

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22991 of 2014

Date of Decision: 15.11.2016

Silak Ram

... Petitioner

Versus

The State of Haryana and others

... Respondents

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

Present: Mr. Adarsh Jain, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.

1. The claim of the petitioner in the present petition is that from the post of Beldar he is entitled to the post of Water Pump Operator Grade-II. However, his case has been wrongly rejected on the ground that he does not possess the requisite qualification, which minimum qualification is in fact meant only for direct recruitment.

2. The few necessary facts which deserve notice in order to determine the dispute are that the petitioner joined as a Beldar in 1983 on daily basis/work charge in Group-D. He was regularized in April 1993 on the post of Beldar. His designation was changed as Pump Attendant in 1998. The petitioner was initially appointed in Bahadurgarh. His designation was changed while working in Sonapat and in 2013 he was posted to work in the Mewat Project of the Public Health Engineering Circle, Panipat. The State government in its reply cites instructions dated

May 15, 2008 whereby an employee who stands transferred out of circle

will not be given the benefit of past service in the new circle for the purpose of seniority. Hence the petitioner lost his seniority from the previous circle. The petitioner was regularized in 1993 so the question of promoting him w.e.f. March 16, 1990 as claimed by him does not arise. Initially the services of the petitioner were governed by service rules notified on October 19, 1981 which provided duties and qualifications besides regulating recruitment and promotions of work charge staff. Completion of seven years service was required to be re-designated as Water Pump Operator Grade-II (WPO). The old rules have been repealed and replaced by the Haryana Public Health Engineering Department, Circle Cadre Mechanical Establishment (Group-C) Service Rules, 2009 ("2009 Rules"). The State admits that the petitioner's designation was wrongly mentioned as WPO-II in the letters placed at Annex P-4 to P-7 and by the office order dated February 21, 2013 the mistake has been rectified and fresh orders have been passed on July 21, 2014. The petitioner has never been re-designated as WPO Grade-II and has not been performing duties attached to the higher post. It is denied that the petitioner is entitled to salary and emoluments admissible to Class-III post. The 2009 Rules provide in case of Water Pump Operator Grade-II the following:-

“(xlii) In case of Water Pump Operator Grade-II,-

- (a) 50% by promotion from Keyman /Oilman / Petrolman /Pump Attendant /Mali/Chowkidar / Beldar/Mali-cum-Chowkidar(Henceforth designated as Multipurpose Water Works Workers/Sewerman/Sewer Helper/Mechanical Helper in the Civil Divisions (Senior most amongst the above categories); and*
- (b) 50% by direct recruitment ; or*
- (c) by transfer or deputation of an official*

already in the Service of Government of India or any State Government.”

3. Fifty per cent of the vacancies in the post of WPO Grade-II are to be filled by a collection of employees mentioned in the rules serving on different posts. Accordingly, promotion is based on seniority in the designated categories. Prior to the 2009 Rules, the Haryana Public Works Department Public Health Branch, Circle Cadre Mechanical Establishment (Group-C) Service Rules, 1998 were in operation which provided for the post of Water Pump Operator Grade-II the following mode of recruitment:-

“(XLII) In case of Water Pump Operator Grade-II,-

- (i) 50% by promotion from Keyman, Oilman, Petrolman, Chowkidar, Beldar, Mali-cum-Chowkidar, Sewerman, Sewer Helper in the ratio of 10 : 10 : 10 : 5: 5: 5 : 3 : 2, respectively ; and*
- (ii) 50% by direct recruitment ; or*
- (iii) by transfer or deputation of an official already in the Service of Government of India or any State Government.”*

4. The petitioner has made the following material prayers in this petition:-

“(i) to issue a Writ of Certiorari for quashing order dated 9.9.2014 (Annexure P.12) issued by respondent No.3 illegally dismissing the claim of the petitioner for promotion from the post of Baildar to Water Pump Operator-II on which post he has been working since 16.3.1990.

(ii) to issue a Writ of Mandamus directing the respondents to regularize service of petitioner as Water Pump Operator-II w.e.f. 16.3.1990, and treat him as Class III post, and to pay him the pay scale and other emoluments attached to the said post, with all arrears and interest and to grant further benefit of promotion in accordance with rules framed and allow him benefit of promotion as well”

5. The petitioner claims that he has been denied benefit of promotion as the persons junior to him as Beldars who have been promoted as WPO-II. The petitioner is entitled to be re-designated as WPO-II from the expiry of seven years of working as Beldar or from the date his junior was promoted. He claims similar relief. The petitioner approached the department for the first time by representation dated February 28, 2014 which failed to evoke any response from the respondents. This led him to serve a legal notice on the department on April 09, 2014 and on failure of the authorities to pass an order on the legal notice he approached this Court through CWP No.11167 of 2014 which was disposed of by directing the 3rd respondent to decide the legal notice in time bound.

6. The claim has been rejected by the impugned order dated September 09, 2014. In the order difference between the Pump Attendant and Water Pump Operator-II has been explained. The qualification for the post of Pump Attendant was compulsory knowledge of Hindi and English, Physical fitness and qualifying field test. The post fell in Group-D in the pay scale of ₹ 750-940 under the rules of 1981. As qualification for the post of WPO-II for direct recruitment was ITI certificate in the trade of Motor / Tractor/ Diesel / Electric / Mech. and candidate should be literate and should have minimum experience of five years and field tests. The rules of 1998 prescribe qualification of Matric, ITI certificate in the trade of Motor/Tractor/Diesel/Mechanical Electric/Wireman with knowledge of Hindi up to Matric Standard, the 2009 rules notified on September 25, 2009 made prospective changes in prescribing qualifications for the post of WPO Grade-II and read as follows:-

- “i) *Matric with Hindi/Sanskrit;*
ii) *ITI certificate in the trade of Motor / Tractor / Diesel Mechanic / Electric / Wireman.*”

7. The petitioner is an under Matriculate. He was engaged and regularized in Group-D service and had never been appointed in Group-C post nor did he possess the prescribed qualification for WPO-II. It is argued by the learned counsel for the petitioner that the impugned order wrongly applies direct recruitment rule on a claim based on promotion. It is trite to say that promotion involves element of seniority among other things when the principle is seniority-cum-merit. In turn, seniority involves laches when dispute is not raised within reasonable time. Petitioner was asked by the interim order of this Court dated November 12, 2014 to produce the seniority list of Beldars to show that the petitioner's name falls in the zone of consideration for promotion to the post of Water Pump Operator Grade-II. The seniority list has not been placed on record despite opportunity of many dates passing by. Therefore, nothing can be said with certainty on the question of seniority. In any case, the petition suffers from delay and laches in raising issue of seniority at this distance of time. The same cannot be allowed to be re-opened without consequentially disturbing persons likely to be affected and are not parties to the petition. Accordingly, the petition also suffers from non-joinder of necessary parties. If the petitioner claims promotion, as he does in his prayer clause as reproduced above w.e.f. March 16, 1990 then his claim is stale and dead issue and does not deserve to be granted in view of the law in P.S. Sadasivaswamy vs. State of Tamil Nadu, AIR 1974 SC 227. If he brought a suit on the same cause of action it would be barred by time. For this, see State of Madhya Pradesh v. Bhailal Bhai,

AIR 1964 SC 1006.

8. Besides, the representation filed belatedly does not give rise to a fresh cause of action. Neither the directions issued in the petitioner's earlier writ petition give rise to a fresh cause of action or wipe out delay to make the claim actionable. Those directions were not meant to overcome issues of limitation, delay and laches. In Union of India v. M.K.Sarkar, (2010) 2 SCC 1126 the Supreme Court observed:-

“When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing ‘consideration’ of a claim or representation should examine whether the claim or representation is with reference to a ‘live’ issue or whether it is with reference to a ‘dead’ or ‘stale’ issue. If it is with reference to a ‘dead’ or ‘stale’ issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct ‘consideration’ without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

9. Viewed from any of these angles, this petition is not maintainable as there is no actionable claim enforceable in a court of law.

Mere experience of seven years would not give rise to a case of automatic

promotion either from Beldar or Pump Attendant in Class-D to the post of Water Pump Operator (Group-II) in Class-III service. The petitioner's class cannot be changed by a mandamus. Moreover, the claim for antedated regularization as WPO-II w.e.f. March 16, 1990 to treat him as a Class-III employee and to pay him the scale and other emoluments attached to Class-III post with all arrears and interest thereon and then to give him undue benefit of promotion accordingly is too farfetched for this Court to grant.

10. I find no reason to interfere in this petition which is devoid of merit. It is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

15.11.2016

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Whether speaking/reasoned Yes

Whether reportable No