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2023:PHHC:084466

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

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Date of Decision : 05.07.2023

..... Petitioner

Versus

Union of India and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr.J.S.Mahal, Advocate  
for the petitioner.

Mr. Amit Sharma, Advocate  
for the respondents-UOI.

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**JAGMOHAN BANSAL, J. (Oral)**

The petitioner through instant petition under Article 226 of the Constitution of India is seeking directions to respondents to consider name of the petitioner for promotion from Constable General Duty to Head Constable General Duty.

Learned counsel for the petitioner *inter alia* contends that the petitioner is working with respondent-department as Constable General Duty since 1985. The petitioner has not been granted promotion only on the ground that he is patient of HIV+. As per Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (for short, '2017 Act'), the respondent cannot make discrimination on the ground that the petitioner is a HIV+ person. In support of his contention, he relied upon judgment of this Court in **Bishamber Dutt vs. Union of India and others, 2010(2) SCT 621** wherein it has been held that benefit of promotion cannot be denied merely on the

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ground that candidate is a HIV+ person. He further submits that the petitioner, at present, is working and he is medically fit. Had he been unfit, he must have been discharged.

Learned counsel for the respondents submits that as per conditions of promotion enumerated in standing order dated 12.03.2015, an employee must be SHAPE-One whereas the petitioner is SHAPE-2(P), thus, he cannot be considered for the purpose of promotion.

On being confronted with the aforesaid 2017 Act, as well as judgment of this Court, learned counsel for the respondents submits that respondents would pass speaking order after considering statutory provision as well as judgment of this Court.

The petition stands disposed of with a direction to the respondents to pass a speaking order qua entitlement of the petitioner to promotion. The competent authority shall pass order after considering 2017 Act as well as afore-stated judgment of this Court and grant opportunity of personal hearing to the petitioner. The needful shall be done within 06 weeks from today.

**( JAGMOHAN BANSAL )  
JUDGE**

05.07.2023

*anju*

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>