

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 13873 of 2011

Date of Decision : September 10, 2015

Ram Phal Petitioner
Vs.
State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Ram Niwas Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks promotion to the post of Clerk from the date his juniors have been promoted.

The uncontroverted facts, which have emerged from perusal of the record and the arguments raised at the bar are that on 28.09.1993, the petitioner was appointed as a Class-IV employee. Vide order dated 28.11.1997, he was adjusted against a vacant post of Lab Attendant. In the

order of such adjustment, it was specifically stipulated that the petitioner, as a Lab Attendant, would be considered on deputation and that his lien would continue to be on the Class-IV post previously held by him. In the year 2006, on the declaration of the posts of Lab Attendants to be surplus, through order dated 20.12.2006, the petitioner was adjusted as a Clerk on temporary basis. It is this post that the petitioner holds till date, on temporary basis.

As per the Haryana Education Department, Sub-Offices, Ministerial (Group-C) Service Rules, 1983 (hereinafter referred to as 1983 Rules), 20% of the posts of Clerks are to be filled up from Group-C employees, whose scale of pay is less than of Clerks and Group-D employees, who are matriculate, on the basis of seniority-cum-fitness. These rules were amended in the year 1998, but even after the amendment, the provision with regard to promotion to the posts of Clerks, as referred to above, remained the same.

As observed earlier, the petitioner was appointed as a Class-IV/ Group-D employee on 28.09.1993 and till date, the substantive post that he holds is that of a Group-D employee. It is true that on 28.11.1997, he was adjusted as a Lab Attendant, and then as a Clerk, but the fact remains that the substantive post that he held and continues to hold till date, is that of a Class-IV/Group-D employee. This is for the reason that when he was adjusted as a Lab Attendant, it was specifically mentioned in the order of

such adjustment that his lien would continue to be on the post that he held earlier i.e. Class-IV/Group-D post. Later, when posts of Lab Attendants were rendered surplus, he was adjusted as a Clerk, but that too was an adjustment on temporary basis. Thus, till date, the petitioner substantively holds a Class-IV/Group-D post.

The case of the petitioner for promotion has been denied by the respondents on the ground that since the year 1997, both as a Lab Attendant as also as a Clerk, the petitioner was being granted pay in the scale of a Clerk, and therefore, while relying on Rule 9 of 1983 Rules (amended in the year 1998), he was not eligible to be considered for promotion as a Clerk. Rule 9 of 1983 Rules is reproduced below for ready reference :-

“9. Method of recruitment. - (1) Appointment to the post in the Service shall be made :-

(i) In the case of Clerk -

(i) twenty percent by promotion from amongst Group-C employees whose scale of pay is less than that of Clerk and Group-D employees who are matriculate on the basis of seniority-cum-fitness; or by transfer or deputation of an official already in the service of any State Government or the Government of India : and

(ii) eighty percent by direct recruitment.”

A perusal of the above reproduced Rule shows that the bar against considering candidates for promotion to the post of Clerk, is qua Group-C employees, who are in the pay scale of a Clerk. As observed above, the petitioner always was and continues to substantively hold a Group-D post. Therefore, that bar would not apply to him and he would be entitled to be considered for promotion to the post of Clerk as a Group-D employee.

In view of the above, the respondents are directed to consider the case of the petitioner for promotion as a Clerk under the 1983 Rules, as amended in the year 1998, from the date his juniors have been promoted, with all consequential benefits, except arrears with regard to pay for the reason that though the petitioner substantively held a Class-IV/Group-D post, he was in receipt of pay scales, which were payable to a Clerk.

(DEEPAK SIBAL)
JUDGE

September 10, 2015
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