

CWP No.25988 of 2015

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

Sr. No. 264

CWP No.25988 of 2015

Date of decision: August 31, 2018

SUKHDARSHAN SINGH

.... PETITIONER

Versus

**PUNJAB BACKWARD CLASSES DEVELOPMENT & FINANCIAL
CORPORATION AND OTHERS**

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. G.S. Bal, Senior Advocate with
Mr. A.D.S. Bal, Advocate,
for the petitioner.

Mr. Ramandeep Singh, Advocate,
for the respondents.

JASPAL SINGH, J

By virtue of the instant civil writ petition, preferred under Articles 226/227 of the Constitution of India, petitioner has sought an issuance of a writ in the nature of certiorari seeking quashing of order dated 31.03.2015 (P-7) passed by Executive Director, Bankfinco – respondent

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No.1 as well as order dated 19.11.2015 (P-9) along with advice dated 25.06.2015 (P-10) of respondent No.3-Department, whereby a communication has been made to him withholding/non-release of his retiral benefits as well as for issuance of a writ in the nature of mandamus directing the respondent No.1 to release his remaining retiral benefits including Death-cum-Retirement Gratuity, Leave Encashment etc. along with interest @ 18% p.a. from due date till actual payment.

2. The brief facts giving rise to the instant petition are that in pursuance of the advertisement issued by respondent No.1 for recruitment of 10 Clerks, petitioner applied and appointed as Clerk vide order dated 23.08.1979 (P-2). His service conditions are/were governed by the Statutory Rules known as The Punjab Backward Classes Land Development & Financial Corporation (Staff) Regulations, 1979 (for short 'Staff Regulations, 1979') framed under Section 34 of the Punjab Backward Classes Land Development & Financial Corporation Act, 1976 (for brevity Bankfinco). At the time of recruitment of Clerks, three posts were kept reserved for Scheduled Caste and petitioner and others were selected against two posts meant for Scheduled Caste.

3. In the year 1987, a Committee from the office of respondent No.2 visited the office of Bankfinco who carried out inspection of the Reservation Roster Registers and Service Record particularly pertaining to reserve category candidates and it was pointed out by them that certificate (P-1) produced by the petitioner does not contain the dispatch number and date of the office of Sub Divisional Officer (Civil), Jagadhri. Thus, he was

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required to obtain a fresh certificate that he is a member of Scheduled Caste category. Consequently, he got issued a fresh certificate dated 14.08.1987 (P-3) from the office of Sub Divisional Officer (Civil), Jagadhri and produced the same before Bankfinco, which was made part of his personal file, which contains his name and residential address. Thus, he never concealed or misstated any fact either at the time of his recruitment or even subsequent thereto. Further, a seniority list of Clerks of Bankfinco as on 31.03.1981 (P-4) also contains the name of the petitioner at Sr. No.17 and he was also promoted from time to time and re-designated as Senior Assistant vide office order dated 09.07.1993 (P-5). Not only this on the basis of his outstanding work and conduct, petitioner was further promoted as Enforcement Officer vide office order dated 21.12.2012 (P-6). Even after attaining the age of superannuation i.e. 58 years, petitioner was granted extension in service for one year in consonance with the decision taken by the Bankfinco in pursuance of the instructions issued by the Punjab Government. Though, second extension for further one year i.e. upto the age of 60 years was not granted to him on the ground that financial health of the Bankfinco was not good. Thus, petitioner stood retired from service on attaining the age of 59 years vide order dated 31.03.2015 (P-7). However, as per the order dated 31.03.2015 (P-7), the retiral benefits of the petitioner were withheld by observing that since the Scheduled Caste certificate furnished by the petitioner stood issued by the Haryana State in accordance with Welfare Department instructions, he could not have been retained in service and thus, his retiral benefits have been withheld and the

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same will be released only after a final decision in the matter is taken. Only an amount on account of CPF has been released to him, whereas his DCRG as well as Leave Encashment have been withheld. Challenging the aforesaid action of the respondents at the time of his retirement, instant petition has been preferred.

4. In response to notice of motion, respondents have filed reply submitting that respondents-department advertised the posts of Clerk in Daily Tribune newspaper dated 06.05.1979. According to which, three posts of Clerk were reserved for candidates of Scheduled Caste category. Petitioner applied for the post meant for reserved category candidate and appeared before the Selection Committee and he was selected and appointed against reserved category post. Moreover, the grading list was casted by the department from time to time, in which, it was clearly depicted that petitioner belongs to Scheduled Caste category. Thus, at the time of entering into the service, petitioner introduced himself as a Scheduled Caste candidate and also produced the certificate in this regard. However, it has been admitted by the respondents that in the year 1987, a Committee visited the office of Bankfinco and conducted the inspection of the Reservation Roster Registers and Service Record of the reserve category candidates, which pointed out that the Scheduled Caste certificate (P-1) produced by the petitioner – Sukhdarshan Singh does not contain the dispatch number, date and office of the issuing authority. Thus, he was required to produce a fresh Scheduled Caste certificate. In pursuance of which, he produced a fresh Scheduled Caste certificate dated 14.08.1987

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(P-3). Since there was no provision for the reservation in the Bankfinco or Staff Regulations, 1979 framed under Section 34 of the Punjab Backward Classes Land Development & Financial Corporation Act, 1976, the appointment of the petitioner was not legal and valid. Thus, retiral benefits have rightly been withheld by the respondents vide order dated 31.03.2015 (P-7). While reiterating the facts contained in the petition, which have been recapitulated in para no.2 of this judgment, it has been contended by learned counsel for the petitioner that petitioner was admittedly appointed as Clerk in the year 1979. He was promoted to the post of Senior Assistant and Administrative Officer. Not only this, he was promoted to the post of Enforcement Officer on the basis of his performance of service. Besides it, he was also granted extension in the light of Instructions dated 27.02.2013 & 08.11.2013 issued by the State of Punjab to the Bankfinco. The petitioner performed more than 35 years of service to the satisfaction of the department and at the fag end i.e. at the time of retirement on completion of 59 years of age, impugned order dated 31.03.2015 (P-7) was passed. There was no fault, mis-representation or concealment of the fact on the part of the petitioner and as such, he should not be made to suffer and in recognition of the services rendered by him, he deserves pensionary benefits including gratuity as well as leave encashment.

5. On the other hand, learned counsel for the respondents urged that petitioner obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and nonest in the eyes of law. The right

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to salary as well as pension or other retirement benefit or on superannation flow from a valid and legal appointment. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. The petitioner as well as one Darshan Singh co-employee were selected and appointed against reserved category post, despite the fact that they were not entitled to it, it is well settled proposition of law that a person even if belongs to a Scheduled Caste category hailing from Punjab or Haryana is not entitled for reservation in Bankfinco and there was no such provision also. Thus, appointment of the petitioner as well as aforesaid Darshan Singh can be said to be not in accordance with statutory provisions of law. Accordingly, instant petition merits dismissal that too, with special cost.

6. After bestowing due consideration to the rival submissions made by learned counsel for the parties and meticulously scanning of the pleadings and other documents available on file, this Court comes to the conclusion that various contentions put forth by the respondents do not carry any legal and factual weight. Rather, this Court finds full strength in the submission made by learned counsel for the petitioner and the impugned orders particularly orders dated 31.03.2015 (P-7), 19.11.2015 (P-9) and 25.06.2015 (P-10) are not sustainable in the eyes of law.

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7. Undisputably, some posts of Clerks were advertised in Daily Tribune. In response thereto, petitioner applied, appointed and selected as Clerk against reserve category post. Three posts were advertised as per the advertisement for Scheduled Caste candidates. Here it would be pertinent to mention that a Committee conducted an inspection of the Reservation Roster Registers and Service Record of the reserve category candidate(s), which pointed out that Scheduled Caste certificate (P-1) produced by the petitioner – Sukhdarshan Singh does not contain the dispatch number, date and office of the issuing authority and advised the petitioner to produce a fresh Scheduled Caste certificate. In pursuance thereof, he produced a fresh certificate dated 14.08.1987 (P-3) issued by the office of Sub-Divisional Officer (Civil), Jagadhri and after submission of said certificate, till the date of passing the order dated 31.03.2015 (P-7), nothing was done. After his appointment, he was promoted at different times for different posts and ultimately, he was promoted to the post of Enforcement Officer before he superannuated. Even after completion of 58 years of age, extension was also granted to the petitioner for a period of one year and it was only subsequent thereto, on completion of 59 years of age, he was retired with certain riders and instructions. No doubt, ordinarily a person, who has obtained appointment on the basis of a false certificate, cannot retain the said benefit and his appointment is 'no appointment in eye of law' and thus, has absolutely no justification for his claim. But in the case in hand, the said proposition is not applicable. There is nothing on record to suggest that petitioner perpetrated a fraud and claimed the reservation. The

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posts were advertised, in each, three posts were reserved for Scheduled Caste. In response to the said advertisement, petitioner applied for the post of Clerk. He was duly selected by the Selection Committee and in pursuance of the letter of appointment dated 23.08.1979 (P-2), he joined his services. Thus, it cannot be said that at any point of time while being appointed, the petitioner concealed or mis-stated any fact or played any fraud or mis-representation. It appears that due to the said reason, petitioner performed his services, promoted to the different post(s) and ultimately retired. Had there been a fraud or mis-representation on the part of the petitioner in obtaining the appointment as a Clerk against reserved category candidate, the contentions put forth by learned counsel for the respondents would have carried some legal or factual weight.

8. Further, it is not the case that petitioner has entered this service by producing a false certificate while obtaining the appointment for reserved category post. Actually and factually, petitioner belongs to Village Bilaspur, District Jagadhri, Haryana and caste certificate produced by him was legally and validly issued by the competent authority i.e. Sub Divisional Officer (Civil), Jagadhri. Thus, it cannot be said that any general candidate was deprived on account of any malafide or illegal and unlawful practice by the petitioner. If, there was any fault or omission while making the recruitment or selection that lies on the part of the department and the Selection Committee and for that reason, petitioner cannot be made to suffer. The petitioner is also not in service and has retired on 31.03.2015. Thus, he deserves the retiral benefits and

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withholding of retiral benefits by the respondents is wholly, illegal and unjustified.

9. In the light of what has been discussed above, impugned orders dated 31.03.2015 (P-7), 19.11.2015 (P-9) and 25.06.2015 (P-10) are set aside/quashed and respondents are directed to release the remaining retiral benefits to the petitioner including Death-cum-Retirement Gratuity or Leave encashment, that too, along with interest @ 9% p.a. after expiry of three months from the date of retirement of the petitioner i.e. 01.07.2015 till actual payment. The needful shall be done by the respondents within a period of three months from the date of receipt of a certified copy of this order. In case of non compliance of this order, petitioner shall be at liberty to have recourse to the other remedies available under law as well as to approach this Court.

August 31, 2018
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes/No