

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

1224

**CWP-875-2010 (O&M)
Date of decision:01.11.2017**

Ravinder Singh

....Petitioner

Versus

Punjab and Haryana High Court and others

.... Respondents

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

Present: Mr. G.S. Bal, Sr. Advocate with
Ms. Manjeet Kaur, Advocate for the petitioner.

Mr. Pawan Kumar Mutneja, Advocate with
Mr. Vikramjeet Singh Mahal, Advocate
for respondents No.1 and 2.

None for respondents No.3 to 5.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has sought for quashing of promotion orders of the respondents No. 3, 4 and 5 to the post of Bailiff vide order dated 23.04.2009 and 01.12.2009 (Annexures P3 and P6) and further sought for a direction to the respondents to consider his name for promotion to the post of Bailiff from the date of private respondents' promotion to the post of Bailiff.

2. Petitioner is senior to respondents No.3, 4 and 5 in the cadre of Process Server which is the feeder cadre to Bailiff. Learned counsel for the

petitioner submitted that his name has been overlooked with reference to his service particulars including annual confidential reports and penalties which were imposed during the period from 1980 to 1986. Whereas the rules of recruitment stipulates for the purpose of promotion to the post of Bailiff source cadre is Process Server with 3 years of service and on the basis of seniority-cum-merit. Therefore, ignoring the claim of the petitioner for promotion to the post of Bailiff on extreneous material and so also contrary to rules of recruitment. In other words, petitioner's records prior to date of promotion namely 23.04.2009 for the period of 3 years were required to be looked into and which were good. Therefore, ignoring the claim of the petitioner for the promotion to the post of Bailiff while promoting respondents No.3, 4 and 5 is highly arbitrary and illegal.

3. Per contra, learned counsel for respondents No.1 and 2 submits that petitioner's service records has been taken into consideration while ignoring his claim. Particularly following record has been taken into consideration:-

“Name of Shri Ravinder Singh, Process Server, comes next. Out of his total 27 ACRs available, 22 are “Good/Very Good”, 02 “Satisfactory” and 02 “Average” and one “Below Average”. ACR for the year 1996 is “not Good”, with the remarks that many complaints of corruption were received against the official. From his service book it also transpires that official was awarded fine of Rs.30/- vide order dated 26.08.1980, Rs. 10/- vide order (date of order is not eligible), Rs.50/- vide order dated 06.11.1980, Rs. 25/- vide order dated 25.09.1982, Rs.20/- vide order dated

05.01.1983, Rs.20/- vide order dated 04.03.1983, Rs.25/- vide order dated 02.09.1985, and his two annual grade increments with cumulative effect were stopped vide order dated 20.10.1986. His two annual grade increments without cumulative effect were stopped vide order dated 08.04.1983.”

4. Therefore, there is no infirmity in overlooking the claim of the petitioner for promotion to the post of Bailiff from the cadre of Process Server even though petitioner is senior to respondents No.3, 4 and 5.

5. None appears for respondents No.3, 4 and 5.

6. Heard learned counsel for the parties.

7. Crux of the matter in the present petition is whether the petitioner is eligible for promotion to the post of Bailiff or not? Rules of recruitment to the post of Bailiff under the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 in particular, Rule 7(viii) and (x) reads as under:-

“7. Mode of appointment and Qualifications to the posts:

Class II

xxxx

xxx

Class III

(ii)Judgment writer(Sr. Grade)

xxxx

(iii)to (vii)

xx

xx

(viii) Bailiffs: Bailiffs shall be appointed by promotion from amongst Process Servers with 3 years experience, on the basis of seniority-cum-merit.

(ix)

xx

xxx

Class-IV

(x) Process Servers: Appointment to the posts of Process Servers shall be made in the manner hereinafter provided:-

(a) 50% by direct recruitment, (b) 50% from amongst class IV employees having 3 years experience:

Provided that no candidate shall be eligible for appointment/promotion unless he is a matriculate with knowledge of Hindi and Punjabi.”

8. The official respondents have not disputed that petitioner is senior to respondents No.3, 4 and 5. They have not disputed regarding eligibility of the petitioner with reference to rules of recruitment. What has been disputed is that the petitioner's service records were not up to the mark. Therefore, petitioner's name has been overlooked for promotion. The material relied on by the official respondents for ignoring the petitioner's claim for promotion to the post of Bailiff from the cadre of Process Server is his service records relating to the year 1980 to 1986 cited supra. Whereas the claim of the petitioner for promotion to the post of Bailiff is as on 23.04.2009. For the purpose of promotion to the post of Bailiff in the year 2009 the respondents cannot relied on adverse records of the petitioner pertaining to the year 1980 to 1986. Rules of recruitment governing the post of Bailiff, what has been prescribed is one must be in the cadre of Process Server with 3 years of experience. Even 3 years of experience is taken from 2006 to 2009 there were no adverse report in the service record of the petitioner so as to ignore the claim of the petitioner. That apart for deferring

promotion employee must be facing either disciplinary/criminal proceedings and charge sheet must have been filed as on the date of consideration as held by the Supreme Court in the case of ***Union of India versus K.V.Jankiraman*** reported in 1991 SCC(4)109 whereas in the present case as on 23.04.2009 the date on which petitioner claim was overlooked petitioner was not facing any of the disciplinary/criminal proceedings. Hence decision to overlook petitioner's name for promotion would be arbitrary and illegal.

9. In view of these facts and circumstances, orders dated 23.04.2009 and 01.12.2009 (Annexures P3 and P6) are set aside insofar as respondents No.3, 4 and 5 are concerned. Accordingly, CWP stands allowed.

10. The official respondents are hereby directed to consider the petitioner's name for promotion to the post of Bailiff w.e.f. 23.04.2009 within a period of 4 months from today. The official respondents are also directed to re-adjust the respondents No.3, 4 and 5 to the post of Bailiff if the vacancies during the period from 23.04.2009 to this day are available. If vacancies are not available in that event, last candidate among the respondents No.3, 4 and 5 be reverted to the post of Process Server to accommodate petitioner. Petitioner is entitled for consequential benefits like service as well as difference of pay. The same shall be released within a period of 4 months from today.

01.11.2017

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons
Whether Reportable:

Yes/No
Yes/No