

(2004) 11 P&H CK 0077

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 1998 of 1984

Kanwar Lal Sharma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Nov. 17, 2004**Citation:** (2005) 139 PLR 532 : (2005) 3 SLJ 504**Hon'ble Judges:** S.S. Nijjar, J**Bench:** Single Bench**Advocate:** R.S. Sahota, for the Appellant; Palika Monga, AAG for Respondent No. 1 and Jagdeep Bains, for the Respondent**Final Decision:** Allowed

Judgement

S.S. Nijjar, J.

The petitioner seeks the issuance of an appropriate writ, order or direction under Articles 226/227 of the Constitution of India directing the respondents to consider the petitioner for promotion with effect from the date respondent No. 3, junior to the petitioner was promoted.

2. The petitioner was appointed as a Clerk in the Gurgaon Central Cooperative Bank Ltd., Gurgaon (hereinafter referred to as "the Bank") on 1.4.1964. He was promoted as Junior Accountant on 23.6.1972. A seniority list of Junior Accountants was circulated on 20.2.1980 (Annexure P-6). In this seniority list (Annexure P-6), name of the petitioner figures at Sr. No. 4 and that of respondent No. 3 at Sr. No. 7. The petitioner claims promotion under the Haryana State Cooperative Bank Staff Service (Common Cadre) Rules, 1975 which had been made applicable to the Bank since 1975. The petitioner claims that his service record is good enough for him to be promoted on the post of Senior Accountant in his own turn. The petitioner has also improved his qualifications by doing a diploma in Cooperative Banking. A certificate to this effect was given to the petitioner on 17.4.1979. At the time when the case of the petitioner was to be considered for promotion to the post of Senior Accountant, he was falsely implicated in a case under Sections 467/471 I.P.C. He was convicted

alongwith one Shabir Ahmad under Sections 467/471 read with Section 109 of the I.P.C. by the Additional Chief Judicial Magistrate, Gurgaon by judgment dated 19.3.1981/23.3.1981. The petitioner filed Criminal Appeal No. 8 of 1982 against the aforesaid judgment. The appeal was allowed and the conviction was set aside by the learned Additional Sessions Judge, Gurgaon on 8.10.1982. The appellate court in paragraph 6 of the judgment has observed as follows:-

"6. As regards Kanwar Lal, there is no expert report against him. Indeed, there is no evidence against him at all that he passed or signed the L.P.Os. He has been convicted on the basis of statements of oral witnesses, to be referred to presently, which have been interpreted to mean that his duty it was to compare the face of the drawer of loan with his photograph."

3. In the final paragraph of the judgment, the appellate court has observed as follows :-

"18. Thus, the appeal of Kanwar Lal is accepted in toto, while that of Shabir Ahmad is accepted party to the extent of modification in sentence as indicated above."

Relying on the aforesaid acquittal, the petitioner submitted a representation to the Bank claiming, promotion from the date his junior i.e. respondent No. 3 had been promoted. The claim of the petitioner for promotion on the post of Senior Accountant was considered by the Bank alongwith Himmat Rai and Zafar Ahmed. In the resolution passed by the Bank on 28.1.1981, the claim of the petitioner and Himmat Rai has been rejected as their service record was said to be poor and criminal case was pending against the petitioner. Zafar Ahmed was promoted to the post of Senior Accountant. The representations filed by the petitioner were accepted and the adverse remarks for the year 1980-81 were expunged. It was also resolved that overall assessment of the petitioner shall be considered as good. Subsequently, the petitioner was permitted to cross the Efficiency Bar by order dated 6.3.1991 w.e.f. 1.6.1988 raising his pay from Rs. 2300 to Rs. 23602 in the scale of Rs. 1600-50-2300-EB-2360. From this, it becomes apparent that the petitioner had reached the maximum of the scale on 1.6.1988. Ultimately, accepting the representation of the petitioner, he has been promoted by order dated 20.2.1991 with all consequential benefits. The claim of the petitioner is now restricted to notional promotion with effect from 28.1.1981 till 20.2.1991 when he was actually promoted, as the petitioner has already superannuated.

4. The respondents have filed a detailed written statement. On the basis of the averments made in the written statement, Ms. Bains has submitted that the petitioner could not be promoted on 28.1.1981 as at that time, the petitioner was facing a criminal trial which resulted in conviction on 19th/23rd of March, 1981. The claim of the petitioner had to be considered on the basis of the record which was available on 28.1.1981. At that time, the service record of the petitioner was poor and, therefore, he was ignored. She has further argued that the petitioner having

been given promotion w.e.f. 20.2.1991, cannot claim any further relief by way of retrospective promotion.

5. I have considered the submissions made by the learned counsel for the parties. From the facts narrated above, it becomes quite evident that the petitioner had been falsely implicated in the criminal case. The petitioner has been acquitted by the appellate court on the basis that there is no evidence against the petitioner. It is not as if the petitioner has been acquitted by giving him the benefit of doubt. The petitioner has been exonerated completely. In such circumstances, the criminal trial and the conviction by the Additional Chief Judicial Magistrate, Gurgaon would have no adverse impact on the service record of the petitioner. He is, therefore, entitled to be considered for promotion with effect from the date person junior to him i.e. respondent No. 3 was promoted. It is further to be noticed that the petitioner was permitted to cross the Efficiency Bar, although belatedly. Furthermore, the respondents have accepted the representation made by the petitioner in the meeting of the Board of Administrators of the Bank held on 16.11.1990. Not only this, the adverse entries have been expunged, and the overall record of the petitioner has been assessed as "Good". In such circumstances, the reasons which prevailed for superseding the petitioner while promoting respondent No. 3 are totally wiped out. In such circumstances, the petitioner would be entitled to be considered for promotion with effect from the date respondent No. 3 was promoted on the post of Senior Accountant.

6. In view of the above, the writ petition, is allowed. A writ in the nature of Mandamus is issued directing the respondents to consider the claim of the petitioner for promotion to the post of Senior Accountant from 28.1.1981 in accordance with the rules. In case the petitioner is found eligible for promotion and is actually promoted w.e.f. 28.1.1981, the petitioner shall also be entitled to all consequential benefits which would also be reflected in the retiral benefits which have already been granted to the petitioner by making a suitable modification therein. Let the exercise be completed within a period of two months of the receipt of a certified copy of this order. No costs.