

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

**CWP NO. 12015 OF 2015
DATE OF DECISION : 29.04.2019**

JAGDISH

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R. S. Mamli, Advocate,
for the petitioner.

Mr. S. K. Vashisth, DAG, Haryana.

Mr. Rajesh K. Sheoran, Advocate,
for respondent No.2.

Mr. K. K. Gupta, Advocate,
for respondents No.3 to 6.

ARUN MONGA, J. (ORAL)

1. The short controversy herein is whether petitioner is entitled to be considered for promotion to the post of Clerk after having rendered more than 20 years of service as Baildar.

2. At the relevant time when the petitioner was appointed in the year 1997, the Municipal Committee, Yamuna Nagar was in existence which later became Municipal Corporation in the year 2010. Subsequently, employees of the Municipal Corporation were promoted as per the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service

Rules, 1998 (hereinafter referred to as "the Rules") which, *inter-alia*, covers the matters of promotion of all Group 'C' and 'D' employees of the Corporation.

3. The claim of petitioner has been negated, *inter-alia*, mainly on two grounds : a) the petitioner being Baildar is not eligible for being considered for promotion since only Peons are eligible; b) No further recruitment/promotions are being made to the post of Clerk since post of Clerk in the Municipal Corporation is a diminishing cadre.

4. Learned counsel for the petitioner has drawn my attention to Section 422 of the Municipal Corporation Act, 1994, which envisages that the employees serving in a municipality, on constitution of a Corporation, shall deemed to have been transferred to the Corporation on the existing terms of service as incorporated in the Corporation Service Rules. For ready reference, the said Section is reproduced herein below :

"422 :Provisions regarding officers and employees :

(1) When any municipality including area comprising rural area or a part thereof, if any, is declare and constituted a corporation under Section 3 and 4 of this Act, the entire officers and employees serving in a municipality including area comprising rural area or a part thereof, if any, on a post in relation to which the Corporation is constituted, shall on the declaration and constitution of a Corporation, be deemed to be transferred to the Corporation on the existing terms of service and integrated into the Corporation service.

(2) The Corporation may recruit additional staff where necessary subject to the conditions as may be laid down by the Government.

(3) In making appointment to any post referred to in this Section the appointing authority shall follow the instructions issued by the Government from time to time in relation to reservation of appointment or post for Scheduled Castes, Backward classes and other categories of persons."

5. A perusal of the above leaves no manner of doubt that the service conditions of petitioner could not have been changed to his detriment by virtue of the Haryana Municipal Corporation Employee (Recruitment and Conditions) Service Rules, 1998, *ibid*, whereby Baildars have been held ineligible to the post of Clerk. Particularly, in view of the specific averment of the petitioner made in para 10 of the writ petition wherein he has given the instances of Baildars, who have been promoted to the post of Clerk. In response to the said averment, the stand taken by respondents that the said Baildars were senior to the petitioner and therefore, they have been granted promotion.

6. Be that as it may, the stand of the respondent that Baildars cannot be considered for promotion to the post of Clerk stands demolished in view of the candid admission that though the illustrations of Baildars given by the petitioner are correct but the same are justified on the ground of their being senior to the petitioner.

7. Now the other defence qua the diminishing cadre. The stand taken by the respondent qua the diminishing cadre also flies in the face of order dated 20.08.2015 (Annexure P-5), whereby certain peons have been promoted to the post of Clerk. On the one hand, the stand taken is that the cadre of Clerks is diminishing, at the same time Peons are being promoted to the said post, whereas, petitioner's claim has been negated on the ground that being diminishing cadre, he cannot be considered for promotion to the post of Clerk. Such a reprobating and approbating conduct of the respondent-Corporation does not stand judicial scrutiny and is to be deprecated, to say the least.

8. Apart from Section 422 of the Act, learned counsel for the petitioner has also drawn my attention to notification dated 24.07.1998 (Annexure P-2) issued by General Administration Department, Government of Haryana, relevant whereof is extracted herein below :-

"APPLICATION

These rules shall apply to all Group C and Group D employees of all the departments of the State of Haryana in respect of promotion to the post of Clerk.

ELIGIBILITY FOR PROMOTION

3. Notwithstanding anything to the contrary contained in any other service rules framed in this behalf, Group C and Group D employees who are Matriculate and have put in five years service on Group C and Group D posts on combined experience of five years service on both Group C and Group D

posts, whose scales of pay are less than or equal to the scale of the post of Clerk, shall be eligible for promotion to the 20 percent posts of Clerk reserved for them. When the turn of such employees comes up for promotion to the post of Clerk, they shall have to pass a written departmental test in Hindi and English language of the Matriculation level to be conducted by the Head of the Department concerned and only on being qualified they shall be considered for promotion to the post of Clerk. Such promotion shall be made on the basis of seniority-cum-fitness."

9. A perusal of said notification shows that the persons who fulfill the criteria stated above, would be eligible for benefit of promotion to the post of Clerk. They cannot be denied this benefit without just cause and without giving any reasons for rejection.

10. Further more, the stand of respondent-Municipal Corporation flies in face of the conceded position as reflected in para 2 of the preliminary objections of written statement, wherein it is stated that as per Haryana Municipal Services (Inegration, Recruitment and Conditions of Service) Rules, 1982 Peons, including Baildars, Oilmen-cum-Baildars, Chowkidars etc. have been granted the benefit of promotion. In view thereof, I am of the opinion that petitioner, who is Baildar, is eligible to be considered for promotion to the post of Clerk.

11. In the premise, the writ petition is allowed. The respondents are directed to consider the petitioner for promotion

to the post of Clerk by disregarding the fact that he is serving as Baildar. It is further made clear that the petitioner's service conditions shall be dealt with Haryana Municipal Services (Recruitment and Condition) Employees Rules, 1998, as mandated in Section 422 of the Municipal Corporation Act, 1994, read with notification dated 24.07.1998 (Annexure P-2). Let the decision with regard to promotion of the petitioner, be taken by the respondents within a period of three months from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

APRIL 29, 2019

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Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No.