

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

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**CM Nos. 14875-76-CWP-2017
RA-CW-471-2017 in
CWP-26639-2013(O&M)
Date of decision:02.11.2017**

Prithvi Singh

....Petitioner

Versus

State of Haryana and others

.... Respondents

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

Present: Mr. Gagandeep Wasu, Addl. A.G. Haryana.

P.B. BAJANTHRI, J. (ORAL)

CM No. 14876 of 2017

This is an application for condonation of delay of 141 days in filing the present review petition. Heard. In view of the reasons stated in the application and affidavit, delay of 141 days in filing the present review petition is condoned. CM No.14876 of 2017 stands allowed

CM No. 14875 of 2017

This is an application for exemption from filing certified copies of civil writ petition along with its annexures and written statement and also exemption from filing typed copies of civil writ petition and its annexures, written statement and annexures, affidavits and order dated 20.04.2017.

Heard. In view of the reasons mentioned in the application and affidavit, CM No. 14875 of 2017 stands allowed.

RA-CW-471-2017 in CWP-26639-2013

Learned counsel for the review applicant sought for recalling the order dated 20.04.2017 passed in CWP No. 26639 of 2013. Reasons for recalling the order is that while deciding the writ petition, this court has taken into consideration the rules called Haryana Public Health Engineering Department Circle Cadre Mechanical Establishment (Group-C) Service Rules, 2009 instead of rules called Haryana Public Works Department (Public Health Branch), Circle Cadre Mechanical Establishment (Group-D) Service Rules, 1995. Rule 11 of the Rules, 1995 reads as under:-

“Seniority

11. Seniority, inter se of members of the Service, shall be determined by the length of continuous service on any post in the Service:-

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre:

Provided further that in case of two or more members appointed on the same date their seniority shall be determined as follow: -

(a) a member appointed by direct recruitment shall be senior to a member appointed by transfer:-

(b) In the case of members appointed by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were

transferred; and

(c) In the case of members appointed by transfer from different cadres, -their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by the length of their Service in the appointment and if the length of such service is also the same, the older member shall be senior to the younger member."

Respondent-petitioner is not entitled to count the service rendered by him prior to transferring him i.e. 03.05.1995 for the purpose of seniority and promotion as his transfer from one circle to another was at his request. Further it was pointed out that Department of Public Health Engineering have issued a memo on 15.05.1998 in which there is prohibition to count the past service for the purpose of seniority under Clause 'a)' which reads as under:

“a) Transfer on request out of Circle:-

Normally no transfer of Regular Mechanical Establishment will be made from one Circle to another except in a very special circumstances i.e. on request and normally with the consent of both the Superintending Engineers. Such an employee will not be given benefit of past service in the new Circle for the purpose of seniority. He will be placed at the bottom of the list of the employees in that category. However, his part service will be counted for pensionery or terminal benefits. In such cases the transfer orders shall be issued by the Head

Office.

b) Transfer of an employee from one Circle to another in the public interest on the change of jurisdiction of the Circle.

Employees transferred in such cases shall take their position in the respective seniority list of the new Circle after taking into account their past continuous service which shall be counted towards seniority in the category on the basis of his service record in the parent Circle.

c) Transfer of an employee from one Circle to another on Administrative grounds in public interest.

When an employee is transferred on Administrative grounds, he shall give his consent within one months of submitting his arrival at new station of his posting to the concerned Superintending Engineers, as to whatever he wants to retain his seniority in his parent Circle or would opt to have his seniority in the new Circle of his posting. In no case such employee who, has been transferred without his consent shall loose seniority.”

The review applicant submitted that in view of the mutual transfer of the respondent-petitioner Prithvi Singh and Dalip Singh which was effected on 03.05.1995 was at their request therefore, in view of the rule 11 of Rules, 1995, read with memo dated 15.05.1998, respondent Prithvi Singh is not entitled to count service rendered by him prior to 03.05.1995 for the purpose of seniority. Therefore, order dated 20.04.2017 passed in CWP No. 26639 of 2013 is required to be recalled and petition is to be dismissed.

In para 7 of the order dated 20.04.2017, order of mutual transfer dated 03.05.1995 (Annexure R2) has been extracted. Perusal of the order of

mutual transfer of respondents-Prithvi Singh and Dalip Singh which were in public interest as is evident from the word used in the transfer order dated 03.05.1995. Therefore, order of transfer from one circle to another circle is in public interest and not at the respondent-petitioner's request. No material was produced to show that respondent-Prithvi Singh had requested for his transfer. Consequently, service rendered by the respondent-Prithvi Singh prior to 03.05.1995 is required to be counted for the purpose of seniority and promotion in the transferred circle. Therefore, there is no infirmity in the order dated 20.04.2017 so as to recall.

Accordingly, review application stands dismissed.

02.11.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No