

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

CWP No. 4113 of 2014

Date of decision: May 17, 2017

Charan Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Dhiraj Chawla, Advocate
for the petitioner.

Mr. L. S. Virk, Additional Advocate General, Punjab
for respondents No. 1 to 3.

Mr. Rohit Kumar, Advocate
for respondents No. 4 and 5.

JAISHREE THAKUR, J.

1. The petitioner herein is aggrieved against the denial of promotion to the post of Assistant Revenue Clerk with all consequential benefits with effect from the date, his juniors have been promoted.

2. The petitioner was appointed on regular basis as Canal Patwari w.e.f. 27.09.1996 in the office of Superintending Engineer, Irrigation Branch, Sirhind Canal Circle, Ludhiana. There are four divisions under Ludhiana Circle i.e. Bathinda, Faridkot, Ropar and Sidwan and a common seniority list is drawn up of all the Canal Patwaris under the said circle. It is submitted that the petitioner, whose date of regularization is 27.09.1996 and reflected at Sr. No. 112, has been ignored for promotion as Assistant Revenue Clerk while promoting persons at Sr. Nos. 147 and 149, whose dates of regularization are shown to be 08.08.1997 and 21.04.1998. It is

further contended that it is only in the year 2011 when tentative seniority list of Canal Patwaris was circulated that the petitioner found that junior persons had been promoted ignoring the claim of the petitioner. Aggrieved against the pick and choose police de hors the rules, the instant writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioner contends that the name of the petitioner had been recommended by the Executive Engineer, Bathinda by letter dated 01.08.2006 but to no avail. It was only when the seniority list was circulated in the year 2011 that the petitioner became aware of being superseded by his juniors. A writ petition bearing ***CWP No. 5155 of 2013*** was filed by the petitioner in this High Court seeking promotion from the date his juniors had been promoted. However, the said writ petition was disposed of with a direction to consider the representation, which has been rejected by the impugned order dated 10.07.2013 (*Annexure P-6*).

4. Learned counsel for the petitioner argues that the promotion to the post of Assistant Revenue Clerk is governed by ***the Punjab Public Works Department (Irrigation Branch) Revenue Clerks State Service Class-III Rules, 1956*** and Rule 10(c) and Appendix 'B' deal with the manner in which appointments are to be made to the post of Assistant Revenue Clerk. The rule provides for promotion from amongst the Patwaris provided they are educationally qualified and suitable or by transfer of persons officiating in permanent posts or by direct recruitment. As per Rule 10(2), 60% of the posts are to be filled up by the direct recruitment and 40% from the departmental candidates.

5. Per contra, learned counsel for the respondents-State relies upon Appendix 'B', referred to in Rule 10(i), which provides for the procedure for recruitment of the candidates to the post of Assistant Revenue Clerks and their training, wherein, it is the duty cast upon the Superintending Engineer to require the Divisional Officers to submit rolls of men recommended for appointment to the service and the Superintending Engineer shall select a suitable number of departmental candidates limited to 40% of the cadre of Revenue Clerks for the Circle. The selection of the Superintending Engineer shall be final in the case of departmental candidates and no appeal shall lie against it. The Superintending Engineer shall maintain a list of candidates who are to be recommended for promotion to the post of Revenue Clerk. It is submitted that the Superintending Engineer had requisitioned the names of the suitable candidates from the Divisional Officers at the time of making promotion orders on 19.05.2005 and 10.06.2005. The application of the petitioner was not received in the office and, therefore, recommendations were made for promotion of Sh. Balraj Singh, Patwari and Smt. Shinderpal Kaur, Canal Patwari as Assistant Revenue Clerk. It is further submitted that as per Rule 10(3), appointment to the service shall be made purely by selection and no official shall be entitled to such appointment as a matter of right.

6. The private respondents have filed their reply, wherein, a stand has been taken that the writ petition ought to be dismissed on the ground of delay and laches while taking plea that as per rules and regulations of the Department, applications were invited from the interested candidates by the Superintending Engineer, Sirhind Canal Circle, Ludhiana for considering the cases regarding promotion. The consents were called from all the

employees who were eligible for the post. The petitioner did not submit any application and, therefore, he was not called for interview and subsequently his name was not recommended for promotion and after a gap of 10 years he cannot seek to challenge the promotions that were given to the private respondents.

7. I have heard learned counsel for the parties and have also perused the record of the case.

8. Rule 10 of *The Punjab Public Works Department (Irrigation Branch) Revenue Clerks State Service Class-III Rules, 1956* prescribes the procedure for promotion and appointment to the post of Assistant Revenue Clerks. The relevant portion is reproduced herein below:

“10(2) Appointment of Assistant Revenue Clerks shall be made in the following manner:

(a) Departmental candidates 40 percent

(b) Direct candidates 60 percent

(3) Notwithstanding anything in the above rules, appointment to the Service shall be made purely by selection and no official shall be entitled to such appointment as of right.”

9. Rule 10(3) clearly specifies that appointment to the Service shall be made purely by selection and no official shall be entitled to such appointment as of right. Furthermore, the Appendix to Rule 10(i) provides for procedure for recruitment of candidates to the post of Assistant Revenue Clerks which in turn would read that Superintending Engineer will require the Divisional Officer to submit rolls of men recommended for promotion to the Service. The Divisional Officers should note on the rolls that they have personally interviewed the nominees recommended giving the result of such

interview. The recommendations must be confined to men who have not less than three years' continuous permanent service with a reputation for honesty and ability of performing the duty. In terms of Rule 10, the Superintending Engineer wrote to all the Executive Engineers of the four Divisions, i.e. Bathinda, Faridkot, Ropar and Sidwan, wherein, it was mentioned that two vacancies of Assistant Revenue Clerk in Ropar Head Works Division are available. The applications and the consent of willing Canal Patwaris, complete in all respect, for promotion as Assistant Revenue Clerk were to be sent to the office of Superintending Engineer along with service record within 10 days. Pursuant to this letter, the names of the two private respondents herein were forwarded. Since the application of the petitioner was not received in the office of Superintending Engineer, his name was not considered.

10. An argument has been raised by the learned counsel for the petitioner that the petitioner was not made aware of the letters received from the office of Superintending Engineer inviting applications and the consent of candidates seeking promotion to the post of Assistant Revenue Clerk.

11. At this point of time, it is difficult for this Court to ascertain whether the petitioner was made aware of the letters issued by the Superintending Engineer inviting applications for promotion to the post of Assistant Revenue Clerk. There is nothing on the record to show that the Superintending Engineer would have been inimical to the petitioner to exclude him. Even otherwise, an averment has been made by the petitioner that he had made a representation to respondent No. 3 for promotion in the year 2005. It is not believable that a person would have kept quiet for such an inordinate length of time. Even after the tentative seniority list was

circulated on 05.12.2011, if the petitioner had grievances, he ought to have raised an immediate challenge thereto. In fact, a written representation was moved only after a year requesting for promotion and in the year 2013, the petitioner raised his grievances against the promotions given to the private respondents.

12. As per the counter affidavit that has been filed, a categorical stand has been taken that the petitioner did not pursue the notices as sent by the Superintending Engineer to which there is no counter by way of replication to submit that the said notices were not made public or not put up on the Notice Board.

13. It is well settled proposition of law that a challenge to a promotion or claim regarding seniority cannot be made after an inordinate length of time. The Hon'ble Apex Court in ***P. S. Sadasivaswamy Vs. State of Tamil Nadu 1976(1) SLR 53*** has held that the writ petition is to be filed within six months or at the most in a year for relief in service matter and stale claims cannot be entertained. The relevant observation reads as under:

“2.not only respondent 2 but also respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where

the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put for-ward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.

3. This appeal is dismissed with costs.”

14. Therefore, the instant writ petition is dismissed on the grounds of delay and laches.

May 17, 2017

Ansari

**(JAISHREE THAKUR)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*