

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

Sr. No.113

CWP No.10487 of 2016

Date of decision: 25.05.2016

Partap Singh

....Petitioner

versus

The Excise & Taxation Commissioner, Haryana, Panchkula and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Eklavya Gupta, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The petitioner, on attaining the age of superannuation on 31.07.2015, retired as a Peon from the Department of Excise and Taxation, Government of Haryana. He has filed the present petition to challenge the order dated 26.02.2016 through which the respondents have rejected his request to count his service from 26.06.1990 to 02.04.1994 for the purpose of pension etc.

After hearing learned counsel for the petitioner and going through the record of the case, the relevant facts which have emerged are that on 26.06.1990, the petitioner was appointed as a Palledar in the Department of Excise and Taxation, Government of Haryana, which post was abolished and resultantly, the services of the petitioner were terminated. The decision of the respondents to abolish the post being manned by the petitioner was challenged by him before this Court

through CWP No.2720 of 1995 titled as 'Pratap Singh versus The State of Haryana and others', which was disposed of on 10.08.1995 in terms of the orders passed in an identical case being CWP No.2718 of 1995 titled as Dharambir versus State of Haryana and others, in which it was held as under:-

“There is no dispute that the petitioner may not have any legal enforceable right for an alternate service on the post being abolished. We are of the considered view that a welfare democratic state cannot absolve itself of its duty to provide employment not only to the persons who have been rendered surplus on abolition of posts but to un-employed persons too. It is not to generate un-employment. It is one of the pious duties of the State to generate employment in order to win the faith of the people in democracy. Even otherwise in the industrial law a retrenched employee has a prior right to be reconsidered for re-employment as and when the vacancy falls vacant which in our considered view is quite equitable and it meets the present extending thinking of human rights in the democratic country. We have no doubt that the State would come up to the expectations of its citizens in order to discharge its constitutional duty. As and when a vacancy arises subject to the eligibility conditions of the petitioner's they shall have a preferential claim for post which shall be offered, if eligible for the same.

With the above observations, the writ petition disposed of.”

A perusal of the afore-quoted order shows that a Division Bench of this Court did not accede to the petitioner's prayer with regard to the challenge made by him to the abolition of the post being manned by him. It was further observed that the petitioner did not have any legally enforceable right to seek alternate employment. However, it was directed

that as and when a vacancy arose, subject to eligibility, the petitioner would be given a preferential right of appointment against such vacancy. As per the afore-quoted directions, on the availability of a vacancy, through order dated 25.04.1997, the petitioner was offered appointment as a Taxation Peon which the petitioner accepted and joined. A perusal of the order dated 25.04.1997 which has not been appended with the present petition but has been produced in Court and is ordered to be taken on record as Mark 'A' shows that such appointment of the petitioner was to be effective from the date of his joining. This term as contained in the appointment order dated 25.04.1997 was accepted by the petitioner as he never raised a challenge to the same neither at the time of his joining of service in the year 1997 nor for nearly 20 years thereafter, as it was only in the year 2015, after the petitioner had retired that he made an application to the respondents to count the period of his service between the years 1990 and 1994 for the purpose of grant of pension.

I have heard learned counsel for the petitioner and with his able assistance have gone through the record of the case.

It is true that the petitioner served the respondents as a Palledar between June 1990 to April 1994 but on the abolition of the post being manned by him his services were terminated. As per the afore-quoted order of this Court the challenge by the petitioners to the abolition of the post and the consequent termination of his services was negated by this Court. While disposing of the afore-referred petition preferred by the petitioner, this Court had directed that on the availability of a vacancy, the petitioner be given preference and as per these directions on the availability of a vacancy in the year 1997 the petitioner was offered appointment which as per

the appointment order was to take effect from the date he joined service in pursuance thereto. Such condition was not only accepted by the petitioner at that time as he joined without any protest but also for about 20 years thereafter. After about two decades, the petitioner cannot be allowed to take a different stand especially when there is a break in service of over three and a half years between June 1990 and April 1994 caused on account of abolition of the post being manned by the petitioner which was upheld by this Court on a challenge made by the petitioner.

Dismissed.

(DEEPAK SIBAL)
JUDGE

May 25, 2016
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