



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.5746 of 2024  
Decided on: 12.08.2025

Nek Singh Dogra .....Petitioner  
Versus  
State of H.P. & Ors. ....Respondents

Coram

**Ms. Justice Jyotsna Rewal Dua**

<sup>1</sup> *Whether approved for reporting? Yes*

For the petitioner: Mr. Surender Sharma and  
Mr. Neeraj Sharma, Advocates.  
For the respondents: Ms. Menka Raj Chauhan, Deputy  
Advocate General.

**Jyotsna Rewal Dua, Judge**

Petitioner seeks promotion to the post of  
Superintendent Grade-I.

Petitioner was appointed as Clerk in the  
respondent-Education Department on 03.02.1989. He was  
promoted as Senior Assistant in the year 2003 and as  
Superintendent Grade-II on 19.07.2007. Further channel of  
promotion available from post of Superintendent Grade-II is

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

to the post of Superintendent Grade-I. Petitioner superannuated as Superintendent Grade-II on 30.06.2024.

**2. The case** of the petitioner is that: -

**2(i)** Respondent No.2-the Director, Higher Education, Himachal Pradesh, vide office communication dated 07.03.2024 (Annexure P-1), directed all the Deputy Directors of Higher Education in the State to supply within three days, particulars on prescribed proforma of eligible Superintendent Grade-II for making promotion to the post of Superintendent Grade-I.

**2(ii)** Petitioner was serving as Superintendent Grade-II in District Kangra. His particulars were accordingly forwarded by the Principal of the concerned school to respondent No.3-the Deputy Director Higher Education, District Kangra, on 01.03.2024 on the prescribed proforma. Respondent No.3 forwarded the particulars of Superintendent Grade-II in District Kangra, who were eligible for promotion to the post of Superintendent Grade-I, to respondent No.2 on 08.04.2024. Name of the petitioner figured at Sr. No.4 in the list sent by respondent No.3. Petitioner has placed on record Annexure P-4 stated to be a panel prepared by the

respondents for promotion of Superintendent Grade-II to the post Superintendent Grade-I in the year 2024, wherein his name figures at Serial No.24.

**2(iii)** Petitioner preferred a representation to respondent No.1 through proper channel on 11.06.2024 [Annexure P-5 (colly)], impressing upon the respondents to promptly convene the meeting of Departmental Promotion Committee (DPC) meeting for making promotion to the post of Superintendent Grade-I, as he was due for superannuation on 30.06.2024.

**2(iv)** Petitioner instituted this writ petition on 22.06.2024, seeking directions to the respondents to convene DPC meeting for promotion to the post of Superintendent Grade-I on the basis of panel already drawn by respondent No.2 and also to consider the case of the petitioner for promotion to the post of Superintendent Grade-I. Alternatively, it was prayed that in case the DPC meeting is not convened prior to petitioner's superannuation, respondents be directed to consider his case for promotion to the post of Superintendent Grade-I notionally with effect from the date the panel of Superintendent Grade-II for promotion

to the post of Superintendent Grade-I was drawn. Petitioner as, noticed above, superannuated on 30.06.2024.

**3. Heard** learned counsel for the parties and considered the case file.

Learned counsel for the petitioner placed reliance upon ***Union of India & Anr Vs. Hemraj Singh Chauhan & Ors***<sup>2</sup>, wherein it was held that right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from the guarantee of equality under Article 14 of the Constitution. In the facts of the case, it was held that the employer had not justified its action of not undertaking the exercise of cadre review within the statutory time-frame. There had been failure on part of the authorities in carrying out timely exercise of cadre review.

Learned Deputy Advocate General, on the strength of reply filed by the respondents, submitted that particulars of the candidates for promotion were received from the field offices by respondent No.2 during April to June 2024. These

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<sup>2</sup> (2010) 4 SCC 290

were scrutinized. Whereafter, panel for promotion was prepared by respondent No.2 and the same was forwarded to respondent No.1 on 12.07.2024. Defects were pointed out in this panel prepared on 12.07.2024 as details of immovable properties of the candidates were not provided as required under the instructions issued by the Vigilance Department on 08.04.2022, therefore, respondent No.2 was again directed to provide complete detail in that regard.

The requisite information was called from the concerned quarters. Whereafter, meeting of DPC for promotion to the post of Superintendent Grade-I was convened on 15.10.2024. Petitioner, in the meanwhile, had superannuated on 30.06.2024, accordingly, he was not promoted as Superintendent Grade-I.

#### **4. Consideration**

**4(i)** It will be appropriate to first refer to ***Government of West Bengal & Ors. vs. Dr. Amal Satpathi & Ors.***<sup>3</sup>, wherein it was held that employee whose promotion was not effectuated before his retirement would not be entitled to retrospective promotion and the notional benefits attached to

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<sup>3</sup>Civil Appeal No.13187 of 2024 decided on 27.11.2024.

the promotion.

In the aforesaid case, learned Tribunal had acknowledged that respondent No.1 (therein) had been duly recommended for promotion before his superannuation, which was delayed due to procedural obstructions beyond his control. Therefore, while actual promotion was not acceded to, the learned Tribunal directed that respondent No.1 should be granted notional financial benefits of promotional post to ensure pensionary benefits commensurate with the promotional post. The order passed by learned Tribunal was assailed by appellant before Hon'ble High Court. The Hon'ble High Court dismissed the writ petition, concurring with the learned Tribunal that retrospective promotion was impermissible but the notional financial benefits were justifiably given, since, no fault could be attributed to respondent No.1.

The State assailed the aforesaid decision before the Hon'ble Apex Court. Appellant-State relied upon several pronouncements, including ***Union of India vs. N.C. Murali***<sup>4</sup>, to contend that without a specific rule entitling employees to

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<sup>4</sup>(2017) 13 SCC 575

promotion from the date of vacancy, right to promotion arises only when it is actually effected. Whereas, submission on behalf of respondent No.1 was that he could have been promoted to post of Chief Scientific Officer years earlier; had the Department submitted a timely proposal to fill up the vacancy, had the Department officials acted with promptitude and diligence, respondent No.1 would have in all probability received the promotion long before his retirement.

Hon'ble Apex Court, *inter alia*, noticed Rule 54(1)(a) of the West Bengal Service Rules and reiterated 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. There is only right to be considered for promotion, there is no fundamental right to the promotion itself. 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. Relevant paras from the decision are 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**<sup>5</sup>, 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*<sup>6</sup> where, citing earlier precedents in *Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty*<sup>7</sup> and *Ajit Singh v. State of Punjab*<sup>8</sup>, 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*

<sup>5</sup>2024 SCC OnLine SC 1768

<sup>6</sup>(2022) 12 SCC 579

<sup>7</sup>(1991) 2 SCC 295

<sup>8</sup>(1999) 7 SCC 209



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:

'22. 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).

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27. In our opinion, the above view expressed in **Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.]**<sup>9</sup>, and followed in **Jagdish Lal [Jagdish Lal v. State of Haryana]**<sup>10</sup>, 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.’

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**“20. In State of Bihar v. Akhoury Sachindra Nath<sup>11</sup>, 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<sup>12</sup>, 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**

<sup>9</sup>(1997) 5 SCC 201

<sup>10</sup>(1997) 6 SCC 538

<sup>11</sup>1991 Supp (1) SCC 334

<sup>12</sup>1992 Supp (1) SCC 272

**Recruit) v. State of U.P<sup>13</sup>**, 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**

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<sup>13</sup>(2006) 10 SCC 346

*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."*

The ratio of the aforesaid decision applies to the facts of the instant case. Admittedly, there is no rule enabling promotion from the date of drawing the panel of promotion or from the date the vacancy occurred.

**4(ii)** ***Bihar State Electricity Board**<sup>5</sup> held that 'a clear distinction has been drawn between the stage of considering*

*an employee for being promoted to taking the next step of recognizing the said right as a vested right for promotion. That is where the line has to be drawn. Stated differently, a right to be considered for promotion being a facet of the right to equal opportunity in employment and appointment, would have to be treated as a fundamental right guaranteed under Articles 14 and 16(1) of the Constitution of India but such a right cannot translate into a vested right of the employee for being necessarily promoted to the promotional post, unless the rules expressly provide for such a situation*

*Promotion to a post..... should only be granted from the date of promotion and not from the date on which a vacancy may have arisen. In the given facts of that case, it was held that merely on completion of duration of the period required for promotion an employee would not automatically be entitled for promotion to the next higher post. No employee can lay a claim for being promoted to the next higher post merely on completing the minimum qualifying service. Such an interpretation would be fallacious and virtually result in nullifying the settled law of a right inhering in an employee for being considered for promotion being a fundamental right. By*

*no stretch of imagination can a right for being appointed to the promotional post be treated as a vested right’.*

**4(iii)** To the similar effect is **State of Himachal Pradesh and others Vs. Amar Dogra<sup>14</sup>**, wherein petitioner had claimed that the Department did not hold DPC in time despite the availability of eligible candidates including the petitioner and as such he was deprived of his right to be considered for promotion to the post in question. The issue before the Hon’ble Division Bench was whether merely on account of non-holding of DPC meeting within the time schedule would automatically give the petitioner a right to claim promotion with retrospective effect. After tracing several authoritative pronouncements in the timeline, it was held that petitioner had not attributed any malafide against the employer. In absence of malafide, no illegality can be said to be committed by the employer in convening the DPC meeting at a later stage.

Similar view was reiterated in **Bishambar Singh Vs. The Registrar, CSKHKV and another<sup>15</sup>** as under: -

“9. At the outset, it needs to be observed that demand for

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<sup>14</sup> LPA No.631 of 2011 decided on 05.06.2014

<sup>15</sup> CWPOA No. 6094 of 2020, decided on 14.03.2024

*appointment to higher post with retrospective effect can be deemed to be genuine only in case of arbitrary or mala fide postponement of DPC meeting, which is not the factual matrix obtaining in the instant case.*

10. *Equally settled is the proposition that the normal rule of law is that nobody can be promoted from a retrospective effect except when there exist facts, which necessitate so or there is a rule, which permits so.*

11 *In Union of India vs. K.K.Vadera & Ors. 1989 Supp (2) SCC 625, it was observed in para 5 as under:-*

*“5.....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion....”*

12. *Following the aforesaid judgment, the Hon'ble Supreme Court in Baij Nath Sharma vs. Rajasthan High Court at Jodhpur & Anr. 1998 (7) SCC 44, held that a member of the Rajasthan Judicial Service could not be promoted from the date when the vacancy accrued in the Rajasthan Higher Judicial Service against which vacancy he was ultimately promoted.*

13. *There is yet another principle that by now well settled and that is if due to administrative reasons, DPC cannot be held in a year, then the person cannot claim retrospective promotion in the absence of mala fides*



*since mala fides taints every act requiring a person wronged to be placed in the position but for the malafide or tainted exercise of power.*

14. *The mere existence of vacancy per se will not create right in favour of an employee for retrospective promotion when vacancies in promotional posts are specifically provided under rules, which also mandate clearance through selection process. 15 In taking this view, we are duly supported not only by the judgments in K.K. Vadera and Baij Nath Sharma (supra), but also a fairly recent judgment of the Hon'ble Supreme Court in Union of India and another versus Manpreet Singh Poonam and others,(2022) 6 Supreme Court Cases 105, wherein it was observed as under:-*

*"18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. 19. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification. 20 .This Court in the case of Union of India v. KK Vadhera and Ors., 1989 Supp (2) SCC 625 has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that: "5....We do not*



*know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”*

In **Chief Director, Highways Department, Government of Tamil Nadu and another Vs. Er. C. Murugesan**<sup>16</sup> junior of the writ petitioner therein was promoted after respondent's superannuation. Hon'ble Apex Court held that merely for the promotion of junior after petitioner's superannuation, the petitioner could not claim any right to seek promotion.

**4(iv)** The ratio of above decisions is applicable to the facts of the instant case as well. Respondents have demonstrated the reasons for not convening the meeting of DPC for promotion to the post of Superintendent Grade-I before superannuation of the petitioner. No malafides have been alleged against the action of the respondents. The

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<sup>16</sup> (2022) 19 SCC 385

petitioner does not have any vested right to seek promotion only on the basis of his name having been found to be eligible for promotion to the post of Superintendent Grade-I. Since, the petitioner had superannuated prior to the convening of DPC, he cannot be granted promotion to the post of Superintendent Grade-I.

**5.** For the foregoing, I do not find any merit in the present writ petition. The same is accordingly dismissed.

Pending miscellaneous application(s), if any, also to stand disposed of.

Jyotsna Rewal Dua  
Judge

August 12, 2025  
*R.Atal*