IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 1133 of 2012 (O&M)
Date of Decision: 23.02.2015.

Ashok Kumar --Petitioner

Versus

State of Haryana & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Suresh Kumar Yadav, Advocate for the petitioner.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

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TEJINDER SINGH DHINDSA.J

The petitioner, who is currently serving on the post of Personal Assistant under the Excise & Taxation Department, Haryana has filed the instant writ petition assailing the order dated 8.8.2011 at Annexure P-10, whereby his claim regarding de-confirmation from the post of Personal Assistant and promotion to the post of Assistant Excise & Taxation Officer, has been declined.

It has gone uncontroverted that under the Haryana Excise & Taxation Department (Group-B) Service Rules, 1988 a quota of 6.2/3% for promotion to the post of Assistant Excise & Taxation Officer from amongst the Assistants and Senior Scale Stenographers had been carved out. Such quota was under Rule 9 of the statutory rules. A Division Bench of this Court vide judgement dated 21.2.2013 in **CWP No.242 of 1999 L.R. Bahmani and others Vs. State of Haryana & others** and another connected petition, has examined the vires of such particular statutory provision and has held the quota of 6.2/3% promotions from amongst Assistants and Senior Scale Stenographers to the post of Assistant Excise &

Taxation Officer to be bad in law and accordingly struck down the offending rule.

In such a situation, no infirmity is found in the impugned order dated 8.8.2011 at Annexure P-10 since the very quota under the rules earmarked for Senior Scale Stenographers for the post of Assistant Excise & Taxation Officer, has been held to be bad in law.

At this stage, learned counsel appearing for the petitioner would submit that after the filing of the instant writ petition and by way of issuance of a notification dated 21.12.2011 an amendment in the rules has been carried out in exercise of powers under Article 309 of the Constitution of India. As per such amendment called the Haryana Excise & Taxation Department (Group B) Service (Amendment) Rules, 2011 in Rule 9 of the statutory rules a 6.2/3% quota for promotion to the post of Assistant Excise & Taxation Officer from amongst the Superintendents, has been carved out. Counsel further submits that in so far as the post of Personal Assistant is concerned and on which the petitioner is presently serving, there is no statutory rule governing the service conditions of such post. As such, it is argued that the petitioner has a right to claim de-confirmation from the post of Personal Assistant so as to be reverted to the substantive post of Senior Scale Stenographer and thereafter to claim promotion to the post of Superintendent.

While upholding the validity of the impugned order dated 8.8.2011 at Annexure P-10 and while dismissing the instant writ petition, it is observed that such order dated 8.8.2011 would not be an impediment for the petitioner to raise a claim seeking de-confirmation from the post of Personal Assistant and reversion to that of Senior Scale

Stenographer in order to facilitate his raising a claim for promotion to the post of Superintendent under the amended statutory rules. It is, however, clarified that in the eventuality of any such claim being raised the same would be considered strictly in accordance with law and nothing contained in this order would be construed as an expression of opinion on the merits of such claim, if, at all raised.

Writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 23, 2015.
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