A RAMINDER SINGH

v.

STATE OF PUNJAB & ANR.

(Civil Appeal No. 2127 of 2009)

B SEPTEMBER 19, 2016

**[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]**

*Service Law:*

*Promotion – Cancellation of – The State merged Grade-C post* C *in Grade-B post of Research Assistant, however did not amend the Service Class Rules and continued with un-amended Rules for filling vacancies – Respondent No.2 invited applications for filling post of Research Assistant Grade B – Appellant, an in-service candidate submitted his application – Competent authorities recommended his* D *promotion – Appellant promoted – Complaints made against promotion – Grade Promotion of appellant was cancelled and he was reverted from the post of Research Assistant Grade B – Held: The State was supposed to make appropriate amendments in Rules after merging one post into another – So long as this exercise was not done by the State, employees who had fulfilled the requirement* E *prescribed in the existing Rules for consideration of their cases for promotion, they could not be denied the benefits under the Rules – There was no suppression of any material information by appellant and his record was also not adverse – No justification by the State for recalling the promotional order of appellant on basis of some complaints, which had no legal foundation – Promotion of appellant* F *to be restored – Punjab Public Works Department (Irrigation Branch), Research Assistants' State Service Class III Rules, 1956 – r.10.*

**Allowing the appeal, the Court**

G **HELD: 1.1 The State was not justified in cancelling the appellant's promotion order as also the High Court was not justified in upholding the cancellation order. First, it is an admitted case that the appellant being an in service candidate, his case for promotion from the post of Silt Observer/Analyst to the next promotional post of "Research Assistant Grade B" was required**

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to be considered as an in-service candidate as provided in Rule 10 of Punjab Public Works Department (Irrigation Branch), Research Assistants' State Service Class III Rules, 1956. Second, it was again an admitted case that the appellant was working as a Silt Observer/Analyst and in addition to the duties assigned to this post, he was also performing the duties of Research Assistant Grade B as per the directives of the office. Third, the appellant had admittedly fulfilled the eligibility criteria and qualification prescribed in Rule 10 (1)(b)(i) and (2) as also the qualifications prescribed for appointment to the post in question for direct recruits. Fourth, the competent authorities had also recommended the case of the promotion of the appellant certifying that the appellant is fit for promotion. Fifth, the appellant worked on the promotional post and performed the duties assigned to the promotional post from 14.12.2001 till 10.12.2002. Sixth, since the Government, despite merging the Grade C post in Grade-B post, did not amend the Rules and on the other hand continued with the un-amended Rules for filling the vacancies including vacancies by promotion, hence, the case of the appellant had to be considered in the light of the requirement of the Rules. It was necessary for the State to have made appropriate amendments in the Rules after merger of one post into another, but so long as this exercise was not done by the State, the employees, who had otherwise fulfilled the requirement prescribed in the existing Rules for consideration of their cases for promotion, they could not be denied the benefits flowing from the Rules and lastly, in the absence of any adverse entries or/and record of the appellant and further in the absence of any allegation made against the appellant for suppressing any material information, there is no justification on the part of the State to have recalled the promotional order of the appellant on the basis of some complaints said to have been made by someone after a long lapse of time which also had no factual or/and legal foundation. [Paras 28 and 29] [317-B-G]

1.2 The appellant is restored to the promotional post of Research Assistant Grade B. If the appellant has discharged the duties of Research Assistant Grade B after the cancellation of his promotional order for any reason in addition to his duties assigned during the period in question then he would be entitled

**to claim the salary of the promotional post from the date of cancellation order after adjusting his salary, which he has received as Silt Observer during such period. [Para 33] [318-D]**

*Kuldip Singh & Ors. v. State of Punjab & Anr.* **CWP No. 19906 of 2002 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2127 of2009.

From the Judgment and Order dated 31.10.2008 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 1066 of 2006.

Ms. Niharika Ahluwalia, Sudhir Walia, Abhishek Atrey, Advs., for the Appellant.

Ms. Disha Singh, Shivendu Gaur, Jagjit Singh Chhabra, Advs., for the Respondents.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed against the final judgment and order dated 31.10.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 1066 of 2006 whereby the High Court dismissed the writ petition filed by the appellant herein against the office order dated 13.01.2006 by which the promotion of the appellant was cancelled and he was reverted from the post of Research Assistant Grade B to Silt Observer.

2. Facts of the case need mention, in brief, infra to appreciate the controversy involved in the appeal.

3. The appellant was recruited as Silt Observer in the year 1986 in Irrigation and Power Research Institute, Amritsar, which is a Branch of Public Works Department, Government of Punjab. At the time of his appointment, his qualification was matriculation with Science subjects and B.A. with Economics and Political Science. While working as Silt Observer, the appellant was performing the duties of Research Assistant Grade B, as per the directives of his superiors.

4. The State of Punjab promulgated the Punjab Public Works Department (Irrigation Branch), Research Assistants' State Service Class III Rules, 1956 (in short "the Rules"). The Rules, *inter alia,* provides three Grades in the cadre of "Research Assistant" in Public Works

Department (Irrigation Branch), namely, Research Assistant Grade A, Research Assistant Grade B and Research Assistant Grade C. Rule 10 with which we are concerned here deals with the Method of Recruitment and appointment to various Grades of the Service, which reads as under:

**"10. Method of recruitment –**

**(1) Appointment to the various grades of the Service shall be made-**

**(a) in the case of Research Assistants, Grade A:-**

**(i) by promotion from amongst Research Assistants Grade B; or**

**(ii) by transfer of an official already in the service of the Government of a State or of the Union; or**

**(iii) by direct appointment;**

**(b) in the case of Research Assistants, Grade B:-**

**(i) by promotion from amongst Research Assistants Grade C; or**

**(ii) by transfer of an official already in service of the Government of a State or of the Union; or**

**(iii) by direct appointment;**

**(c) in the case of Research Assistants, Grade C:-**

**(i) by promotion from amongst Analysts or Silt Analysts or other ranks already working in the Institute or Laboratories under the control of Institute, provided the official so promoted is reported to be fit for research work expected of Research Assistants and has worked in the Institute or Laboratories for at least 5 years and has also passed the F.Sc. examination of a recognized university; or**

**(ii) by transfer of an official already in service of the Government of a State or of the Union; or**

**(iii) by direct appointment.**

**(2) For promotion from Grade C to Grade B and from Grade**

**B to Grade A, a Research Assistant must have crossed the efficiency bar in the Grade from which he is promoted.**

**(3) Appointment to any post to be filled either by the promotion of officials already in the Service or by the transfer of officials already in the service of the Government of a State or of the Union shall be made purely by selection and no official shall have any claim to such appointment as of right.**

**Note : When any vacancy arises and the recruitment is to take place through the Punjab Public Service Commission the method of recruitment shall always be decided in consultation with them."**

5. In the year 1967-68, the State of Punjab abolished the post of Research Assistant Grade C and it was merged in Research Assistant Grade B. Despite merger of the post, Rules were not amended.

6. On 21.06.2001, respondent No.2 invited applications for filling up the post of Research Assistant Grade B from amongst the cadre of research staff working as Silt Analyst and other categories in the Irrigation laboratories. The said invitation specifically mentions that the officials, who are employed as Silt Analyst or Observer should be working in the Institute or laboratories of the Department of Irrigation for at least 5 years and has also passed F.Sc. examination or equivalent.

7. In response to the said invitation, the appellant submitted his application without concealing any fact or qualification along with the attested photocopies of his educational qualification certificates.

8. On consideration of his application and the experience, the Research Officer, Chemistry Branch of the Irrigation and Power Research Institute, Amritsar recommended the case of the appellant for being promoted as Research Assistant Grade B. After consideration, the appellant was promoted as Research Assistant Grade B on 14.12.2001 and accordingly his pay and other allowances were also fixed. Since 14.12.2001, the appellant was continuing to work as Research Assistant Grade B.

9. After the promotions, some complaints were received by the Punjab Government regarding the promotion of the appellant as well as other promotions made subsequently and the Under Secretary, Irrigation

Department, Government of Punjab asked for the detailed comments and records from respondent No.2 regarding promotions made by him during the period 2001-2002. A

10. On 24.05.2002, respondent No.2 submitted detailed comments to the Under Secretary whereby the promotions of the appellant and others were explained. B

11. On 10.10.2002, the Under Secretary, Irrigation Department, Government of Punjab directed the appellant and seven other promotees to appear before the Special Secretary, Irrigation Department, on 16.10.2002 regarding the complaint about their promotion.

12. Accordingly, the appellant and other promotees appeared before the Special Secretary on 16.10.2002 and explained to him about their eligibility under the Rules for promotion to the post of Research Assistant Grade B. C

13. After considering the matter, vide order dated 10.12.2002, the promotion of the appellant was cancelled on the ground that he did not fulfill the requisite qualification and experience and that he was not promoted in accordance with Rules. D

14. Challenging the order of cancellation of promotion, the appellant along with one Sohan Lal, who was also promoted with him, filed C.W.P. No. 19893 of 2002 before the High Court for quashing the order of cancellation of promotion. E

15. The High Court by order dated 01.04.2004 disposed of the petition directing the Department to examine the case of the appellant in view of the decision of the High Court rendered in C.W.P. No. 19906 of 2002 **(Kuldip Singh & Ors. Vs. State of Punjab & Anr.)**. F

16. In compliance with the directions issued by the High Court, the claim of the appellant was reconsidered and the same was rejected on the ground that he did not fulfill the prescribed qualification for promotion.

17. By order dated 13.01.2006, the promotion of the appellant was cancelled and was reverted to the post from which he was promoted. G

18. Challenging the said cancellation order, the appellant filed writ petition being C.W.P. No. 1066 of 2006 before the High Court. By impugned judgment dated 31.10.2008, the High Court dismissed the H

A petition filed by the appellant herein.

19. Aggrieved by the said judgment, the appellant has filed this appeal by way of special leave before this Court.

20. Heard Ms. Niharika Ahluwalia, learned counsel for the appellant and Ms. Disha Singh, learned counsel for the respondents.
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21. Learned Counsel for the appellant while assailing the legality and correctness of the impugned order made three-fold submissions.

22. In the first place, learned counsel contended that the High Court erred in dismissing the appellant's writ petition and thereby erred
C in upholding the order impugned in the writ petition by which the appellant's promotion to the post of Research Assistant Grade B was cancelled and he was reverted to the post of Silt Observer.

23. In the second place, learned counsel contended that when admittedly the appellant had possessed the requisite qualification as
D provided in Rule 10 (1)(b)(i) and (2) for the next promotional post of Research Assistant Grade B and further the competent authority had duly recommended the appellant's case for promotion to the post of Research Assistant Grade B pursuant to which the appellant was promoted and worked on the promoted post from 14.12.2001 to 10.12.2002, there was no justification on the part of the State to have cancelled the
E appellant's promotion order and revert him to his original post.

24. In the third place, learned counsel contended that when the State merged the Grade C post in Grade B and after merger, did not amend the Rules by providing any separate qualifications for the posts in question nor did provide any other requirement by making any amendment
F in the existing rules, there was no reason much less justifiable reason for the State to cancel the appellant's promotion.

25. In reply, learned counsel for the respondents supported the reasoning and the conclusion arrived at by the High Court and prayed for its upholding.
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26. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned counsel for the appellant.

27. The short question that arises in this appeal is whether the State was justified in cancelling the promotion order of the appellant by
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which he was promoted to the post of Research Assistant Grade B from the post of Silt Analyst/Silt observer? A

28. In our considered opinion, the State was not justified in cancelling the appellant's promotion order as also the High Court was not justified in upholding the cancellation order.

29. This we say for more than one reason. First, it is an admitted case that the appellant being an in service candidate, his case for promotion from the post of Silt Observer/Analyst to the next promotional post of "Research Assistant Grade B" was required to be considered as an in service candidate as provided in Rule 10. Second, it was again an admitted case that the appellant was working as a Silt Observer/Analyst and in addition to the duties assigned to this post, he was also performing the duties of Research Assistant Grade B as per the directives of the office. Third, the appellant had admittedly fulfilled the eligibility criteria and qualification prescribed in Rule 10 (1)(b)(i) and (2) as also the qualifications prescribed for appointment to the post in question for direct recruits. Fourth, the competent authorities had also recommended the case of the promotion of the appellant certifying that the appellant is fit for promotion. Fifth, the appellant worked on the promotional post and performed the duties assigned to the promotional post from 14.12.2001 till 10.12.2002. Sixth, since the Government, despite merging the Grade C post in Grade-B post, did not amend the Rules and on the other hand continued with the un-amended Rules for filling the vacancies including vacancies by promotion, hence, the case of the appellant had to be considered in the light of the requirement of the Rules. In other words, it was necessary for the State to have made appropriate amendments in the Rules after merger of one post into another, but so long as this exercise was not done by the State, the employees, who had otherwise fulfilled the requirement prescribed in the existing Rules for consideration of their cases for promotion, they could not be denied the benefits flowing from the Rules and lastly, in the absence of any adverse entries or/and record of the appellant and further in the absence of any allegation made against the appellant for suppressing any material information, we do not find any justification on the part of the State to have recalled the promotional order of the appellant on the basis of some complaints said to have been made by someone after a long lapse of time which also had no factual or/and legal foundation. B C D E F G

30. Learned Counsel for the respondents, however, contended H

A that the appellant did not possess the requisite qualifications that were necessary for the promotional post as prescribed in the advertisement and hence cancellation of the appellant's promotion was appropriate. We do not find any force in this contention.

31. As held supra, the appellant had fulfilled the necessary criteria B prescribed in Rule 10. It was, in our view, sufficient compliance for the in service candidate. Anything prescribed in the advertisement, which was *de hors* the Rules was bad in law.

32. In the light of foregoing discussion, we do not agree with the view taken by the High Court and accordingly allow the appeal and set C aside the impugned order of the High Court and, in consequence, allow the writ petition filed by the appellant (writ petitioner) and set aside the order dated 10.12.2002 (Annexure P-9) impugned in the writ petition.

33. As a consequence, the appellant is restored to the promotional post of Research Assistant Grade B. If the appellant has discharged the D duties of Research Assistant Grade B after the cancellation of his promotional order for any reason in addition to his duties assigned during the period in question then he would be entitled to claim the salary of the promotional post from the date of cancellation order after adjusting his salary, which he has received as Silt Observer during such period.

E Ankit Gyan Appeal allowed.