

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19540-2005 (O&M)
Date of decision: 08.03.2017

Daya Nand

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Devender Singh, Advocate for the petitioner
Mr.Keshav Gupta, AAG Haryana

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?*

Kuldip Singh, J. (Oral)

Petitioner who is an ex-service man was appointed as a Clerk on the recommendations of Service Selection Board Haryana vide appointment letter dated 29.10.1982 and joined his duty on 8.11.1982. According to the petitioner, in the final seniority list dated 29.11.1985 (Annexure P1), his name figured at serial no.149, whereas his junior namely, Gian Singh Behmani, a Scheduled Caste candidate, figured at serial no.162. It is stated that said Gian Singh Behmani, Clerk was provisionally promoted as Assistant vide order dated 6.11.1985, whereas the petitioner was promoted w.e.f. 8.7.1987. Claim of the petitioner is that he should be given deem date of promotion as 7.11.1985 i.e. the date when his junior Gian Singh Behmani was promoted. Petitioner retired from service on 31.5.2005 on attaining the age of superannuation and thereafter, approached this Court for seeking writ in the nature of mandamus.

In the written statement, respondents have taken the stand that vide order dated 28.5.1985, petitioner was given the benefit of military service rendered during first 'National Emergency' from 1.5.1965 to

10.1.1968 and his deemed date of joining was worked out as 3.9.1980. The seniority list of the Clerks was finalized on 29.11.1985 (Annexure P1). In the seniority list, the petitioner figured at serial no.149 and Gian Singh Behmani figured at serial no.162. It is further stated that another ex-service man Mange Ram was given deemed date of appointment as 3.8.1977. He was at serial no.121 and promoted against the post of Assistant on 1.9.1988. He also belongs to Scheduled Caste Category. On his representation, he was given deemed date of promotion as 10.8.1983 i.e. from the date his junior Scheduled Caste Clerk Sushila Devi was promoted vide order dated 5.6.1992 (Annexure R1). It is further stated that vide order dated 25.6.1992, the other Scheduled Caste Clerks who were actually promoted as Assistant earlier to Shri Mange Ram were given admissible date of promotion, which shows that Gian Singh Behmani was given date of promotion as Assistant as 8.7.1987 in place of 7.11.1985. It is the same date from which the petitioner was promoted. Therefore, petitioner is not entitled to the relief claimed.

In the replication, the petitioner has not denied the change of deemed date of promotion of Gian Singh Behmani but has claimed that Gian Singh Behmani has worked from 7.11.1985 to 8.7.1987 as Assistant and he was given salary on the said post.

In reply to the said replication, the State has taken the stand that since Shri Gian Singh Behmani had worked on the said post, therefore, he was given salary for the said post. However, his pay was refixed as Assistant w.e.f. 8.7.1987.

I have heard learned counsel for the parties and have also carefully gone through the file.

The promotion order of Gian Singh Behmani (Annexure P3)

shows that the promotion of Gian Singh Behmani as Assistant was purely provisional and on ad hoc basis without prejudice to the seniority of the Clerks as the case of ex-service man Clerks for granting benefit of past service towards seniority was under consideration. It was further stipulated that the said Clerk is liable to be reverted without any notice or show cause. In this way, the promotion of Gian Singh Behmani Clerk to the post of Assistant was a conditional one. It is not disputed that subsequent to the grant of benefit of service as ex-service man, the deemed date of joining of the petitioner was also changed to an earlier date i.e. 3.9.1980. Petitioner was promoted as Assistant w.e.f. 8.7.1987. Thereafter, in the year 1992, after considering the case of Mange Ram and other Scheduled Caste employees, the deemed date of promotion of Scheduled Caste Clerks as Assistant was also changed and accordingly, deemed date of promotion of Gian Singh Behmani was also changed to 8.7.1987. It is the same date from which the petitioner was promoted as Assistant.

So far as salary of the said Gian Singh Behmani for the period from 7/8.11.1985 to 8.7.1987 is concerned, since he had worked on the higher post, though on ad hoc basis, he was entitled to the salary for the same and the petitioner is not entitled to salary for the said period on the ground of parity since the petitioner did not work on the said post even on ad hoc basis.

It being so, there are not merits in the present petition. The same is accordingly dismissed.

08.03.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
No