

Present: Vs. the Financial Commissioner and Another

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Court : Punjab and Haryana

Decided On : Sep-13-2013

Appellant : Present:

Respondent : The Financial Commissioner and Another

Judgement :

CIVIL WRIT PETITION No.11737 of 2012 /1/ IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CIVIL WRIT PETITION No.11737 of 2012

JUDGMENT

RESERVED ON: SEPTEMBER 06 2013 DATE OF DECISION: SEPTEMBER 13 h , 2013 Jasmer KaurPetitioner Versus The Financial Commissioner and anotherRespondents CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA Present: Present Ms.Sonia G.Singh, Advocate for the petitioner. Ms.Sudeepti Sharma, Deputy Advocate General,Punjab. <><><> TEJINDER SINGH DHINDSA, J.The petitioner who retired on 31.8.2010 while serving as Senior Assistant under the Department of Co-operation, State of Punjab, has filed the instant writ petition impugning the order dated 14.5.2012, Annexure P7, whereby her claim seeking notional promotion to the post of Superintendent, Grade-II with effect from the date she became eligible for such post has been rejected.

2. Shorn of all unnecessary details, brief facts are that the petitioner joined the respondent-Department on 28.9.1977 as Clerk. She thereafter earned promotions

as Senior Clerk, Junior Assistant and finally to the post of Senior Assistant on 15.3.2005.

3. Under the Punjab Co-operative Audit (Group 'B') Malik Sushama Rani 2013.09.16 16:47 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.11737 of 2012 /2/ Service Rules, 2007, the post of Superintendent, Grade-II is to be filled up by way of promotion from amongst Senior Assistants and Senior Scale Stenographers who are members of the Punjab Co-operative Audit Department (Ministerial) Class-III Service and have an experience of working on any of these posts for a minimum period of three years. The petitioner possessed the requisite experience on the post of Senior Assistant in the year 2008 itself. A number of posts of Superintendent, Grade-II were available in the year 2008 and a meeting of the Departmental Promotion Committee to consider the cases of all eligible officials for promotion to the post of Superintendent, Grade-II was fixed for 20.1.2009. The proceedings of the Departmental Promotion Committee were thereafter postponed on a number of occasions. Apparently, instructions were issued by the Department of Personnel, Government of Punjab on 10.12.2009 stating that there was no requirement for convening the Departmental Promotion Committee for promotion to the post of Superintendent, Grade-II.

4. The entire case set up by the learned counsel for the petitioner is that inspite of the petitioner having acquired eligibility for promotion to the post of Superintendent, Grade-II on 15.3.2008, and the posts having been available, there could be no justification for the respondent-authorities to have denied to the petitioner her right for promotion to the higher post. Learned counsel has argued that it is only on account of the in-action on the part of the respondent-authorities and for no fault of the petitioner herself that she had been deprived of her right to Malik Sushama Rani 2013.09.16 16:47 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.11737 of 2012 /3/ promotion as Superintendent, Grade-II. Learned counsel contends that since the claim of the petitioner was under active consideration and the Departmental Promotion Committee meetings having already been convened, denial of promotion to the petitioner prior to her superannuation would be arbitrary and violative of Articles 14

and 16 of the Constitution of India.

5. During the course of hearing on 22.7.2013, this Court directed the Chief Auditor of Co-operative Societies, Punjab to file an additional affidavit bringing forth the administrative exigency which justified the postponement of the Departmental Promotion Committee meetings on 20.1.2009, 16.12.2009 and 23.12.2009. Further directions were issued for justification as to why the Department did not take action at the level of the concerned Administrative Secretary for effecting promotions in the light of the instructions dated 10.12.2009 having been issued, under which there was no requirement for holding a Departmental Promotion Committee for effecting promotion to the post of Superintendent, Grade-II.

6. In deference to the order dated 22.7.2013 passed by this Court, an additional affidavit dated 30.8.2013 of the Chief Auditor, Co-operative Societies, Punjab has been placed on record. In this affidavit, it has been explained that the Departmental Promotion Committee meeting for considering the claim of all the incumbents including the petitioner for promotion to the post of Superintendent Grade-II was held on 20.1.2009, but the names could not be cleared on account of non-finalization of seniority list of Senior Assistants Accordingly, agenda of Malik Sushama Rani 2013.09.16 16:47 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.11737 of 2012 /4/ promotion to the post of Superintendent Grade-II was again sent to the Government on 3.8.2009 in which the name of the petitioner was included and meeting of the Departmental Promotion Committee was fixed for 16.12.2009. However, such meeting of Departmental Promotion Committee was postponed to 23.12.2009. However, in the proceedings of the Departmental Promotion Committee held on 23.12.2009, the agenda for promotion to the post of Superintendent Grade-II was not taken up in the light of instructions dated 10.12.2009 issued by Government of Punjab, Department of Personnel in terms of which it had been clarified that promotion to a post below the rank of Superintendent Grade-I be considered at the level of concerned Administrative Secretary without holding Departmental Promotion Committee. The proposal for promotion to the post of Superintendent Grade-II was thereafter considered by the Government and advice of the Personnel Department on the issue of reservation was sought on 2.3.2010. Such advice was received on

9.4.2010 and the matter was then referred to the Social Welfare Department, Punjab on 14.6.2010. The advice of the Welfare Department was received vide letter dated 13.7.2010. It has further been deposed that there was a dispute inter se seniority between one Janak Singh and Partap Singh, Senior Assistants which was finalized by the Government, vide order dated 30.4.2010. However, Partap Singh, Senior Assistant filed Civil Writ Petition No.12864 of 2010 in this Court whereby certain interim directions were issued on 23.7.2010. At this stage, the Government sought a fresh proposal for promotion to the post of Malik Sushama Rani 2013.09.16 16:47 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.11737 of 2012 /5/ Superintendent Grade-II, vide letter dated 28.8.2010 and the same was sent by the Chief Auditor, Co-operative Societies, Punjab on 3.9.2010. The same was considered by the Government and the matter was finalized on account of passing of order dated 22.11.2010. The petitioner, however, retired on 31.8.2010 in the meantime.

7. There would be no dispute as regards the proposition that the petitioner was vested with a right to a fair consideration for promotion to the higher post of superintendent Grade-II. As per the sequence of facts and events delineated in the additional affidavit dated 30.8.2013 filed by the Chief Auditor Co-operative Societies Punjab, it can be concluded that the delay in finalizing the matter with regard to promotion to the posts of Superintendent Grade-II was not deliberate. Neither can it be held that such delay was actuated on account of any oblique motive to single out the petitioner and to deny to her the right for consideration for promotion to the higher post.

8. Having so concluded and coupled with the fact that no junior to the petitioner was promoted to the post of Superintendent Grade-II during the service tenure of the petitioner, I am of the considered view that no interference is warranted in the matter.

9. The writ petition is, accordingly, dismissed. (TEJINDER SINGH DHINDSA)
September 13th, 2013 JUDGE SRM Note: Whether to be referred to Reporter?.
(Yes/not Malik Sushama Rani 2013.09.16 16:47 I attest to the accuracy and integrity of this document

