

(2012) 12 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17744 of 1995

Ishwar Singh Nain

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2013) 3 SCT 95

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Subhash Ahuja, for the Appellant; Saurabh Mohunta, DAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—The present writ petition filed under Articles 226 and 227 of the Constitution of India prays for issuance of a writ in the nature of certiorari quashing the promotion order of respondents No. 3 and 4 dated 14.01.1994 (Annexure P-7) vide which, the said respondents were promoted as Lecturers in Political Science (School Cadre) without considering the case of the petitioner, who was senior to the said respondents. A further prayer for issuance of a writ in the nature of mandamus has been asked for commanding respondents No. 1 and 2 to consider the case of the petitioner for promotion to the post of Lecturer on the basis of seniority and satisfactory record with effect from the date his juniors i.e. respondents No. 3 and 4 were considered and promoted. The case set up by the petitioner in the petition is that the petitioner was appointed as Maths Master on ad hoc basis w.e.f. 28.07.1976 through the employment exchange and his services were regularized w.e.f. 01.01.1980 and he had been working sincerely and there was no complaint against him. While in service, the petitioner improved his qualification and passed his M.Ed. from Himachal Pradesh University on 28.03.1987. He also passed his M.A. in History with second division from Kurukshetra University on 15.02.1984 and M.A. in Public Administration in

July 1993 and certificate dated 05.10.1993 (Annexure P-2) was appended. The Social Studies Master, as per the eligibility criteria, who passed M.A. in Public Administration, were entitled to get promotion as Lecturer in Political Science but vide instructions dated 22.10.1992 (Annexure P-3), the State had decided that promotion is to be made as Lecturer from the post of Master if the person possesses the qualification in his own subject. The petitioner was having the eligible qualification for the post of Lecturer in Political Science but since he was posted as Maths Master, he was considered ineligible for consideration. The petitioner, alongwith other eligible candidates, filed CWP No. 9026 of 1993 challenging the said criteria dated 22.10.1992 and during the pendency of the writ petition, the State re-considered the same. Vide letter dated 14.11.1994 (Annexure P-4), it waived the condition by which it was made mandatory for getting the promotion to the post of Lecturer in a different subject and the condition that the said person should have experience in teaching in that subject and also the period of experience had been reduced from 5 years to 2 years. Consequently, the writ petition filed by the petitioner became infructuous.

2. Accordingly, as per the earlier instructions and policy, the case of the petitioner was sent for promotion to the Principal, District Institute of Education Training, Mohindergarh on 09.11.1993 but the case of the petitioner was not considered and respondents No. 3 and 4 were considered and promoted vide order dated 14.01.1994. The petitioner figured at Sr. No. 6674 of the seniority list whereas respondent No. 3 was figured at Sr. No. 8984 and thereafter respondent No. 4. In spite of the earlier instructions having been withdrawn, respondents No. 1 and 2 did not consider the case of the petitioner for promotion to the post of Lecturer in Political Science with effect from the date his juniors i.e. respondents No. 3 and 4 were considered for promotion and promoted on 14.01.1994. The petitioner had made a representation on 20.07.1995 and claimed that his juniors had been considered and promoted and, therefore, the petitioner be considered for promotion. The petitioner's case had not been considered and thus the writ petition was filed on the ground that there was unequal treatment and the junior of the petitioner figuring at Sr. No. 8984 had been promoted, which was violative of Articles 14 and 16 of the Constitution of India.

3. The State, in its written statement, took the plea that the petitioner was not eligible for the post of Lecturer and respondents No. 3 and 4 were considered and promoted since as per policy dated 22.10.1992, only such employees were eligible for promotion as Lecturers if they possessed the qualification in their own subjects. The petitioner was working as Maths Master having qualification of M.A. in Public Administration and History and was not eligible for promotion as Lecturer in Political Science. The policy had been changed on 14.11.1994 and the petitioner, who had become eligible for promotion, would be considered for promotion to the post of Lecturer in Political Science alongwith other persons who were senior to the petitioner and were to be promoted. The petitioner was not eligible on 14.01.1994 and instructions dated 20.10.1992 were modified on

14.11.1994. The representation of the petitioner dated 20.07.1995 had been received and his case was to be considered at an appropriate time since he had become eligible for promotion in accordance with revised policy. It was also not denied by the State that the Social Studies Masters who had passed M.A. in Public Administration were entitled to get promotion as Lecturer in Political Science till 22.10.1992, on which date the instructions were issued. That promotion was to be made as Lecturer from the post of Master if the concerned person possessed the qualification in his own subject and the petitioner had passed M.A. in Public Administration on 05.10.1993.

4. The petitioner filed replication to the written statement pleading that prescribing subject condition was withdrawn after having been reviewed and the old policy was re-enforced according to which, Masters and Mistresses were entitled for promotion to the post of Lecturer on the basis of the subject of their post graduation and irrespective of the subject being taught by them. The policy decision dated 22.10.1992 was not adhered to and a large number of senior employees were promoted retrospectively from the dates persons junior to them were promoted and who could not be earlier promoted at the time when their juniors were promoted on the post of Lecturers because of the aforesaid condition of teaching subjects. Reference was also made to order dated 17.11.1995 (Annexure P-9) wherein, persons were promoted as additional Lecturers in Political Science who were junior to the petitioner and the said persons' seniority was to be effected from 17.05.1993, from the date on which their junior namely Sh. Rajinder Singh having seniority No. 10403 was promoted as Lecturer.

5. Counsel for the petitioner accordingly submitted that the petitioner, being senior to respondents No. 3 and 4, was required to be given promotion as Lecturer in Political Science w.e.f. 17.05.1993 and was entitled for arrears of the monetary benefits from the date his juniors were given the said benefits since he had only been promoted on 24.03.1998 and had retired thereafter.

6. Counsel for the State, on the other hand, submitted that the petitioner had been duly promoted after the withdrawal of the policy dated 22.10.1992 (Annexure P-3) w.e.f. 14.11.1994 and was not entitled for any relief.

7. After going through the records of the case, this Court is of the opinion that the writ petition is liable to be allowed. There is no dispute regarding the seniority of the petitioner, who was at Sr. No. 6674 having been appointed on 28.07.1976 and having been regularized on 01.01.1980. The State has also not denied that initially Social Studies Masters who had passed M.A. in Public Administration were entitled to get the promotion as Lecturers in Political Science. The petitioner having passed his M.A. in Public Administration in July, 1993, was thus eligible for promotion as Lecturer in Political Science but due to the change in policy dated 22.10.1992, could not be promoted as he did not possess the qualification in his own subject. Respondent No. 3, who was at Sr. No. 8984, was promoted and adjusted as Lecturer in Political Science on

14.01.1994 during the pendency of the policy dated 22.10.1992. The policy dated 22.10.1992 was thereafter withdrawn on 14.11.1994 and it was provided that Masters and Mistresses would be given promotion as Lecturers in case they had done their post graduation irrespective of the subject they were actually teaching as Masters. Admittedly, the petitioner was senior to respondents No. 3 and 4 and had made representation dated 20.07.1995 that he had been wrongly ignored on the basis of his seniority and claiming that his case had been forwarded for promotion by the Principal District Institute of Education Training, Mohindergarh vide Letter No. 22 dated 09.11.1993. Thus, he had been deprived of his right to promotion whereas his juniors had been given the benefit and, thus, there was violation of his fundamental rights. Admittedly, the petitioner had challenged the introduction of the new policy dated 22.10.1992 since his right of promotion had been jeopardized by the introduction of the said policy. The said policy was thereafter withdrawn on 14.11.1994 and, therefore, it would have the effect of not being in existence and the petitioner would have a right of consideration from the date his juniors were promoted on 14.01.1994. The petitioner has also placed on record letter dated 17.05.1995 (Annexure P-9) alongwith the replication to show that after the policy had been withdrawn on 14.11.1994, more juniors appointed from the year 1982 to 1983 had been promoted w.e.f. 17.05.1993, the date on which their junior-Rajinder Singh having seniority No. 10403, had been promoted as Lecturer. The said persons were, however, not given any monetary benefits of arrears of pay till their actual taking over of the posts as Lecturers. Once the State had also further given benefit to the persons at Sr. Nos. 25 to 29 (Annexure P-9), who were junior to the petitioners, the State could not have denied the said benefit of promotion to the petitioner from the date the said juniors were promoted.

8. Accordingly, in view of the findings recorded above, the petitioner is entitled for promotion as Lecturer in Political Science w.e.f. 05.10.1993, the day he passed his M.A. in Public Administration but it is made clear that he would only get the arrears of pay from the date the persons mentioned at Sr. Nos. 25 to 29 in the letter dated 17.11.1995 got the benefits since he has now retired. The monetary benefits, to which the petitioner is entitled to, shall be calculated and paid to him within a period of 2 months from the date of receipt of certified copy of this order. The writ petition is accordingly allowed in the above terms.