

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

**CWP No.10838 of 1993
Date of decision: 30.3.2016**

Gopi Chand

... Petitioner

Versus

State of Haryana & ors.

... Respondents

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

Present: Mr. SK Sud, Advocate,
for the petitioner.

Mr. Naveen Kaushik, Addl. A.G., Haryana.

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

RAJIV NARAIN RAINA, J.(Oral)

1. When notice of motion was issued on September 7, 1993, learned counsel for the petitioner had appeared and the matter was ordered to come up with case CWP No.3161 of 1993, titled as 'Ram Chander v. State of Haryana & ors.'. Downloaded copy of the order passed in the said petition has been printed by the Bench Secretary from the Official website of this Court. The aforesaid petition has been dismissed on many counts; firstly by applying the ruling in **State of Madhya Pradesh v. Bhailal Bhai**, AIR 1964 SC 1006 the Supreme Court holding that it would be proper for the writ court to decline interference in a case where triable issue of limitation arises. This Court found it patent in Ram Chander to refuse challenge to the impugned order which was clearly barred by limitation and therefore, the petition could

not have been entertained. Learned Single Judge of this Court went on to opine on merits on the twofold challenge made by Ram Chander as wholly devoid of substance. The Court held as follows:-

As already noticed the number of posts falling to the share of promotees are already occupied by the persons from that category. As for the challenge on the ground that various juniors are today continuing to work as Zilledars, it only deserves to be noticed that it is so because they had approached this Court at the first available opportunity. They having got the relief from this Court, the petitioner cannot be permitted to argue that the action of the Department suffers from the vice of discrimination. Still further, none of the so-called juniors has been impleaded as a party. No order to the prejudice of any person can be passed in his absence.

Mr. Sood submits that even today persons junior to the petitioner continue to hold the higher posts of Zilledars. According to the learned counsel, the petitioner is far senior to them and the respondents should consider his claim for promotion. Since persons who are alleged to be juniors have not been impleaded as parties, it is not possible for this Court to give any specific directions. However, the petitioner may submit a representation and if such a representation is submitted the Department would consider and decide it in accordance with law within two months by passing a speaking order.

Looked at from any angle, the petition seems to be lacking in merit. It is consequently

dismissed. In the circumstances of the case, there will be no order as to costs.

2. Still further, learned counsel appearing for the State submits that while the petitioner was on deputation with HSMITC, and his services lent by the parent department, no person junior to him in the parent department i.e. the P.W.D. Irrigation Department, Haryana had been promoted as Zilledar which was the position obtaining at the time of filing of the petition in 1993. It may be mentioned that the petitioner served on deputation for a period of three years and was given in the borrowing Corporation department the additional charge of Zilledar from where his rights cannot flow in the parent department since he was on deputation, the arrangement being local with no legal effect in the parent department. The petitioner was repatriated to parent department and retired from service in the year 2000 on superannuation as informed by learned State counsel. There is thus no life in this petition as none of the rights of the petitioner has been affected on the date of presentation of the petition and much less is left for determination. In any case, it is now too late in the day to tinker with the issue of promotion and consequential seniority and resultantly for retrospective promotion, which if allowed may upset the entire cadre even if there was some merit in this petition even then interference would not be called for. The petitioner was not a Zilledar duly promoted in the parent department and cannot claim that post to the detriment of others in the parent department and steal a march over them. Moreover, persons likely to be affected are not made party respondents.

3. It is not possible to accept the petition and the same is liable

to be dismissed.

4. However, before parting with the order the submission of Mr. Sood deserves to be noticed which is that Zilledars deputed by the foreign employer should count deputation service towards his experience in the parent department or person junior to him in P.W.D. Irrigation Department, Haryana, is an argument which deserves to be noticed and rejected on the ground that in this petition the only challenge is to the reversion order from Zilledar to Assistant Revenue Clerk, the substantive post held by the petitioner. There is no other prayer in the petition and therefore, the issue is not triable and all that this order would mean is that the impugned reversion order is not reversion since the petitioner was not substantively promoted as a Zilledar in the parent department for rights to vest in him to make an actionable claim. In such a situation reversion is not a punishment. It is a natural consequence of repatriation to the parent department as he would return to his original position and when person junior to the petitioner as Assistant Revenue Clerk had not been promoted as a Zilledar. It would be profitable to notice the preliminary objection raised by the State in the written statement, which amply answers the dispute. The objection reads as follows:-

“That the petitioner was sent on deputation to HSMITC on their demand and as per their requirement of work as Assistant Revenue Clerk. The foreign employer posted him against the post of Zilledar upto 31.10.83. But subsequently, the petitioner was reverted and repatriated on the same post by the foreign employer on Administrative grounds vide their office order No.30013-15/Admn/III/PF-5614 dated 13.10.83.

Copy of order dated 13.10.83 enclosed as Annexure R-1. Subsequently, the petitioner becomes co-petitioner of CWP No.162/86 along with others who were reverted in the year 1986 and he kept mum for a considerable period of about 2½ years from 11/83 to 2/86. Above said writ was decided on 11.4.91 in favour of the petitioners and the directions of the Hon'ble High Court given therein have since been complied with. Thereafter, the petitioner alone filed a contempt petition No.127/93 in this Hon'ble High Court which was dismissed on the sole ground/argument besides others that the petitioner's name was not there in the order which was challenged in CWP No.162/86.

From the position explained above it is abundantly clear that the petitioner's claim has been rejected by this Hon'ble High Court in the above said COCP and thus he has not right to approach this Hon'ble High Court by the present writ petition. Thus this writ petition becomes infructuous and is liable to be dismissed on this ground alone.”

5. The petition is thus dismissed so far as challenge to reversion is concerned. The petition also suffers from delay and laches. The experience part of working as a Zilledar in HSMITC would however remain open to be dealt with by the parent department in accordance with rules, if any.

(RAJIV NARAIN RAINA)
JUDGE

30.3.2016