



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

**214**

**CWP-12435-2016 (O&M)  
Date of decision: 04.08.2025**

**Yog Raj Garg**

**...Petitioner**

**VERSUS**

**State Bank of Patiala and others**

**...Respondents**

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present :- Mr. Raman Sharma, Advocate for the petitioner(s).

Mr. Vikas Chatrath, Advocate for respondent(s) No.1 and 2.

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**VINOD S. BHARDWAJ, J. (Oral)**

1. Aggrieved by the non-consideration of his candidature for promotion to the post of Senior Management Grade Scale-V (SMGS-V), the petitioner has approached this Court.
2. The grievance, succinctly, is that the petitioner, who was serving as Chief Manager with the respondent-Bank, asserts that under the applicable statutory rules, the respondents are mandated to call for promotion eligible candidates equivalent to three times the number of available posts. It is contended that for the promotion exercise conducted for the year 2016-17, even though 33 posts were filled up by way of promotion, the respondents called only 80 candidates for consideration, instead of 99, thereby excluding the petitioner. He avers that being eligible he was entitled to be considered for promotion and by restricting the zone of consideration, he has been unlawfully deprived of his statutory right.



3. It is contended that even though the respondents' averment in their written statement is that only 26 vacancies existed and against which 80 candidates were called for interview, being more than three times the number of posts but on account of bracketed candidates, the respondents acknowledge elsewhere in the written statement that 33 officers were eventually promoted to the post of SMGS-V. The petitioner submits that, since the exact number of vacancies was not specified at the time of convening the Departmental Promotion Committee (DPC), the claim by the respondents that the promotion process was initiated only to fill 26 posts is contradicted by the subsequent promotion orders issued by the respondents. Further, it is submitted, that although the petitioner has since superannuated, this fact does not by itself adversely affect his statutory right to be considered for promotion, as the convening of a Departmental Promotion Committee, post-superannuation, is permissible in such circumstances. In support of the said argument, reliance is placed on the judgment of the **Madhya Pradesh High Court (Jabalpur Bench)** in '**Ravinder Kumar Rajnegi v. The State of Madhya Pradesh and others**', **Writ Petition No. 13018 of 2010**, decided on **17.08.2023** (Law Finder Doc Id #2510039). The relevant extract of thereof reads thus:-

*"10. I am unable to persuade myself with the line of stand taken by the State for the simple reason that if respondents are talking about punishments inflicted on the petitioner, they must satisfy that the said orders of 'Ninda' are indeed statutory punishments under the Regulations. Learned*



*Govt. Advocate could not point out any provision from the regulation which includes 'Ninda' or 'censure' as a punishment. It is trite that only a punishment prescribed in the rule can be treated to be a 'punishment' under the law. In (2012) 5 SCC 242 (Vijay Singh v. State of U.P.) it was held that-*

*"20. Unfortunately, a too trivial matter had been dragged disproportionately which has caused so much problem to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that (sic it cannot be left to) the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct.*

*[See Glaxo Laboratories (I) Ltd. v. Presiding Officer [(1984) 1 SCC 1 : 1984 SCC (L&S) 42 : AIR 1984 SC 505] and A.L. Kalra v. Project and Equipment Corp. of India Ltd. [(1984) 3 SCC 316 : 1984 SCC (L&S) 497 : AIR 1984 SC 1361] ]*

*21. Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the*



*legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law."*

*The necessary corollary of the ratio of this judgment is that only such punishments can deprive the petitioner from right of consideration which are statutorily prescribed.*

11. *In this view of the matter, there was no valid reason to deprive the petitioner from the right of consideration for promotion. Right of consideration is not only a statutory right it is a fundamental right under the Constitution flowing from the Articles 14 and 16 of the Constitution (See : (2022) 12 SCC 579 Ajay Kumar Shukla and Ors. Vs. Arvind Rai and Ors.). The said right of petitioner is taken away for a reason which cannot sustain judicial scrutiny.*

12. *Resultantly, the respondents are directed to consider and permit the petitioner to participate in the selection process and if he is selected promote him from appropriate date as if petitioner had participated in the examination held on 28.08.2010. In the event petitioner is promoted, he shall get all the consequential benefits except the arrears of pay for the intervening period on the promotional post."*

*(emphasis supplied)*

4. A further corroboration of the aforesaid claim is sought from



the judgment of the **Himachal Pradesh High Court** in the matter of '**Bichittar Singh Vs. State of Himachal Pradesh and others**' in CWP(T) No.12586 of 2008, decided on 29.04.2011. The relevant extract thereof reads thus:-

*"6. It is by now fairly settled that the right for consideration for promotion is a fundamental right. The incumbent is legally entitled to assert such right even in an eventuality of his retiring from service in the meanwhile. To this effect is the law laid down by a Division Bench of Hon'ble Punjab and Haryana High Court in Chaman Lal Lakanpal v. Union Public Service Commission and others, 1999 (1) SLR 670, vide paras 7, 9, 10 and 11, which read as under-*

*7. The right to equality of opportunity in matters of promotion is guaranteed under Article 16 of the Constitution. This cannot be stifled by an arbitrary failure to perform the duty imposed by statutory regulations. By merely choosing to avoid the meeting, a citizen cannot be denied the right to be considered.*

*9. We are unable to accept this contention. The respondent cannot be permitted to take advantage of its own wrong. It is the Commission's own case that the committee could not meeting during the year 1994-95, 1995-96 and 1996-97 on account of the interim order of stay granted by the Tribunal in S.P. Gupta's case. 'After*



*the stay was vacated on December 3, 1996, the Commission took no steps for the meeting of the committee immediately. If it had performed its duty and nominated a member for the committee as constituted under the regulations, the petitioner's rights as guaranteed to him under the rules would not have been violated. By merely failing to nominate a member and not allowing the committee to meet, the Commission can't be permitted to defeat the rights of the petitioner.*

10. It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensure in accordance with the rules.



11. *In view of the above, we allow the writ petition.*

*The order of the Tribunal is set aside. It is directed that the petitioner's claim shall be considered with effect from the due date for each of the years. The right shall be considered in respect of the vacancies which have occurred year-wise viz. 1994-95, 1995-96 and so on. The needful shall be done within three months from the date of receipt of copy of this order. The petitioner is also entitled to his costs which are assessed at Rs. 5000/-, Ordered accordingly."*

7. *In view of the above, the petition is allowed with a direction to respondents No. 1 and 2/competent authority to consider the case of the petitioner for promotion to the post of Chief Pharmacist, if otherwise eligible, from the post became available in the first instance before retirement of the petitioner, by holding a review DPC within three months from the date of production of copy of this judgment by the petitioner. Needless to say that consequential benefits, if any, would ensue the outcome of the proceedings of the DPC."*

*(emphasis supplied)*

5. Counsel for the respondent(s) on the other hand contends that the petitioner has already superannuated and that the persons, who were promoted in the concluded process, had already assumed charges and have served for nearly 9 years and that a concluded promotion process be not



interfered with. He places reliance on the Constitution Bench's judgment in the matter of '**Sivanandan C.T. and others Vs. High Court of Kerala and others**' reported as **2023 INSC 709**, paragraph No. No.55(vi) thereof reads thus:-

*“55. The following are our conclusions in view of the above discussions:*

- (i) The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14:*
- (ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following: (1) the legitimacy of the expectation, and that (ii) the denial of the legitimate expectation led to a violation of Article 14:*
- (iii) A public authority must objectively demonstrate by placing relevant material before the court that its decision was in the public interest to frustrate a claim of legitimate expectation:*
- (iv) The decision of the High Court of Kerala to apply a minimum cut-off to the viva voce examination is contrary to Rule 2(c)(iii) of the 1961 Rules.*
- (v) The High Court's decision to apply the minimum cut-off marks for the viva voce frustrates the substantive*



*legitimate expectation of the petitioners. The decision is arbitrary and violative of Article 14.*

(vi) *In terms of relief, we hold that it would be contrary to the public interest to direct the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated. They were all qualified and have been serving the district judiciary of the state. Unseating them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest.”*

*(emphasis supplied)*

6. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the matter of '**Govt. of West Bengal & Ors. Vs. Dr. Amal Satpathi & Ors.**' reported as **2024 INSC 906**, paragraphs No.20, 22 and 23 reads thus:-

*“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.*

23. *The appeal is allowed accordingly. No order as to costs.*

24. *Pending application(s), if any, shall stand disposed of.”*



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7. He submits that on 19.05.2016 the names of 80 candidates were short listed whereas the writ petition has been filed on 08.06.2016 while the promotions had been effected on 31.05.2016.

8. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition with their able assistance.

9. Except for the submissions, the respondent bank has failed to place on record any document to substantiate the assertion that the promotion process was confined to only 26 posts. Moreover, despite a specific query as to how and under when circumstances 33 posts got filled up, counsel could not offer any satisfactory explanation. The presumption that would thus flow is that the promotional process was to be actually undertaken for 33 posts only. A manipulation in the vacancies to keep people away from consideration cannot find favour in a Court of law. The defence of the respondents as regards the available posts being 26 thus deserves to be rejected.

10. The respondents having promoted 33 officers to the post of SMGS-V for the year 2016-17, as per the applicable rules, officials three times the total number of vacancies were required to be called for consideration prior to the issuance of final promotion orders. Furthermore, it is also admitted that the respondents shortlisted only 80 officials and the name of the petitioner was not included therein, which would be there if correct number of people were called for the process.

11. In the above undisputed factual matrix, it stands conclusively



established that the respondent-Bank had to actually initiate the promotion process for 33 posts of SMGS-V and the petitioner would have fallen within the zone of consideration. The justification offered, that the additional appointments were made by including a bracketed candidate and six persons on deputation, cannot be accepted as a valid or legally sound explanation. Notwithstanding that an individual may be on deputation from another department, they would not be deemed as promoted against the available vacancies. There is thus a failure on the part of the respondents to fully disclose the facts concerning the actual number of vacancies available for consideration in the year 2016-17. The promotion of 33 candidates, therefore, lends support to the petitioner's contention that 33 posts were indeed available for promotion during the relevant period.

12. The respondents have further attempted to justify their actions by stating that the petitioner was considered for promotion in the year 2015-16 but failed to attain the requisite benchmark for elevation. However, the said explanation carries no weight in relation to the vacant posts available for the next financial year. There is nothing on record to indicate or establish that a candidate who has been considered for promotion in an earlier year(s) and has not succeeded in the select list would be barred from consideration in the following years for vacancies arising in the same cadre. The petitioner's right to be considered for the available posts in the cadre for the year 2016-17 stands unimpeached.

13. Now, advertiring to the reliance placed by the respondents on the judgment of the Constitutional Bench in the matter of Sivanandan C.T. and



others (supra), it is observed that paragraph 55(vi) of the said judgment merely lays down a rule of caution against interfering with selections that have subsisted over a considerable period of time. However, the principles enunciated therein are inapplicable to the facts of the present case, as the said decision pertained to direct recruitment, where no statutory right to appointment to a post exists. In contrast, the present matter concerns appointment by way of promotion, wherein a legitimate right is vested in the candidate to be considered for further promotion. Thus, the reliance placed on Sivanandan C.T. is misplaced and does not advance the respondents' case.

14. The reliance placed by the learned counsel on the judgment of the Hon'ble Supreme Court in Government of West Bengal & Ors. (supra) is misconceived. The facts of that case disclose that the respondent-employee therein had been recommended for promotion but, due to administrative exigencies, was not actually promoted to the post and subsequently superannuated. The financial relief claimed by the petitioner in that case was denied on the ground that he had not served in the promotional post and, therefore, was not entitled to the benefits thereof. The facts of the present case are clearly distinguishable. The position in law needs no reiteration that mere recommendation for promotion does not vest any obligation upon the appointing authority to effect such promotion. The appointing authority retains the discretion to accept or reject the recommendations of the recommending authority.

15. The right to claim promotion and the attendant financial



benefits accrue only when the recommendations of the selection committee are accepted and acted upon, and similarly placed candidates have been actually promoted. Under such circumstances, the right of a person who has been actually overlooked or denied such benefit becomes crystallized. In the present case, the respondents initiated the promotion process for the year 2016-17. The recommendations made by the Departmental Promotional Committee were accepted and promotions of 33 candidates were effected. In such a scenario, the respondents, by their own act and conduct, have deprived the petitioner of his statutory right of consideration for which they cannot be permitted to take benefit and contend that *dehors* an illegality committed by them, yet it must be validated by a Court of law by efflux of time.

16. The facts of the present case do not disclose any inordinate delay on the part of the petitioner in approaching this Court. The names of the shortlisted candidates were finalized only on 19.05.2016 and the results were declared on 31.05.2016. The contention of the respondents that the petitioner approached this Court belatedly on 18.06.2016 i.e., after the selection process had concluded and promotions had been effected for seeking dismissal of the writ petition, is untenable. Even as per the case of the respondents, the promotion process was initiated only against 26 vacancies. In such circumstances, the short-listing of 80 candidates as on 19.05.2016 did not confer any actionable right on the petitioner since only these 80 candidates fell within the threefold zone of consideration. The grievance relating to denial of the right to be considered arose only after the



results were declared on 31.05.2016 and when the respondents made promotion of 33 candidates.

17. Accordingly the petitioner's approach to this Court, after declaration of the results, cannot be deemed delayed, as there was no reason for him to anticipate that the respondents would exceed the number of posts originally intended to be filled by promotion. It appears that the respondents, by withholding the actual number of vacancies to be filled by promotion, deprived candidates of a fair opportunity of consideration and leaving them uncertain about their position. The judgments of the **Madhya Pradesh High Court (Jabalpur Bench)** in **Ravinder Kumar Rajnegi** and the **Himachal Pradesh High Court in Bichittar Singh (supra)** are apposite and applicable to the facts of the present case. The petitioner is therefore held entitled to be considered for promotion notwithstanding his superannuation during the pendency of this writ petition.

18. The legal position requires no reiteration that an order of the Court should not prejudice the rights of any party. It is also not an absolute principle that after superannuation, a person is precluded from asserting or enforcing a right that had accrued in his favor at the time of approaching the Court. The respondents' plea for dismissal of the instant writ petition on the ground of the petitioner's superannuation is accordingly rejected. However, at this stage, the Court is persuaded to accept the respondents' submission that the result finally published on 31.05.2016 should not be disturbed as the persons promoted have assumed charge and served against the post and 15 officers out of the total 33 have superannuated in the meantime, and the



remaining 18 officers likely to retire in the near future.

19. In view of the foregoing, the instant writ petition is **allowed**. The respondent-Bank is directed to consider the case of the petitioner for promotion to the post of SMGS-V for the year 2016-17 deeming him to be in service and evaluating his performance, as per the criteria applied to other candidates in the same promotion process.

20. In the event of the petitioner found eligible and entitled for promotion, having higher merit than the persons recommended by the respondents in the said promotion process, the petitioner shall be given all notional benefits of promotion w.e.f. the date when such benefits were extended to the respondents who were appointed vide order dated 31.05.2016 and upto the date of his superannuation. The respondents are hereby directed to convene a Departmental Promotional Committee within a period of two months from the receipt of a certified copy of this order. The notional benefits would be calculated within a period of two months thereafter. The admissible financial benefits, including pensionary and Death-cum-Retirement Gratuity (DCRG) benefits, shall be revised and released in favour of the petitioner within the subsequent period of three months, along with interest @6% per annum from the date of institution of the present writ petition until the actual disbursement.

21. **Allowed in above terms.**

**(VINOD S. BHARDWAJ)**  
**JUDGE**

**04.08.2025**

*Mangal Singh*

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No