



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

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CWP-13541-2021

Date of Decision : 30.03.2026

Usha Rani

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Vikas Singh, Senior Advocate assisted by
Ms. Anamika Sheoran, Advocate for the petitioner.

Mr. Amanpreet Singh Bains, A.A.G., Punjab.

NAMIT KUMAR, J. (ORAL)

1. On the last date of hearing i.e. 18.03.2026, the following order was passed :-

“The instant petition has been filed by the petitioner seeking a writ of mandamus for directing the respondents to consider and promote the petitioner to the post of Superintendent Grade-I with effect from 01.11.2019, the date from which the said post became vacant, with all consequential benefits.

In the written statement filed on behalf of the respondents, it has been stated that the meeting of the Departmental Promotion Committee (DPC) was held on 12.03.2020 and 30.03.2020 for promotion of other vacancies/posts in the department. It has further been stated that two posts of Superintendent Grade-I (one in General Category and one in SC Category) in the Head Office had fallen vacant and for this purpose, the name of the petitioner as well as five other eligible employees was forwarded to the Director of Food Civil Supplies and Consumer Affairs, vide letter dated 24.04.2020 (Annexure P-3) and in pursuance to the above-said letter, the DPC was to be held on 29.05.2020, whereby the name of the petitioner along with other five employees was to be considered. However, the said meeting was cancelled and thereafter, the petitioner retired from service on attaining



the age of superannuation on 31.05.2020 and much after her retirement, the promotions were made to the said posts on 31.03.2021.

*Learned State counsel submits that no person junior to the petitioner has ever been promoted to the post of Superintendent Grade-I, while the petitioner was in service. He has placed reliance upon the judgment of the Hon'ble Supreme Court in **I. Chuba Jamir and others v. The State of Nagaland and others : 2010(1) SCT 183** and judgment of a Division Bench of this Court in **Union Territory, Chandigarh Administration and others v. Tarlochan Singh and others : 2014(3) SCT 330**, wherein it has been held that mere existence of vacancy does not confer any right of promotion to the employee.*

Counsel for the petitioner is not present.

In the interest of justice, adjourned to 30.03.2026.

To be taken up immediately after urgent cases.”

2. Learned counsel for the petitioner submits that the petitioner was due for retirement on 31.05.2020 and the D.P.C. was to be held on 29.05.2020, however, the same was intentionally cancelled by the respondents and the petitioner retired from service, on attaining the age of superannuation, on 31.05.2020 and her right for promotion to the post of Superintendent Grade-I has been frustrated only due to their inaction in not holding the said D.P.C. on 29.05.2020.

3. Per contra, learned State counsel, while referring to the averments given in the short reply dated 29.10.2021 filed by the State and reiterating his contentions recorded, vide order dated 18.03.2026, submits that in the absence of any statutory mandate for filling up the vacancies, the employer is well within its right to decide about the time, it would chose to fill up the vacancies.

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



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5. There is no doubt that the petitioner was due for retirement on 31.05.2020 and as per the stand taken by the respondents in their written statement, meeting of D.P.C. was held on 12.03.2020 & 30.03.2020 for promotion of other vacancies/posts in the department and the case of the petitioner was also under consideration for promotion to the post of Superintendent Grade-I in the meeting of the D.P.C. to be held on 29.05.2020, however, the same was cancelled and the petitioner retired from service two days thereafter and further, promotions to the post of Superintendent Grade-I were made on 31.03.2021 i.e. after a period of about 10 months from the date of retirement of the petitioner.

6. 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.”

7. Now, coming back to the facts of the present case, there is nothing on record to show that the cancellation of the D.P.C. meeting scheduled for 29.05.2020 was done with any mala fide intention, rather it appears to have been a bona fide exercise of the Administration. Further, no person junior to the petitioner was promoted to the post of Superintendent Grade-I while she was in service and even the promotions to the said posts were made on 31.03.2021 i.e. after a period of about 10 months from the date of her superannuation. As per settled law, promotion is neither a vested nor fundamental right. Only consideration for promotion is a fundamental right.

8. In view of the above discussion and settled principles of law, the instant petition is hereby dismissed.

30.03.2026	(NAMIT KUMAR)
Kothiyal	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No