

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 20976 of 2014

Date of decision : May 17, 2016

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Ram Niwas

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ram Pal Verma, Advocate for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner is seeking writ of certiorari for quashing the order dated 28.1.2011 (Annexure P-2) vide which his claim for promotion has been rejected.

The petitioner was appointed as Accounts Clerk and joined the services with the respondents on 17.6.1991. Thereafter, some persons junior to the petitioner were promoted to the post of Assistant. The petitioner filed a CWP No.20100 of 2010 titled as 'Ram Niwas Versus State of Haryana and others' along with other

co-employees. This writ petition was disposed of vide order dated 11.11.2010 (Annexure P-1) along with other writ petitions with a direction to the respondents to decide the legal notice served by the petitioners on the respondents within a period of three months from the date of receipt of copy of this order and pass an appropriate order in accordance with law and in terms of the law laid down by this Court. In compliance of the above said order, the legal notice dated 31.10.2013 (Annexure P-5) was rejected vide order dated 28.1.2011 (Annexure P-2). The petitioner was denied the benefit of promotion on account of the fact that he had not passed the typing test. As per the information received under the RTI Act (Annexure P-3), Sh. Dalbir Singh, Clerk was promoted on 16.7.2013 and Sh. Bhoop Singh, Clerk was promoted on 17.6.2011 after giving them exemption from passing the type test. The petitioner was at Sr. No.68 in the seniority list, whereas Dalbir Singh was at S. No. 102 and Bhoop Singh was at Sr. No.168 in the seniority list. Hence the present writ petition.

On notice, a written statement has been filed on behalf of the respondents, wherein it has been submitted that the petitioner retired as Clerk from service on attaining the age of superannuation on 31.7.2014. The case of the petitioner in the present writ petition for promotion from retrospective effect has been reconsidered. The petitioner had completed 5 years experience as Clerk on 1.10.1996 which is the essential experience as per Haryana Social Defence and Social Security Department Group 'C' Service 1998 for promotion to the post of Assistant/Accountant/Cashier. The petitioner was facing

a charge sheet dated 11.3.2004 under rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 for a major penalty for acts and omissions committed by him while discharging his duties as Clerk while working in the District office of District Social Welfare Officer Jhajjar for the period from 22.8.2002 to 20.04.2003. Since he was facing a charge sheet under Rule 7 for major penalty, he could not be considered for promotion to the post of Assistant.

Heard counsel for the parties.

The petitioner has placed on record, the enquiry report dated 1.4.2010 (Annexure P-4). As per this enquiry report, the petitioner was found innocent on the basis of a letter of District Social Welfare Officer, Rohtak dated 24.1.2003 which was written to the Police Station Incharge, Jhajjar. The petitioner joined on 22.8.2002 in the office of District Social Welfare Officer, Jhajjar. The petitioner was on duty of diary and dispatch. Moreover, the misappropriation of amount was before joining date of the employee. In view of this fact, the petitioner was found innocent in the investigation. The enquiry report (Annexure P-4) has not been denied by the respondents in their written statement. The petitioner after being found innocent in the enquiry has a right to be considered for promotion to the post of Assistant. Further it has been admitted by the respondents in the written statement that judgment in CWP No. 18333 of 2002 titled as 'Tilak Raj vs. State of Haryana' decided on 16.8.2005 has been implemented after the dismissal of the SLP by Hon'ble the Supreme Court of India. The similarly situated

employees have been extended the benefit of such judgment keeping in view the government Instructions on promotion, service record/service rules applicable.

The respondents has not disputed as regards the seniority of the petitioner. A perusal of letter dated 30.6.2014 (Annexure P-3) shows that both the juniors were promoted by granting them exemption from passing type test as per the Instructions of Chief Secretary, Haryana Government dated 26.5.1975 and as per the department letter dated 6.6.2011, the type test was exempted from 1.3.2008. The petitioner being senior to those employees has a right to be exempted from passing the type test as per the Department letter dated 6.6.2011.

In view of all that has been discussed above, the writ petition is allowed with a direction to the respondents to consider the case of the petitioner for promotion to the post of Assistant w.e.f the date his juniors were promoted and extend him the benefit of exemption from passing the type test as given to his juniors Dalbir Singh and Bhoop Singh vide department letter dated 6.6.2011. Respondents are directed to pass appropriate orders within a period of three months of getting a certified copy of this order and in case the petitioner is extended the benefit of promotion, the consequential benefits shall be given to him within a period of next one month.

May 17, 2016
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(**RITU BAHRI**)
JUDGE