

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

CWP-27797-2013

Date of Decision:20.11.2017

Parmod Kumar

.....Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.J.S.Maaniipur, Advocate,
for the petitioner.

Mr.R.K.Doon, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (Oral)

Pursuant to the order dated 19.09.2017, an affidavit of the Principal Secretary to the Government of Haryana, Department of Forests and Wildlife, Sh.S.N.Roy, is on record, in which, after giving a long background on the framing and amendment of service rules under the proviso to Article 309 of the Constitution of India, as also on employees employed on contractual basis not being governed by service rules but by their terms and conditions of contract, they thereafter being regularized “by default”, eventually it is stated that the petitioner having been regularized in service w.e.f. 01.10.2003 (in terms of the then existing policy of the Government of Haryana of that date itself, a copy of which is Annexure R1 annexed with the affidavit), he cannot be promoted further, as his services were regularized on the post of a Labourer in Group-D, which

actually was a non-existent post in the said group, even on the date of his regularization, (such post not being reflected anywhere in the statutory rules, i.e. Haryana State Forest Executive Section (Group C) Service Rules, 1998).

Mr. Maanipur, learned counsel appearing for the petitioner, on the other hand first points to Rule 9 itself of the aforesaid Rules, the relevant part of which reads as follows:

“9. Method of recruitment-(1) Recruitment to the Service shall be made:-

Xx xx xx xx

(d) in the case of Forest Guard,-

(i) 20 per cent by promotion from amongst the Head Malies/Malies; and

(ii) 80 per cent by direct recruitment; or

(iii) by transfer or deputation of an officer/official already in the service of any State Government or the Government of India;

(2) All promotions, unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.”

He then points to the instructions, Annexure P-2, issued by the office of the Principal Chief Conservator of Forests, Haryana, to the Conservator of Forests, West, Hissar, stating as follows:

“With reference to the above referred letter it is intimated that till the Service Rules of Labourer Category are not framed,

they may be given all the facilities as given to the Group D officials. Their service be considered under the same Service Rules, which are for the Group D Mali in the department.”

The said letter is seen to be endorsed on 20.06.2006.

Though the said letter is not from the Government but an internal communication of the department itself, however, I do not see how the stand taken by the Principal Secretary, in his aforementioned affidavit, is sustainable in any manner, because once the petitioner had been inducted into regular service, on a Group D post, he was bound to be treated to be appointed to a post existent in the cadre, even as per the service rules, and that is why, very obviously, the aforesaid letter dated 20.06.2006 has been issued on behalf of the Head of the Department.

As already noticed by this Court in its order dated 19.09.2017, as per the settled law, at least two promotional avenues should be provided in any cadre to an employee. In my opinion, this would be a case which would be covered by the observations of the Supreme Court to the aforesaid effect in its judgment passed in ‘**Dr.Ms. O.Z.Hussain vs. Union of India and others**’, AIR 1990 SC 311, wherein it was held as follows:

“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why, while similarly placed officers in other Ministries would have the benefit of promotion,

the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.”

Mr. Maanipur, learned counsel for the petitioner, further points to the order of regularization, Annexure P-5, wherein the petitioners' services have been regularized specifically in Group D w.e.f. 01.10.2003, in the pay scale of Rs. 2550-55-2660-EB-60-3200 plus usual allowances, as admissible under the rules.

Though Mr. Doon, learned counsel for the respondent State, has submitted that where there is no channel of promotion provided, the employee is rewarded otherwise in terms of the Assured Career Progression (ACP) Rules, by which, on account of non-promotion, he is given a higher pay scale, that contention is not found to be sound by this Court, in view of the fact that the ACP Rules though of course otherwise provide a higher grade to a particular class of employees on account of non-promotion, are actually rules promulgated to offset stagnation due to non-promotion to those

employees who, despite having a channel of promotion, have not been promoted within a particular period due to lack of adequate number of vacancies on such higher posts at a particular point of time. Thus, if an employee has not been promoted for a period of 10 years, he is granted the first ACP scale, if not for 20 years then the second ACP scale, and so on.

That does not imply that an employee in regular employment is not to be provided any channel of promotion at all, even if he possesses the qualifications required for higher posts in the cadre.

At this stage it is also to be noticed that though persons as are contended to be juniors to the petitioner, i.e. respondent no.4 to 7, have been duly impleaded and have been served with the notice issued in this petition (as per the report of the Registry), they have chosen not to appear, either by themselves or through counsel.

As per their orders of promotion, Annexure P-5, they are shown to have joined service between 25.01.2008 and 29.01.2008, with them being promoted from the posts of Malis to posts of Forest Guards by the said order.

Consequently, the petitioner having been regularized in Group D w.e.f. 01.10.2003, vide the order Annexure P-1, dated 16.10.2006, both of which dates are obviously prior to the date of appointment of respondents no. 4 to 7, this petition is allowed and the case of the petitioner, to be promoted to the post of a Forest Guard, is directed to be considered by the respondent State, if he fulfills other eligibility conditions for the said post as per the statutory rules.

A speaking order, after considering the petitioners' case, shall be passed by the competent authority/respondents within 3 months from the date of receipt of certified copy of this order, with the petitioner not to be debarred from promotion by the said order, because he was appointed to the post of a Labourer.

It is made clear that the petitioner would be treated to have been regularized on the post of a Mali, which otherwise is a 'labour class' post within Group D service, which fact has been very logically inferred in the instructions issued from the office of the Principal Chief Conservator of Forests, (Annexure P-2).

November 20, 2017

dharamvir

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO