

(2021) 08 SHI CK 0278

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 3859 Of 2020

Dr. Devendera Sharma

APPELLANT

Vs

Himachal Pradesh University

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Citation : (2021) 08 SHI CK 0278

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : M.L. Sharma, Neel Kamal Sharma

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The petitioner, as, disclosed in Annexure A-4, as, made on 27.1.2016, was promoted to the post of Professor w.e.f. 4.3.2015. The afore made promotion of the petitioner to the post of Professor, was made under the Career Advancement Scheme. However, through an office order, embodied in Annexure A-6, the afore made promotion, vis-a-vis, the petitioner against the post of Professor hence under the Career Advancement Scheme, rather became altered from 4.3.2015 to 28.1.2016. Therefore, the writ petitioner is hence aggrieved from the afore modification/alteration, of the date of taking into effect of his promotion to the post of Professor, under the Career Advancement Scheme, w.e.f. 4.3.2015, as, embodied in Annexure A-4 rather to 28.1.2016, and, as, becomes embodied in Annexure A-6. Consequently, he is led to approach this Court for the making a mandamus, upon, the respondent hence for its enforcing the apposite recitals, vis-a-vis, the date of the takings into effect of his promotion to the post of Professor, and, as, becomes embodied in Annexure A-4.

2. The learned counsel appearing for the writ petitioner has contended with much vigor before this Court, that the meteing of the afore benefit of promotion to the writ petitioner, is not a stricto-sensu promotion, rather it only bestows upon the

petitioner, the benefit of a higher pay band, appertaining to the higher post concerned.

3. However, the afore made contention before this Court cannot be accepted, as, a perusal of Clause 6.3.9, carried in UGC Guidelines, and, as, becomes embodied in Annexure A-2, Clause whereof stands extracted hereinafter:-

"The incumbent teacher must be on the role and active service of the Universities/ Colleges on the date of consideration by the Selection Committee for Selection/CAS Promotion." does rather enjoin upon the promotee concerned, to be on the role, and, in the active service of the institution concerned, uncontrovertedly at the phase of consideration of his selection/CAS promotion rather by the selection committee concerned. The legal sequel thereof, is that only upon the petitioner being on the date of his name being considered for his selection/CAS promotion by the selection committee concerned, rather on the role, and, in the active service of the educational institution concerned, hence as a professor, thereupon alone the benefit of selection/CAS promotion to the post of Professor rather could become validly bestowed upon him. From the afore evident factum, it appears, that the benefit of promotion under the CAS was rather prima facie not legitimately bestowable from the date embodied in Annexure A-4. The reason for making the above inference spurs from the factum of the petitioner, at the afore stage rather being not evidently in the active service, and, on the role of the educational institution concerned, hence as a Professor. Consequently, at the phase of his name being considered by the selection committee concerned, for his selection/CAS promotion, to the post of Professor, prima facie he was not eligible for apposite promotion. Nonetheless, the recommendations of the selection committee concerned, hence resulted in, the making of Annexure A-4, on 27.1.2016, and, wherethrough, the benefit of promotion, under the Career Advancement Scheme became meted to the petitioner w.e.f. 4.1.2015. In sequel, even the afore factum cannot become validated.

4. Be that as it may, the benefit of promotion, and as claimed by the petitioner through Annexure A-4, and, as became meted to him w.e.f. 4.3.2015, cannot also be validated rather merely, on anvil, that the afore made promotion being not a stricto-sensu promotion to the promotional post concerned, rather it merely escalating his pay band hence co-equal to that of the higher/promotional post, as, thereupons, rather the normative necessity of his being at the relevant stage in the active service, and, on the role of the institution concerned as Professor, norms whereof becomes embodied in clause (supra), would suffer unwanted breach, besides would become scuttled. Moreover, the benefit(s) thereof, as granted to the beneficiary concerned, hence under the Career Advancement Scheme, rather is a benefit attached to the incumbency/ post, and, also only upon his functionally holding the post of Professor, he becomes entitled thereto, and, is not merely a notional or a fictional benefit, of enhanced pay scale rather co-equivalent to the pay band of a Professor, even when he does not

function thereagainst. Unless, the afore interpretation, and, normative necessity supra, is insisted upon, the entire purpose of the apposite regulations appertaining to, and, governing the norms of promotion(s) to the promotional post, rather would become an ill causality.

5. Since the respondents in their reply meted, on affidavit, to the writ petition, make a clear uncontroverted contention, that the writ petitioner, did not join, the promotional post w.e.f. 27.1.2016. Consequently, since vide order dated 27.1.2016, the writ petitioner became on the role, and, in the active service as a Professor, in the educational institution concerned. Therefore, when he at the afore stage hence meted satiation to the interpretation (supra), as made to the hereinabove extracted clause, as embodied in Annexure A-2, hence only from the afore date, he can claim the benefit of the higher pay band, attached to his selection/CAS, to the post of Professor, and, not from 4.3.2015, as becomes embodied in Annexure A-4.

6. For the foregoing reasons, there is no merit in the extant writ petition, and, the same is accordingly dismissed. All pending applications also dismissed.