

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

CWP No.20787 of 2017

Date of decision : 13.09.2017

Surinder Paul Sharma

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. S. S. Siao, Advocate for the petitioner.

* * *

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 11.01.2002 to the extent of permanently absorbing respondent No.4 in Punjab Municipal Corporation while on deputation. A further prayer has also been made for direction to respondents No.1 and 2 to promote the petitioner as Land Scape Officer with effect from the year 2009 and, thereafter, to promote as Executive Engineer (XEN.) which was due in the year 2014 as per seniority list dated 31.12.2001.

Briefly, the facts of the case as made out in the present petition are that the petitioner was promoted as Junior Engineer (Horticulture) from the post of Supervisor on 04.06.1999. Thereafter, in the year 2002, he was transferred in Municipal Corporation, Amritsar. In the provisional seniority

list of Junior Engineers (Horticulture) dated 31.10.2001, the petitioner was at Sr. No.7. The seniors to the petitioner were promoted as Land Scape Officers and, thereafter, as Executive Engineers (Horticulture) and have already retired. However, till 2016 no DPC was held for promotion to the post of Land Scape Officer. Vide order dated 11.01.2002 respondent No.4 - Daljit Singh, who was working in Municipal Corporation, Jalandhar on deputation from Punjab Agriculture University, Ludhiana, was permanently absorbed in Municipal Corporation, Jalandhar as Junior Engineer. It was mentioned in the order that he will not be given benefit of past service rendered in Punjab Agriculture University, Ludhiana towards seniority and his seniority was to be fixed at the tail of cadre of Horticulture of Municipal Corporation, Junior Engineers. The petitioner made various representations for his promotion to the post of Land Scape Officer but he was not promoted in spite of the fact that he was given additional charge of Land Scape Officer without any financial benefit. Respondent No.4 was promoted as Land Scape Officer from the post of Junior Engineer (Horticulture) by ignoring the claim of the petitioner. Subsequently, the additional charge of the post of Land Scape Officer was also withdrawn from the petitioner. The petitioner made another representation stating that he was to be promoted to the post of Land Scape Officer being senior to respondent No.4 but still respondent No.4 was promoted in spite of recommending his case for promotion.

The petitioner is aggrieved by the promotion of respondent No.4 and has challenged order dated 11.01.2002 whereby respondent No.4

was permanently absorbed in Punjab Municipal Corporation while on deputation. The petitioner is also praying for direction to the respondent-authorities to promote him as Land Scape Officer as per seniority list dated 31.12.2001 or from the date when respondent No.4 was promoted.

Learned counsel for the petitioner submits that the action of respondents in not promoting the petitioner on the post of Land Scape Officer (Horticulture) is illegal, unlawful and arbitrary. He submits that petitioner is entitled for promotion on the said post since the year 2009 on completion of 10 years of regular service as Junior Engineer. Even he is entitled for further promotion under Rule 5 (2) of Punjab Municipal Corporation Services (Recruitment and Conditions of Service) Rules, 1978. At the end, learned counsel for the petitioner submits that order dated 11.01.2002, whereby respondent No.4 was permanently absorbed when he was on deputation, is contrary to Rules as well as violative of Article 14 of the Constitution of India.

Heard arguments of learned counsel for the petitioner and have also perused the documents on the file.

Facts that the petitioner being presently posted as Land Scape Officer (Horticulture) in Municipal Corporation, Ludhiana, his promotion from Supervisor to Junior Engineer (Horticulture) and preparation of provisional seniority list of Junior Engineers wherein petitioner was at Sr. No.7 are not disputed. It is also not disputed that respondent No.4 was working as Technical Assistant with Punjab Agriculture University, Ludhiana and joined Municipal Corporation, Jalandhar on deputation on

12.04.2001.

Respondent No.4 was permanently absorbed in Municipal Corporation, Jalandhar vide order dated 11.01.2002 and thereafter, was promoted as Land Scape Officer vide order dated 21.10.2011 and the said orders were never challenged by the petitioner. Order dated 31.05.2012, whereby additional charge of the post of Land Scape Officer was withdrawn from the petitioner was also not challenged. No doubt the name of the petitioner was recommended for promotion but he was not promoted. Respondent No.4 was reverted vide order dated 23.09.2015. The petitioner is claiming his promotion as Land Scape Officer on completion of 10 years of service as Junior Engineer from the date of his eligibility with effect from the year 2009 and next promotion as Executive Engineer (XEN.) Horticulture from the year 2014, as per seniority list dated 31.12.2001 or from the date when respondent No.4 was promoted, who was later on reverted vide order dated 23.09.2015. He is also aggrieved by the action of respondents for not holding any DPC for promotion to the post of Land Scape Officer. It is not disputed that petitioner has now challenged order dated 11.01.2002 whereby respondent No.4 was permanently absorbed in Municipal Corporation, Jalandhar. However, there is inordinate delay in challenging the said orders.

The present petition has also been filed for issuance of writ of mandamus to promote the petitioner from the back date after reversion of respondent No.4, however, no representation was moved by the petitioner, whereas for claiming the writ of mandamus, the petitioner should have

approached the competent authority. The promotion cannot be claimed as a matter of right. Not only delay is there in approaching this Court without challenging the earlier orders, as the petitioner remained slept over his rights and woke up only when respondent No.4 was reverted. He has challenged the order passed on 11.01.2002 and without giving any satisfactory explanation for the inordinate delay. After reversion of respondent No.4, no other person who is junior to the petitioner has been promoted. Petitioner cannot be promoted from the back date as the present petition has been filed after a long unexplained delay. The petitioner has even not approached the appropriate authority. No such direction can be issued to the respondent-authorities to promote the petitioner from the date respondent No.4 was promoted.

The writ petition is dismissed.

However, in case the petitioner moves any representation to the respondent-authorities for his promotion, the respondent-authorities may consider the same in accordance with law.

13.09.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No