinay

(NAMIT KUMAR)
JUDGE

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