

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

Civil Writ Petition No.1306 of 2011

Date of Decision: May 06, 2015

Munshi Ram Jakhar

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Girish Agnihotri, Senior Advocate with
Mr.Arvind Seth, Advocate,
for the petitioner.

Mr.Hitesh Pandit, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 11.1.2011 (Annexure P-6), whereby the name of the petitioner has been deleted from the seniority list of S.D.Es on the premise that the benefit given to the petitioner in pursuance to the order dated 19.8.1997 passed in Civil Writ Petition No.1920 of 1997 was on the basis of a wrong undertaking.

On 24.1.2011, this Court while noticing the contention of the petitioner, issued notice of motion. The order reads thus:-

“Contends that in the first instance the petitioner had filed CWP

No.463 of 1995 which was disposed of by making the following observations:-

This writ petition is disposed of with the observation that the respondents shall prepare the joint seniority list of Junior Engineer (CD & NREP) for the purpose of promotion to the post of Sub Divisional Officer (PR/NREP) within three months from the date of receipt of a copy of this order and the petitioner shall be considered for promotion on the first available vacancy.”

Subsequently, since the aforesaid directions were not implemented, the petitioner filed COCP No.480 of 1996 in which the following order was passed:-

The respondents have admitted that the persons junior to petitioner at Sr.No.187, 199 and 209 have been promoted but they are the persons who are holding degrees and do not fall within the class of the petitioner. It has been assured by the learned counsel for the respondents, upon instructions from Sube Singh Superintendent concerned that the case of the petitioner will be considered in his quota against the first available vacancy now irrespective the seniority as per the direction of the Court but I find that the respondents were certainly trying to circumvent the order of the Court. As some plausible explanation has been rendered by the respondents before this Hon'ble Court, I consider it appropriate that contempt proceedings against them are not called for at this stage.”

The petitioner then filed another CWP No.1920 of 1997 in which this Court categorically observed as under:-

“For the foregoing reasons, we allow this writ petition and direct the respondents to promote the petitioner to the rank of Sub Divisional Engineer as the two grounds mentioned above have been found to be not legally sustainable and there is nothing wrong so far as his

record is concerned. Let these directions be carried out within three months.”

The SLP filed by the department against this order was also dismissed. The petitioner stood promoted as SDO in the year 1997. Now by virtue of the impugned order the respondents have nullified the effect of the earlier order of promotion of the petitioner and have not accorded him any seniority. While doing so, in the impugned order it has been observed as follows:-

“Similarly, Shri Munshi Ram Jakhar was promoted as SDO with immediate effect vide office order dated 18.11.1997 on the basis of wrong undertaking given by the department before the Hon'ble High Court in CWP No.1920 of 1997, decided on 19.8.1997. On the basis of this promotion, his seniority has also been wrongly fixed. His seniority among SDEs comes to a lower stage. Accordingly, the matter of seniority of Shri Munshi Ram Jakhar will be decided after obtaining the legal opinion from the Legal Remembrancer, Haryana.”

It is the contention of learned counsel for the petitioner that the matter regarding promotion having been decisively settled, the respondents cannot undo the effect of the earlier orders of this Court.

Notice of motion for 18.5.2011.

In the meantime, the impact of the order dated 11.1.2011 (Annexure P-6) qua the petitioner by virtue of which the promotion of the petitioner made in 1997 has been reversed and his name removed from seniority list altogether, shall remain stayed.”

Mr.Girish Agnihotri, learned Senior Counsel assisted by Mr.Arvind Seth, Advocate, appearing on behalf of the petitioner contends that the manner in which the name of the petitioner has been deleted from

the seniority list is not sustainable in the eyes of law. In case the respondent authorities were of the view that some wrong undertaking was given, then they should have adopted the procedure of withdrawing that undertaking in accordance with law and not in the manner vide which the impugned order has been passed.

Mr.Hitesh Pandit, learned Addl.A.G.Haryana, appearing for the State contends that the petitioner is claiming the promotion from the post of J.E. to the post of S.D.E. on the basis of dependent of Ex-serviceman. There is no provision in the rules for claiming promotion on the basis of said reservation.

I have heard the learned counsel for the parties.

It would be apt to extract the relevant portion of the impugned order, whereby the name of the petitioner has been deleted from the seniority list:-

“Similarly, Shri Munshi Ram Jakhar was promoted as SDO with immediate effect vide office order dated 18.11.1997 on the basis of wrong undertaking given by the department before the Hon'ble High Court in CWP No.1920 of 1997, decided on 19.8.1997. On the basis of this promotion, his seniority has also been wrongly fixed. His seniority among SDEs comes to a lower stage. Accordingly, the matter of seniority of Shri Munshi Ram Jakhar will be decided after obtaining the legal opinion from the Legal Remembrancer, Haryana.”

The order dated 24.1.2011 passed by this Court is self-explanatory and need not be rebutted. In case the respondents were

aggrieved by some wrong undertaking given by the department in the Court, they had a legal remedy in law, but cannot be permitted to disturb the seniority of the petitioner in the manner as it has been done.

It is a matter of record that the petitioner had filed detailed objections to the tentative seniority list. However, the same have not been taken into consideration while passing the impugned order. Accordingly, the impugned order vis-a-vis the petitioner is hereby set-aside. The authorities are directed to pass a fresh order while taking into consideration the objections filed by the petitioner to the circulation of the tentative seniority list.

The petitioner is permitted to file his fresh objections to the tentative seniority list and in case the objections are filed, the same shall also be decided by the respondent authorities in accordance with law.

The writ petition is disposed of.

It is made clear that the findings of mine would not have a bearing on the various writ petitions, stated to have been pending, wherein also the same order has been challenged.

May 06, 2015
ramesh

(AMIT RAWAL)
JUDGE