

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

CWP No.14698 of 2012

Date of Decision:8.10.2015

Joginder Singh (Driver)

..... Petitioner

Versus

The Director, S.C. and B.C., Department of Welfare Punjab and another

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:Mr.Pardeep Bajaj, Advocate for the petitioner

Mr.Nikhil K. Chopra, DAG, Punjab

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

RAJIV NARAIN RAINA, J. (Oral)

The petitioner is a Driver serving in office of the Scheduled Castes and Backward Classes, Department of Welfare Punjab, Chandigarh. In 2007, he made a request to the department that he may be adjusted as a Clerk from the Post of Driver. He cited instances of 2 or 3 Drivers working in another Wing of the Department who had been allowed to change their cadre as Clerks as per Rule 3.17 of the Punjab Civil Services Rules, Part-I, 1970. Those orders were passed in the Department of Social and Women Welfare which is a different Department. The petitioner was a matriculate and obtained +2 Certificate while in service. The Punjab Civil Services (General and Common Conditions

of Service) Rules, 1994 were amended in 2009 whereby the essential qualifications for the appointment of Clerk under Rule 15 were amended to read "Graduation" degree. The petitioner is not a Graduate. His request had been declined vide order dated 13th April, 2011 (P-1) citing amended qualification for the post of Clerk which has been increased to BA+120 hours Computer Course or equivalent qualification. The petitioner has been declared ineligible for change of cadre.

He has approached this Court claiming writ of certiorari to quash the impugned order (P-1) and for issuance of a mandamus directing the State to allow the petitioner to change Cadre by appointing him on the post of Clerk from that of driver. This request, in the opinion of this Court, deserves to be rejected for the reason that prior to amendment of rules, the petitioner had not acquired any accrued or vested right to claim change of cadre *de hors* the rules. After the amendment, the petitioner's claim is lost forever unless he earns the prescribed qualification; a Graduate degree while in service after obtaining permission from the department. This is in case he has the inclination to do his BA and takes out time if he has sufficient left before he retires. The claim based on inter-department discrimination citing instances of 2 or 3 drivers who may have been allowed to change cadre will not found actionable claim based on precepts of Article 14 of the Constitution of India as it is not known as to under what circumstances those orders were passed and whether they were legal and valid. In either case, the petitioner would have no claim for compelling a change of cadre and change his class and category of post. If those orders are illegal, then the petitioner cannot claim parity or expect from this Court an order perpetuating an illegality. In case they are legal, then there can be no inter-department discrimination and the question cannot be answered without a foundation laid down in the petition making out

solid grounds for interference. I find no reason to interfere with the impugned order in this petition and would commend the dismissal of the same as one without any substance.

This petition is accordingly dismissed.

8.10.2015

MFK

(RAJIV NARAIN RAINA)
JUDGE