

320

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

CWP No.11025 of 2001 (O&M)

Date of decision: September 13, 2018

P.K. Sachdev

.....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Petitioner in person.

Mr. Siddharth Sanwaria, DAG Haryana.

A.B. CHAUDHARI, J

By the present petition, petitioner-P.K. Sachdev has prayed for issuance of writ of certiorari for quashing Rule 9(1)(b) and (L) (1) and serial number 2 of appendix 'A' of the Haryana Transport Department (Group-A) Service Rules, 1992 and rule 9(1)(b) of the Haryana Transport Department (Group-B) Service Rules, 1992 and order dated 04.07.2001 (Annexure P-9) in granting promotion to the petitioner as Deputy District Attorney on assuming charge and to grant the same retrospectively.

2. The petitioner appeared in person and submitted that he was appointed on 12.08.1968 as legal advisor in the Transport Department/Government of Haryana. In all, he served 33 years, but there was no promotion to him till 04.07.2001, when he was actually promoted as Deputy District Attorney. According to him, he having served for 33 years the promotion ought to have been given to him at appropriate time and the

said order of promotion dated 04.07.2001 must be made retrospective by the Government. Consequently, he should be granted reliefs monetary as well as otherwise of the promotional post. He submitted that the relevant Rules should be quashed by a writ of certiorari. He also placed reliance on some judgments/decisions of Apex Court.

3. *Per contra*, learned counsel for the respondents opposed the writ petition and submitted that the petition is liable to be dismissed on delay and latches. The petitioner claimed seniority and promotion w.e.f. 01.10.1986 when he was in employment and has filed the petition almost after 15 years in this Court. The petition cannot be entertained and should be dismissed on the ground of delay and latches. It is then submitted by the respondents that the work that was performed by the petitioner as legal advisor was not similar to the Assistant District Attorney of the Prosecution Department. The Government had taken a decision to fill up the said post of Assistant District Attorney 15 years before filing of the writ petition and therefore, the petition should be dismissed on the ground of delay and latches. It is then stated that the nature of work performed by the petitioner as legal advisor was such that it would not be at all compared with the work of Assistant District Attorney of the Prosecution Department. The petitioner was merely working as a legal advisor and did not have any experience in conducting trials in the Court, in drafting pleadings and defending in the Court. There was no channel of promotion for the petitioner. Nevertheless by the order of promotion dated 04.07.2001, he was promoted by considering the fact that there was no promotional channel available for him and therefore, on humanitarian ground, his case was made an exception. The petitioner does not have any

legal right and as such, there is no merit in the petition and the same should be dismissed.

4. We have heard the petitioner appeared in person. We have also perused the pleadings on record filed by both the parties. It is not in dispute that the petitioner was appointed as legal advisor in the Transport Department of Government of Haryana, on 12.08.1968 and worked as such till 04.07.2001. It is also not in dispute that the petitioner did not have any experience of working in the Courts for the Department or for the prosecution. That could not be because he was supposed to act only as a legal advisor in the Department itself and nothing more. His duty list did not provide for his working in the Courts either for prosecuting or for defending the Department or for providing the pleadings and so on and so forth. At the outset, we, therefore find that the comparison made by the petitioner acting as a legal advisor with the Assistant District Attorney in the Court is misplaced and misconceived. The petitioner is under a misconception that he was at par with or he was performing similar duties as of Assistant District Attorney. The cadre for promotion for the Assistant District Attorney/Deputy District Attorney was not available to the legal advisor like the petitioner.

5. We have asked the petitioner as to his legal right or any relevant Rules providing for promotion from the post of legal advisor to any higher post. The petitioner could not point out any. The reason is that there is no channel of promotion for appointment as legal advisor. That may be unfortunate but then in the absence of legal right in the petitioner, this Court is unable to exercise the jurisdiction. Still he was promoted to the post of

Deputy District Attorney on 04.07.2001, till the date of his superannuation, i.e. 31.07.2001, i.e. almost for 27 days. The Government was graceful in doing so since the petitioner did not have any chance for promotion.

6. But then, the petitioner is further claiming relief w.e.f. 1986 in the matter of said promotion. Obviously, his claim is without any legal basis or legal right sprouting from any Rules or Regulations. The judgments cited by him have no application. On facts, all the judgments are distinguishable and do not apply to the case of the petitioner. In the result, we find no merit in the writ petition. Hence, we make the following order:-

ORDER

- (i) **CWP No.11025 of 2001** is dismissed;
- (ii) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

September 13, 2018
mahavir

Whether speaking/ reasoned: **No**

Whether Reportable: **No**