

C.W.P No. 17340 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 17340 of 2014

DATE OF DECISION: 22.09.2016

Iqbal Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Harinder Sharma, Advocate
for the petitioner.

Mr. TN Sarup, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of order dated 21.3.2014 (Annexure P-9), vide which, claim of the petitioner for consideration of his promotion w.e.f. 27.5.2010 and to give him place of posting in the category of physically handicapped has been rejected and he has been debarred from promotion for two years.

Briefly the facts of the case, as made out in the petition, are that the petitioner is a physically handicapped person as he is suffering 60% permanent disability due to shortening of his right leg. He was appointed as Hindi Teacher as a General Category candidate in the reserved category of Physically Handicapped. At the time of appointment, the petitioner possessed qualification of JBT and Prabhakar. During service, he acquired higher qualification of B.A., M.A. in Hindi and B.Ed and became eligible

for the post of Hindi Master. He was promoted to the post of Hindi Master on 27.5.2010 and was given posting at Government High School, Dallewala. He was not allowed to join at Government High School, Dallewala as no vacant post of Hindi Master was there. The petitioner made representation to respondent No.2 through respondent No.3 for his adjustment at any local station because of his physical disability but inspite of sending reminders as well, no action was taken thereupon. Thereafter, the petitioner served a legal notice upon the respondents through his counsel but still nothing was done. The petitioner has also brought to the notice of the respondent-authorities, instructions dated 5.9.2002 (Annexure P-6), issued by the Punjab Government, whereby, it was directed to be ensured that the handicapped persons be given posting at such places where it is convenient to them but still no action was taken. Thereafter the petitioner filed C.W.P. No. 11321 of 2013 before this Court, which was disposed of with a direction to respondent No.2 to consider and decide the legal notice dated 9.3.2013 (Annexure P-5) within a period of one month from the date of receipt of copy of the order. The order was conveyed to the respondent-authorities but still no action was taken by the respondents. When the order passed by this Court in writ petition was not complied with, the petitioner filed COCP No. 94 of 2014. During pendency of the contempt proceedings, respondent No.2 passed impugned order dated 21.3.2014 (Annexure P-9), whereby, claim of the petitioner was rejected and he was debarred from promotion for next two years from the date of passing of earlier order dated 27.5.2010, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the action of respondent No.2 in rejecting the claim of the petitioner and imposing

punishment to debar him from promotion for next two years is not only illegal but unjust, arbitrary, discriminatory as well as violative of Articles 14 and 16 of the Constitution of India. Learned counsel further submits that the petitioner never denied or refused to get promotion but he was not allowed to join at the place of posting because of non-availability of post of Hindi Master. The petitioner made various representations but still no action was taken. Learned counsel also contends that order of debarring the petitioner from promotion for two years is punitive in nature as the same has been passed as a measure of punishment and that too without following the principles of natural justice. Learned counsel also submits that the petitioner is entitled to all consequential benefits and to support his contentions, he has also relied upon the judgment of Hon'ble the Apex Court in the case of **Harbans Singh Vs. State of Punjab and others** 1995 (4) S.C.T. 848 as well as judgments of this Court in **Vidya Parkash Harnal Vs. State of Haryana** 1995 (3) S.C.T. 785, **Krishan Kumar Vs. Haryana State Fed. Of Consumers' Coop. Wholesale Stores Ltd.** 1997 (1) S.C.T. 686, **Sports Authority of India and another Vs. Central Administrative Tribunal and another** (C.W.P. No. 14998 of 2009 decided on 6.11.2009) and **State of Punjab and others Vs. Gian Singh** (LPA No. 121 of 2011 decided on 11.7.2011), in support of his contentions.

In response to notice of motion, reply on behalf of respondent-State was filed and the same is on record.

Learned counsel for respondent-State submits that the petitioner himself did not join his duty at the allotted station within the stipulated period, whereas, he should have joined duty in compliance of order passed by respondent-Department. Section 18 (ii) of the General and

Common Conditions of Service) Rules, 1994 provides that in case of refusal to accept the order of promotion by any member of service, he can be debarred by the appointing authority from consideration for promotion as has happened in the present case.

Heard the arguments advanced by learned counsel for the parties and have also gone through the other documents available on the file.

Vide order dated 11.7.2016, learned State counsel was directed to file an additional affidavit explaining therein as to whether at that time, any post was lying vacant against which, the petitioner was directed to report for duty.

In compliance of aforesaid order, learned counsel for respondent-State has filed an additional affidavit of Assistant Director (S.A-2) office of Director Public Instruction (S.E.), Punjab in Court today and the same is taken on record. In the additional affidavit, it has been mentioned that one post of Hindi Master was lying vacant during the period from 1.6.2009 to 15.7.2015 at Government High School, Romana Ajit Singh (Faridkot) due to retirement. It has also been mentioned in the affidavit that the petitioner never reported anything about the non-availability of the post at Village Dallewala, which was allotted to him, to District Education Officer (S.E.), Faridkot and resultantly, he refused to accept the promotion.

On perusal of stand taken in the additional affidavit, it is apparent that the post was available but still the petitioner was not allotted the place of posting inspite of the fact that respondent-Department was well aware about the disability of the petitioner. It cannot be said that the petitioner refused to accept the promotion and the fact regarding non-

availability of the post at Government High School Dallewala was never brought to the notice of the respondent-authorities as not only various representations were made but a legal notice was also served upon the respondents. Thereafter the petitioner filed C.W.P. No. 11321 of 2013 before this Court, which was disposed of with a direction to respondent No.2 to consider and decide the legal notice dated 9.3.2013 (Annexure P-5) within a period of one month from the date of receipt of copy of the order. When the order passed by this Court in writ petition was not complied with, the petitioner filed COCP No. 94 of 2014. During pendency of the contempt proceedings, respondent No.2 passed impugned order dated 21.3.2014 (Annexure P-9), whereby, claim of the petitioner was rejected and he was debarred from promotion for next two years from the date of passing of earlier order dated 27.5.2010.

Admittedly, the order of promotion was passed in the year 2010 but the petitioner was not allowed to join duty inspite of the provisions laid down in The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 (hereinafter referred to as 'the Act, 1995'). The object of the Act, 1995 is to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provisions of medical care, education, training, employment and rehabilitation of the persons with disabilities and to create barrier free environment for them as well as to remove any discrimination against persons with disabilities in the sharing of development, benefits viz-a-viz non-disabled persons. It is also the object of the aforesaid Act to counteract any situation of the abuse and exploitation of persons with disabilities and to lay down strategies for comprehensive development of programmes and services and equalization

of opportunities for persons with disabilities and to make special provision for the integration of persons with disabilities into social mechanism. The provisions of Section 47 of the Act, 1995 prescribes for non-discrimination in Government employment and the same is reproduced as under:-

“47. Non-discrimination in Government employment:-

(1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, which is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

It has also been held in various judgments of this Court as well as Hon’ble the Apex Court that the provisions of said Act are mandatory in nature and the exemption is exceptional. In pursuance of provisions of Section 47 of Act, 1995, the Department of Social Security, Women and Child Development of the Government of Punjab has also issued

instructions dated 5.9.2002 for taking care of the difficulties of handicapped employees and for creating worry free atmosphere for them. The relevant instructions are reproduced as under:-

“(a) That it be ensured that the handicapped persons be given posting at such places where it is convenient to them to come. Their working atmosphere should be hustle free meaning thereby, there should be a barrier free atmosphere.

(b) That this be also ensured that all the employees should keep the feeling of cooperation and respect towards handicapped employees. Their physical disability be not made a matter of discussion of any kind. Strict action be taken against such employee who passes objectionable comments upon a handicapped employee.

(c) Head of the Departments should pay special attention towards the difficulties of the handicapped employees and should make personal efforts to solve them.”

The impugned order of rejection of claim of the petitioner and imposition of punishment of debarring him from promotion for the next two years is contrary to the provisions of the Act, 1995 and as such the same is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is not the case whereby the petitioner had ever denied or refused to get promotion and even nothing with regard to that has been mentioned by the respondents in the written statement or even in the affidavit. The case of the petitioner is that he could not join at the given place of posting because of non-availability of the post of Hindi Master. He even made a representation for making his adjustment at Faridkot in a local School but

the same was never considered. Even the respondent-authorities never bothered to respond to his representation or legal notice. Only on filing of writ petition and thereafter on initiation of contempt proceedings, the order of rejection was passed. The petitioner has suffered because of inaction on part of respondent No.2 as order of promotion of petitioner dated 27.5.2010 could not be implemented. It has specially been mentioned in the additional affidavit dated 22.9.2016 that the post of Hindi Master was not vacant at Government High School, Dallewala at the time of promotion of the petitioner as per information received from District Education Officer, Faridkot but one post of Hindi Master was lying vacant during period from 1.6.2009 to 15.7.2015 at Government High School Romana Ajit Singh (Faridkot). The petitioner could have easily been adjusted at Government High School, Romana Ajit Singh (Faridkot) but no efforts were made by the respondent-authorities to do the same.

In view of facts and law position as explained above, the present petition is allowed and impugned order dated 21.3.2014 (Annexure P-9) is hereby quashed.

However, the respondents are directed to pass necessary order for posting of the petitioner within a period of two weeks from the date of receipt of copy of the order. It is also directed that the petitioner shall be entitled for notional benefits with effect from the date of earlier order of promotion.

September 22, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes