

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.971 of 1996
Date of decision:07.01.2015**

Deep Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Adarsh Jain, Advocate for the petitioner.

Mr.A.S.Chaudhary, Addl.A.G., Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the alleged inaction on the part of respondent authorities, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus.

Learned counsel for the petitioner submits that although the services of the petitioner were regularised vide resolution dated 1.11.1977 (Annexure P-3) on the post of Peon, yet he was entitled for regularisation as Clerk because of resolution dated 8.7.1977 (Annexure P-2), whereby he was promoted to the post of Clerk. He further submits that petitioner was also entitled for the salary of the post of Clerk because he had been working on the said post in compliance of his promotion order vide Annexure P-2. He prays for allowing the present writ petition.

Having heard the learned counsel for the petitioner at

considerable length, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that raising all the grievances, petitioner served the respondent-Municipal Committee by way of legal notice dated 23.5.1995 (Annexure P-9), which was specifically replied by the respondent-Municipal Committee, making its stand clear, denying the claim of the petitioner for regularising his services on the post of Clerk and also for salary for the said post, in its para-wise reply communicated to the petitioner vide Annexure P-10 dated 11.9.1995. In spite of the said stand having been made by the respondent-Municipal Committee in its communication (Annexure P-10), petitioner did not challenge the validity thereof, for the reasons best known to him. Until and unless Annexure P-10 dated 11.9.1995 is challenged by the petitioner and the same is set aside by this Court, no relief by issuing a writ in the nature of mandamus can be granted to the petitioner.

It is equally important to note that petitioner was admittedly not eligible and qualified to be appointed on the post of Clerk. The minimum qualification for appointment on the post of Clerk was matriculation, whereas the petitioner has studied only upto 8th standard. Further, respondent-Municipal Committee was not even competent to promote the petitioner to the post of Clerk and passing of the resolution dated 8.7.1977

(Annexure P-2) would be an action without jurisdiction for the said purpose, because of which, no right, whatsoever, would flow in favour of the petitioner from the resolution dated 8.7.1977 (Annexure P-2).

Once the petitioner was not eligible and qualified to be appointed to the post of Clerk and the Municipal Committee was not having any jurisdiction to promote the petitioner on the said post, this Court would be transgressing its writ jurisdiction, while directing the respondent authorities to regularise the services of the petitioner on the post of Clerk and paying him the salary thereof. It is so said, because petitioner was admittedly not eligible for appointment to the post of Clerk, as per the statutory requirement in this regard.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, in view of the above-said observations made, instant writ petition stands dismissed, however, with no order as to costs.

07.01.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE