

**231 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.15582 of 2015.

Date of Decision: 19.08.2019

Sarabjit Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Amrik Singh, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG Punjab.

Mr. V.K. Sharma, Advocate,
for respondent No.4.

JITENDRA CHAUHAN J.

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of order dated 30.06.2015 (Annexure P-12) and reply dated 23.06.2015 (Annexure P-11) vide which the claim of the petitioner for promotion to the post of Sub Inspector Horticulture was rejected.

It is contended that the petitioner was appointed as Beldar in the pay scale of Rs.70-2-80/3-95 in the Department of Agriculture on 21.08.1978 vide appointment letter dated 21.08.1978 (Annexure P-1). The petitioner was transferred to Fruit Preservation Laboratory vide order dated 10.02.1986 (Annexure P-2) and since then he has been working as Laboratory Attendant but has been receiving the pay of Beldar. Thereafter, the department prepared a seniority list in which

the post of the petitioner was shown as Beldar and he is placed at serial No.10, vide seniority list dated 21.11.1994 (Annexure P-3). Thereafter, the petitioner was confirmed as Beldar vide letter dated 29.01.1996 (Annexure P-4). Vide letter dated 22.05.1996 (Annexure P-5) respondent No.4 was appointed as Beldar. The petitioner submitted a representation dated 10.09.2014 (Annexure P-6) to the department for promoting him as Sub Inspector. Vide order dated 29.09.2014 (Annexure P-7), respondent No.4 was promoted as Sub Inspector in the pay scale of 5910-20200+2400 grade pay inspite of the fact that the petitioner is senior to him. The petitioner served a legal notice dated 05.10.2014 (Annexure P-9) upon the department however, the claim of the petitioner was rejected on the ground that the cadre of the petitioner was changed as Lab Attendant at his own request so he cannot claim seniority and whereas, respondent No.4 is a Beldar and was legally promoted by the department.

It is contended that vide order dated 10.02.1986 (Annexure P-2) the petitioner was transferred to Food Preservation Laboratory as Beldar however, this transfer order cannot be termed as appointment of the petitioner as Laboratory Attendant. It is further contended that as per Rule 3.12 of the Punjab Civil Services Rules, when an employee is confirmed on a post, he acquires a lien on that post which does not cease on his fresh appointment. It is further contended that the services of the petitioner have been confirmed as Beldar on 29.01.1996 which shows that he was holding the post of Beldar, although he had been

referred to as Lab Attendant vide order dated 10.02.1986 (Annexure P-2).

On the other hand, on behalf of respondent Nos. 1 to 3, it is contended that the petitioner had submitted an application for appointment on the vacant post of Laboratory Attendant in the Fruit Preservation Laboratory in the office of Horticulture Development Officer, Ropar. The said application was forwarded in original by Assistant Director Landscaping, Patiala along with his recommendation vide letter dated 31.12.1985 to the Director Horticulture, Punjab, Chandigarh. The petitioner joined on the post of Laboratory Attendant in the office of Horticulture Development Office, Ropar on 05.03.1986 in compliance of order dated 10.02.1986. The petitioner has been receiving salary as Laboratory Attendant and not as Beldar. The nomenclature of the post is Laboratory Attendant and not Laboratory Assistant and the same is due to the typographical mistake. The petitioner had changed his cadre from Beldar to Lab Attendant at his own request in the year 1986.

Respondent No.4 has also adopted the line of arguments as addressed by the learned State counsel.

Heard.

As per record, the initial appointment of the petitioner was as Beldar vide order dated 21.08.1978 (Annexure P-1). Vide order dated 10.02.1986 (Annexure P-2) the petitioner was transferred to Fruit Preservation Laboratory. It is the case of the respondents that

through this transfer order, the cadre of the petitioner stood changed which in opinion of this Court is not sustainable in the eyes of law particularly considering the fact that in the seniority list dated 21.11.1994 (Annexure P-3) which was finalized after eight years of passing the aforesaid transfer order (Annexure P-2), the post held by the petitioner was shown as Beldar, although with a special remark that the petitioner had been working as Lab Attendant since 05.03.1986. Not only that, after two years of finalizing the seniority list, the petitioner was confirmed in service as Beldar vide order dated 29.01.1996 (Annexure P-4) passed by Assistant Director Horticulture Fatehgarh Sahib. Meaning thereby, till 29.01.1996 the petitioner was considered and shown in the documentation as Beldar. However, vide order dated 29.09.2014 (Annexure P-7) respondent No.4 who is junior to the petitioner was promoted as Sub Inspector Horticulture ignoring the legitimate claim of the petitioner. Even otherwise, the learned counsel for the respondent(s) have failed to show any rule/instructions vide which the cadre of the petitioner could be changed from Beldar to that of Lab Attendant.

In view of the above, the present civil writ petition is allowed. The order dated 30.06.2015 (Annexure P-12) and order dated 23.06.2015 (Annexure P-11) are hereby quashed. The respondent Nos. 1 to 3 are directed to promote the petitioner as Sub Inspector Horticulture from the date when respondent No.4 was promoted as Sub Inspector Horticulture. The necessary exercise be completed within a

period of two months from the date of receipt of certified copy of the judgment.

19.08.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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