

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 3192 of 2014 (O&M)

Date of decision : December 11, 2015

Om Parkash

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. P.K. Goklaney, Advocate
for the petitioner.

Mr. Amit Chaudhary, Addl. AG, Punjab

Mr. G.S. Bal, Senior Advocate with
Mr. A.D.S. Bal, Advocate
for respondent No. 2.

LISA GILL, J.

Prayer in this writ petition is for setting aside order dated 11.12.2013 (Annexure P-2) vide which Secretary, Punjab School Education Board has rejected petitioner's claim for arrears of salary.

Undisputed facts are that two posts of Assistant Secretaries against 25% quota of direct recruitment were advertised in the year 1994. Petitioner working with the respondent-Board applied for this post alongwith one Varinder Kumar, who was working as Personal Assistant to the Chairman of the respondent-Board.

Varinder Kumar was declared ineligible not having the requisite prescribed qualifications while petitioner was found eligible. Posts were re-advertised in the year 1996. Varinder Kumar, applied again but found ineligible yet again.

Interview to be held on 26.11.1996 was postponed without assigning any reason. Service regulations were amended on 05.05.1999 and qualifications prescribed for the post of Secretary were also amended providing that 10% out of 25% quota meant for direct recruitment be given to persons who are already working with the Board. It is against 10% quota out of 25% against which Varinder Kumar was selected as Assistant Secretary on 01.10.1999. No recruitment was made qua remaining 15% in respect to which process was started in 1994 and 1996.

CWP No. 9619 of 1999 titled Santosh Kumar and others versus Punjab State Education Board and others challenging Varinder Kumar's selection was ultimately dismissed on 22.05.2001 (Annexure P-2). This Court noted the stand of respondent-Board that Varinder Kumar would not rank senior to the persons, who would be appointed against two posts out of direct quota of 15% against vacant seats for which process had earlier started in the year 1994 and 1996 (in which petitioner was found eligible). Respondent-Board specifically averred that posts qua rest of 15% quota could not be filled due to a ban imposed by the state of Punjab. Said ban was ultimately lifted in the year 2001.

Shorn of unnecessary detail, it is to be noted that petitioner filed writ petition CWP No. 3327 of 2004 and COCP No.

563 of 2002 and was ultimately selected for the post of Assistant Secretary under 15% quota of direct recruitment in continuation of the process started in years 1994 and 1996. Appointment letter dated 15.04.2008 was issued. Petitioner submitted representation for fixing his seniority in the cadre of Assistant Secretary in the light of judgment passed by this Court in CWP No. 9619 of 1999. On consideration of the matter by the Committee constituted by respondents, petitioner was declared senior to Varinder Kumar as Assistant Secretary vide order dated 12.01.2009 w.e.f. 15.04.2008.

Varinder Kumar was working on the post of Joint Secretary while petitioner continued to work on the post of Assistant Secretary. Petitioner again approached this Court by preferring COCP No. 149 of 2009 for non-compliance of order dated 22.05.2001. Vide order dated 11.08.2010 petitioner was afforded notional promotion as Deputy Secretary w.e.f. 16.04.2008 in view of consistent undertakings given by the Board that in the event of selection of the petitioner as Assistant Secretary, he shall be treated senior to Varinder Kumar. In view of above, contempt petition was rendered infructuous on 18.01.2011 (Annexure P-9).

Subsequently vide order dated 01.03.2011 petitioner was reverted from the post of Joint Secretary to that of Assistant Secretary as approval of seniority as well as appointment of the petitioner to the post of Joint Secretary was not afforded. Yet again an application was preferred by the petitioner in COCP No. 149 of 2009 for restoration of the petition.

Vide order dated 15.03.2011 (Annexure P-11) petitioner

was again promoted as Joint Secretary on temporary basis in anticipation of approval of the Board. Contempt petition was revived and vide order dated 01.07.2011 provisional promotion afforded to the petitioner on 15.03.2011 was regularised but seniority of the petitioner over Varinder Kumar was not declared.

Thereafter, vide order dated 04.08.2011, petitioner was declared senior to Varinder Kumar as Assistant Secretary w.e.f. 01.10.1999 to 24.02.2004, as Deputy Secretary w.e.f. 25.02.2004 to 26.02.2007 and as Joint Secretary from 27.02.2007 to 14.03.2011. Salary of the petitioner was fixed in equivalence to Varinder Kumar (Annexure P-16) but arrears were not released on the ground that it was notional promotion afforded to him. Rule was discharged in COCP No. 149 of 2009 with liberty to the petitioner to submit a representation to the authorities for grant of arrears of pay which should be considered sympathetically. Despite representations matter was not decided and it is only after filing of yet another contempt petition i.e. COCP No. 149 of 2013, impugned order dated 11.12.2013 (Annexure P-22) has been passed.

Petitioner's specific case is that he has been deprived of his right to arrears of salary for no fault of his. He was not granted seniority over and above his junior Varinder Kumar who was promoted to higher post on account of amendment in the rules in the interregnum. It is submitted that principal of 'No Work No Pay' is not applicable in the present case, once claim of seniority of the petitioner is accepted by the respondents.

Learned senior counsel for the Board on the contrary

argues that petitioner has admittedly not worked on the promotional post. It is due to ban imposed by the Government that appointment to the post of Assistant Secretary by way of direct recruitment could not be made. Respondent-Board cannot be penalised or made to suffer on account of action of the Government. He relies on judgment of Hon'ble Supreme Court in **State of Haryana and others versus O.P. Gupta 1996 (2) RSJ 194** and **Union of India versus B.N. Jha (2007) 11 Supreme Court Cases 632** and prays for dismissal of this writ petition.

Having heard learned counsel for the parties, it is apparent that stand of respondent-Board throughout has been that it is due to a ban imposed by State of Punjab that necessary action could not be taken for filling up posts of Assistant Secretaries. In CWP No. 9619 of 1999, respondent-Board specifically undertook that selection of Varinder Kumar shall be deemed to have been made alongwith selection qua two posts against 15% quota of direct recruitment of Assistant Secretaries for the purpose of seniority. It is not disputed that petitioner was found eligible in the year 1994 and 1996. He was already working with the department at that time. It is subsequently that by an amendment in the rules, 10% quota out of 25% quota for direct recruitment, was afforded to employees working in the respondent-Board. Eligibility conditions/qualifications for said 10% quota were amended and Varinder Kumar became eligible under the amended rules.

Petitioner has been afforded seniority over and above Varinder Kumar at every stage by the respondent-Board though after

protracted and contentious litigation. While not denying petitioner's right over and above Varinder Kumar which was afforded grudgingly, petitioner is denied arrears of pay on the principle of 'No Work No Pay'. It is been held by Hon'ble Supreme Court in Union of India versus K.V. Jankiraman AIR 1991 Supreme Court 2120 that normal principle of 'No Work No Pay' is not applicable where an employee although willing to work is kept away from work by authorities for no fault of his. Division Bench of this Court in its decision dated 02.02.2006 in CWP No. 12037 of 2005 has endorsed such a view. Employee/petitioner therein was held entitled to all consequential benefits from the deemed date of his promotion.

In view of the specific stand taken by the respondents right from the very outset, it is not open to the respondents to take a stand now that persons to be appointed against two posts out of direct quota of 15% qua process started in the year 1994 and 1996 would rank senior to respondent-Varinder Kumar, but arrears of pay would not accrue to them. Undertaking in respect to seniority would otherwise be illusory and reflective of an attempt of respondents to carve out an escape route at that particular point of time to escape contempt.

Consequently, this writ petition is allowed and petitioner is held entitled to arrears of salary and consequential benefits for the relevant period.

December 11, 2015
rts

(Lisa Gill)
Judge