

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

**Civil Writ Petition No.24244 of 2013
Decided on : 21.08.2017**

Anil Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Ram Niwas Sharma, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana
for respondent No.1.

Mr. Deepak Balyan, Advocate
for respondents No.2 to 4.

Mr. Harkesh Manuja, Advocate
for respondent No.5.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks the quashing of the order of respondent No.4 vide which he has allowed the mutual transfer of respondent No.5 against the post of Fitter-II (Permanent Regular) being illegal and against the rules/instructions. Resultantly, the reply to the legal notice dated 06.03.2013 (Annexure P-3) is also subject matter of challenge.

A perusal of the reply of respondents No.2 to 4 would go on to show that the plea taken was that the mutual transfer was allowed for smooth running of the Mills and respondent No.5 had been mutually transferred in place of Sant Lal, Fitter-II and there was no illegality in the order. The petitioner had not suffered any loss on account of the transfer and therefore the same was justified.

In short the case of the petitioner is that he was appointed as a Fitter-II (Seasonal Permanent) on 02.07.2002 and he was governed by the Service Rules for the Employees of the Cooperative Sugar Mills in the Haryana. One Sant Lal Fitter-II was working with the Chaudhary Devi Lal Cooperative Sugar Mill, Gohana and he applied for his mutual transfer with respondent No.5, who was working as Blacksmith in the Sonapat Sugar Mill which is admitted in the stand of the respondents themselves. Sant Lal Fitter-II belonged to SC Category, whereas Randhir Singh belonged to General Category and due to the mutual transfer, respondent No.5 as such had blocked the chances of promotion to the post of Fitter-II (Permanent Regular) which was a post lying vacant and to be filled up by the General Category candidate. It was, accordingly, averred that the qualifications of Fitter-II is ITI Certificate in Fitter Trade with two years experience, whereas the qualification for Blacksmith is ITI Certificate with two years experience in similar capacity for direct recruitment. The qualifications for the post of Fitter-II and Blacksmith were totally different and therefore mutual transfer was not permissible under the rules. It was further the case of the petitioner that seniority in each category is to be fixed as per selection list and therefore mutual transfer could only be allowed in the same category and the employees has to lose out his seniority. Resultantly, the promotion having been blocked the legal notice had been served on 09.01.2013 (Annexure P-2).

The stand of respondents No.2 to 4 was that the transfer was effected after permission of Managing Directors of both the Mills and on

the basis of mutual transfer and employees stand shifted which is further for the smooth running of the Mills. It was admitted that Sant Lal, Fitter was of SC Category, whereas Randhir Singh was a Blacksmith and placed at Sr. No.11 of the roster register which was for General Category and the action was in good faith. The order dated 18.06.2012, however, has not been placed on record.

In the written statement filed on behalf of respondent No.5, it has been mentioned that the order dated 18.06.2012 has not been annexed and Sant Lal has not been arrayed as a party. It has further been mentioned that the writ petition has been filed on 28.10.2013 after a period of almost 1 year and 4 months and, therefore, there is estoppel against the writ petitioner who was not eligible. The petitioner was not liable to raise any grievance against the said transfer order.

Vide order dated 15.01.2016 respondents sought time to assist the Court whether in the Sugar Mill, Sonapat two separate lists of seniority were being maintained for Fitter and Blacksmith or not. The communication dated 30.01.2016 of Chaudhary Devi Lal Cooperative Sugar Mill Ltd., Gohana-respondent No.4 has been placed on record, wherein it has been specifically clarified that seniority list of Fitter and Blacksmith are separately maintained.

The facts having thus been admitted to the extent that respondent No.5 who has been transferred against a vacancy has blocked the chances of promotion on account of the transfer order dated 18.06.2012, as admittedly he is belonging to the General Category and

whereas Sant Lal, Fitter was of the SC Category. It has been specifically averred that there was a vacant post of Fitter which would have been filled up by the General Category candidate and it is only on account of the transfer which has taken place, the petitioner has lost his right for consideration of promotion to the Regular Fitter which is thus a violation of his right of consideration of promotion. Counsel for the petitioner is well justified in placing reliance upon the judgment of the Apex Court in **Union of India and others Vs. Hemraj Singh Chauhan 2010 RSJ (2) 728 SC** that consideration of promotion is virtually a part of fundamental right guaranteed under Article 16 of the Constitution of India.

Resultantly, keeping in view the above, this Court has no hesitation in allowing the present writ petition and setting aside the order dated 18.06.2012 qua respondent No.5 whereby he has been permitted to be transferred mutually to the respondent No.4-Chaudhary Devi Lal Sugar Mill at Gohana District Sonapat. Resultantly the petitioner's claim for promotion to the post of the said Fitter-II (Seasonal) will, accordingly, be considered w.e.f. the date the vacancy arose within a period of 4 weeks from the receipt of the certified copy of this order.

The writ petition stands allowed.

AUGUST 21, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No