

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

CWP No.5159 of 2002 (O&M)

Date of Decision:18.08.2017

Surinder Kumar

... Petitioner

Vs.

District and Sessions Judge, Karnal and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Satyavir Singh, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

Mr. Rakesh Nagpal, Advocate for respondent No.6.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has questioned the validity of order dated 16.3.2002 (Annexure P-6) by which respondents proceeded to alter the ranking of the petitioner and 6th respondent in the cadre of Steno Typist for the purpose of promotion to the post of Judgment Writer. Further petitioner has sought for direction to declare him as senior most Steno Typist taking into account change of cadre permitted by the competent authority on 8.2.1994.

The petitioner was initially appointed as clerk on 26.2.1990. While he was working in the office of District and Sessions Judge, Karnal, petitioner noticed that there was a vacancy of Steno Typist and he being fully eligible for the post of Steno Typist, he submitted an application for change of cadre from clerk to Steno Typist and it was allowed by the competent authority on 4.2.1994. Consequently, petitioner was posted as Steno Typist on 8.4.1994. While working as such, he met with an accident with right hand fracture in the month of October 1995. In view of his hand injury, he was unable to discharge the duties of the post of Steno Typist.

Consequently, he requested the competent authority to accommodate him in the post of clerk. The competent authority posted him as a clerk on 17.10.1995. Petitioner in the capacity of clerk worked upto 2.6.1998. Thereafter he was again posted back to Steno Typist on 3.6.1998. In the absence of seniority list of Steno Typist, competent authority noticed that seniority of the petitioner with reference to the length of service rendered in the steno typist cadre w.e.f. 8.4.1994 was taken into consideration and he was promoted to the post of Judgement Writer on 24.7.2000. 6th respondent submitted an application that petitioner is not entitled to be promoted to the post of Judgment Writer on the score that he do not fulfill the requisite qualification of three years of experience. Based on the 6th respondent's application, respondents proceeded to initiate action for re-fixation of seniority in the cadre of Steno Typist. Even though petitioner was heard but his contention has been rejected to the extent that petitioner was once again re-appointed to the post of Steno Typist on 3.6.1998, therefore, for the intervening period from 8.4.1994 to 17.10.1995 and 3.6.1998 to 24.7.2000 service rendered by the petitioner as Steno Typist could not be identified and considered for promotion to the post of Judgement Writer as experience and he is liable for reversion. Such an order was passed on 16.3.2002 (Annexure P-6). Thus, the present petition.

Learned counsel for the petitioner submitted that the competent authority permitted the petitioner to change his cadre from clerk to Steno Typist on 4.2.1994. While he was working as Steno Typist, he met with an accident whereby his right hand got injured which made him to discharge the duties of clerical post and not the duties of Steno Typist. Consequently, based on the petitioner's application, petitioner was accommodated as a

clerk till 2.6.1998 and it was in public interest. Thereafter, once again he was posted as Steno Typist. Thus, the respondents have rightly promoted the petitioner to the post of Judgment Writer on 24.07.2000 with reference to the service rendered by him from 8.4.1994 to 17.10.1995 and 3.6.1998 to 24.7.2000 while considering his eligibility for promotion to the post of Judgment Writer. Thus, there is no infirmity. On the other hand, respondents in the impugned order dated 16.3.2002 proceeded to hold that the petitioner was appointed as Steno Typist afresh on 3.6.1998 and past service rendered by him from 8.4.1994 to 17.10.1995 cannot be counted for the purpose of experience may not be correct for the reasons that petitioner had a lien over the post of Steno Typist as and when he was posted as Clerk on 17.10.1995. It was further submitted that he was promoted to the post of Judgment Writer on 24.7.2000; even to this day, order of promotion has not been disturbed to the extent withdrawing or cancelling or modifying the order. Therefore, petitioner is entitled for the benefit of promotion. It was further submitted that without withdrawing or cancelling the order of promotion dated 24.7.2000, petitioner's ranking cannot be altered to the post of Steno Typist to his disadvantage. Hence, order dated 16.3.2002 (Annexure P-6) is liable to be set aside. Consequently, petitioner is entitled for promotion to the post of Judgment Writer and at appropriate ranking in the cadre of Steno Typist with reference to the change of cadre from clerk to Steno Typist w.e.f. 4.2.1994.

Per contra, learned counsel for respondent No.6 vehemently contended that petitioner has been heard in the matter of fixation of seniority in the cadre of Steno Typist. It was further submitted that petitioner on his request posted as clerk on 17.10.1995 and once again he

was posted as Steno Typist on 3.6.1998. Therefore, service rendered by the petitioner from 8.4.1994 to 17.10.1995 cannot be treated as a experience for the purpose of promotion to the post of Judgement Writer. Since there is a gap in service and posting him as a clerk on 17.10.1995, therefore, petitioner is not entitled to count the past service for the purpose of experience so as to claim promotion w.e.f. 24.7.2000. It was further submitted that 6th respondent submitted an application that petitioner is not entitled to promotion to the post of Judgement Writer having regard to the dates and events of the petitioner's service with reference to the appointment of the petitioner as clerk; change of cadre to the post of Steno Typist; reverting him to the post of clerk and re-appointed him as Steno Typist. Thus, the petitioner has not made out a case so as to interfere with the order dated 16.3.2002 (Annexure P-6). Identical arguments were advanced on behalf of the official respondents.

Heard learned counsel for the parties.

The petitioner was permitted to change the cadre from Clerk to Steno Typist. It was permitted on 8.2.1994 having regard to the vacancy as well eligibility to hold the post of Steno Typist and it was in the petitioner's interest. Undisputedly, the petitioner met with an accident whereby petitioner's right hand was injured. Consequently, he was unable to discharge the duties of the post of Steno Typist. Competent Authority sympathetically considered the petitioner's grievance and accommodate him in discharging the duties of the post of Clerk. He discharged the duties of the post of Clerk till 17.10.1995. Thereafter, when petitioner was fit enough to discharge the duties of the post of Steno Typist, the same was considered by the competent authority and posted him as Steno Typist on 3.6.1998.

In this background, whether service rendered by the petitioner from 8.4.1994 to 17.10.1995 and 3.6.1998 to 24.7.2000 could be taken into account as experience for the purpose of promotion to the post of Judgment Writer or not?

Change of cadre from Clerk to Steno Typist was permitted by the competent authority at the request of the petitioner on 8.2.1994. It was at his request, therefore, service rendered by the petitioner between 3.3.1990 to 8.2.1994 cannot be counted. From 8.4.1994 onwards, petitioner is entitled to count his service in the cadre of Steno Typist. There is a reason for reverting him to the post of Clerk as he was met with an accident and he was unable to discharge the duties of the post of Steno Typist. Therefore, competent authority permitted him to discharge the duties to the post of Clerk. Merely asking the petitioner to discharge the duties of the post of clerk due to hand injury that does not take away the benefit of service rendered by the petitioner from 8.4.1994 to 17.10.1995 and 3.6.1998 to 24.7.2000 for the purpose of experience in the cadre of Steno Typist. That apart, 6th respondent has not challenged the promotion of the petitioner to the post of Judgment Writer given on 24.7.2000. The official respondents have not prepared the seniority list of Steno Typist as on 24.7.2000 so as to say that seniority list has been operated for the purpose of promotion to the post of Judgment Writer. Perusal of the records, it is evident that even today order of promotion of the petitioner to the post of Judgment Writer has not been disturbed. What has been disturbed is seniority in the cadre of Steno Typist to say that 6th respondent was appointed in the year 1997. Whereas petitioner was re-appointed to the post of Steno Typist on 3.6.1998. Thus, 6th respondent is senior to the petitioner. As long as order of promotion

dated 24.7.2000 is not withdrawn, modified or cancelled or reviewed, petitioner is entitled to maintain the seniority in the cadre of Steno Typist as well as in the cadre of Judgment Writer. Therefore, decision taken by the official respondents in the order dated 16.3.2002 (Annexure P-6) insofar as petitioner is concerned is hereby set aside. Consequently, the petitioner is entitled for benefit of promotion from 24.7.2000. Setting aside the order dated 16.3.2002 (Annexure P-6) would not come in the way of official respondents to take fresh action, if it is warranted, after due notice to the petitioner insofar as withdrawal of promotion order dated 24.7.2000. If the petitioner submitted his reply to the show cause notice, in that event, the competent authority is hereby directed to consider the petitioner's grievance and proceed to pass final order.

With the above observation, petition stands allowed.

18.08.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**