

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

**CWP No. 4022 of 2013 (O&M)
Date of decision: 13.1.2015**

Chander Bhan

...Petitioner

Versus

Registrar General, Punjab and Haryana High Court and another

...Respondents

CORAM:HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.P.Sharma, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate
for the respondents.

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 Article 226/227 of the Constitution of India, seeking a writ in the nature of Mandamus.

Learned counsel for the petitioner, at the very outset, fairly states that the petitioner will be satisfied in case his claim for appointment is treated on priority basis against the new posts, as per the circular No. 1243/E-II/VII.A.23 dated 1.6.1982 issued by this Court, granting him relaxation in age.

Faced with the above, learned counsel for the respondents did not deny the correctness of the statement made by learned counsel for the petitioner and rightly so, because the petitioner is

prima facie entitled for the treatment on priority basis in view of the abovesaid circular dated 1.6.1982.

The relevant part of the abovesaid circular dated 1.6.1982, reads as under:-

“I am, therefore, to request that employees rendered surplus as a result of withdrawal of a court from one Sessions Division may be absorbed on priority basis against the new posts which are to be created in another Sessions Division consequent on the shifting/creation of any court there.”

A bare reading of the abovesaid circular dated 1.6.1982 would show that priority which was to be given to the surplus employees for their absorption was not restricted to Class IV employees only because it relates to the staff rendered surplus.

The abovesaid view taken by this Court also finds support from the Division Bench judgment of this Court in **Ajmer Singh Vs. Senior Sub Judge, Ambala, 1996 (3) SCT 549**. Relevant observations made in para 6 of the judgment, read as under:-

“There is no doubt that the petitioner was appointed as Class-IV servant on purely temporary basis, but it is more than clear from the order (Annexure P-2) that while terminating his service on the ground of withdrawal of two Courts from Ambala, the Senior Sub Judge had assured the petitioner that in case a new court is created then the petitioner shall have a right to be appointed in service on preferential basis. If this assurance on the Senior Sub Judge is read in the light of letter No. 12431-E-II/VII-A, 23 dated 1.6.1982 written by the Registrar, Punjab and Haryana High Court to all

the District and Sessions Judge in the State of Haryana, it becomes clear that the High Court had directed that the employees rendered surplus as a result of withdrawal of Court from one Sessions Division may be absorbed on priority basis against the new post which are to be created in another Sessions Division consequent upon the shifting/creation of any Court there. District and Sessions Judges were also directed to send list of the employees alongwith their willingness to be transferred to any other session Division. The import of the circular of the High Court is that the surplus employees who are removed from service on account of abolition of posts should be given preference at the time of fresh appointments. This is specifically reflected in the order Annexure P-2. Therefore, the respondent No.1 was duty bound to consider the case of the petitioner before appointing respondent No.2 and 3 as Class-IV servant. The principle which is incorporated in Section 25-H of the Industrial Disputes Act, 1947, requiring an employer to offer to the post for re-employment of a retrenched employee may not be applicable in strict sense to services in the Court but the principle underlying that provision has been incorporated in the Circular (Annexure P-3) and, therefore, it was the duty of the respondent No.1 to have given preference to the petitioner at the time of appointment of new hands. In our opinion, the respondent No.1 had acted arbitrarily in ignoring the claim of the petitioner for preferential consideration for appointment against the newly created posts or the post of Class-IV employees which may have become available otherwise and at the same time

appointing fresh hands. By not considering the case of the petitioner, the respondent No.1 has violated his fundamental right of equality enshrined in Articles 14 and 16 of the Constitution of India.”

In the peculiar facts and circumstances of the case, noticed hereinabove, this Court is of the considered view that even if the petitioner may not be entitled for absorption, in the true sense of word, he would be certainly entitled for treatment on priority basis against the new posts which are created in another Session Division, including granting him relaxation in age, at the time of consideration of his claim for appointment.

Consequently, the respondents are directed to consider the claim of the petitioner in terms of the abovesaid circular dated 1.6.1982 and also the observations made hereinabove, including granting him relaxation in age, as and when any new post is sought to be filled up, by passing an appropriate order, strictly in accordance with law.

With the abovesaid observations made and directions issued, present writ petition stands disposed of.

13.1.2015
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE