

CWP No. 15684 of 1999 (O&M)

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

**CWP No. 15684 of 1999 (O&M)
Date of Decision: 17.1.2018**

Mohammed Illias

...Petitioner.

Versus

Managing Director, Haryana Tourism Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. G.S. Gandhi, Advocate
for the petitioner.

Mr. Padam Kant Dwivedi, Advocate
for respondents No.1 and 2.

ARUN PALLI, J. (ORAL)

A writ in the nature of Certiorari is prayed for to quash the order dated 4.1.1999 (Annexure P-6) as also the letter dated 27.5.1999 (Annexure P-13). The petitioner has also prayed for a direction to respondents No.1 and 2 to consider his claim for promotion to the post of Manager-cum-Accountant from the date his junior was promoted. Further, action of respondent No.1, treating the petitioner on duty w.e.f. 8.2.1999, be held to be illegal and arbitrary and he be accordingly awarded necessary pay and allowances.

Facts that are required to be noticed are limited.

Concededly, the petitioner was engaged as a Counter Incharge on 15.6.1977 in Haryana Tourism Corporation, Chandigarh. His services

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were terminated by the Management on 3.8.1990. He raised an industrial dispute and vide award dated 12.9.1997 (Annexure P-1), termination of the services of the petitioner was held to be illegal. And he was ordered to be reinstated with continuity of service, but without back wages. It is not disputed either that the petition preferred by the respondent management, i.e. CWP No. 19332 of 1998, against the award rendered by the Labour Court, was dismissed by this Court on 21.12.1998. Thus, the said award has since become final. Resultantly, vide order dated 4.1.1999 (Annexure P-6), the petitioner was taken back on duty as Counter Incharge. The limited grievance that the petitioner has is; that although he was ordered to be reinstated on 12.9.1997, but he has not been paid wages from the said date till 8.2.1999; when he was permitted to rejoin the duty. Further, being a backward class candidate, he was required to be considered for further promotion in terms of the government instructions. Particularly, when Gopi Chand (respondent No.3), who happened to be junior to the petitioner, was promoted to the post of Manager-cum-Accountant.

Ex facie, vide award dated 12.9.1997 (Annexure P-1), rendered by the Labour Court, the petitioner was ordered to be reinstated with continuity of service. As indicated earlier, the award rendered by the Labour Court has since attained finality. In the given situation, the respondent management had no option but to allow the petitioner to join. Though the petitioner had submitted his joining report on 9.1.1998 (Annexure P-3) but he was permitted to join only on 4.1.1999. Significantly, the order vide which the petitioner was taken back on duty (Annexure P-6), reveals “Sh. Mohd. Ilyas is taken back as Counter Incharge with immediate effect with continuity of service but without back wages as

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per the award of Industrial Tribunal-cum-Labour Court, Rohtak, dated 12.9.1997.” Needless to assert that once termination of the petitioner was held to be erroneous and he was reinstated, he would be deemed to have continued in service. And shall be entitled to wages for the period post his reinstatement till he was permitted to join duty. This has never been the case of the respondent management that he was gainfully employed during the said period. Concededly, no such material exists on record either. Thus, the only and the inevitable conclusion one could reach is; the petitioner could not be denied wages for the said period.

As regards his claim that he being a backward class candidate ought to have been considered for promotion from the date respondent No.3 was promoted cannot be countenanced. Concededly, the petitioner was never employed as backward class candidate. Rather, he joined in the general category. In fact, the petitioner furnished a certificate of being a backward class candidate on 6.4.1999, i.e. on his reinstatement in service. No doubt, respondent No.3, who happened to be junior to the petitioner, was promoted in November, 1990, but his initial appointment in service was in the backward class category. Further, at the time of his promotion in the year 1990, there indeed existed a quota for promotion for the backward class candidates. But, the subsequent instructions issued by the State Government envisaged no such reservation/quota for promotion. Not just that, at the time of promotion of respondent No.3, the petitioner was not even in the employment of the management, for, his services were already terminated. In any event, the petitioner has since retired in the year 2011.

In conspectus of the above, the petition is partly allowed to the extent that the petitioner shall be entitled to wages from the date of his

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reinstatement, i.e. 12.9.1997, till 8.2.1999, when he was taken back on duty by the respondent management. Needless to assert that the respondent management shall determine the requisite amount the petitioner is entitled to and disburse the same within eight weeks from today.

17.1.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether Speaking/Reasoned:
Whether Reportable:

YES / NO
YES / NO