

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17161-2015 (O&M)

Date of Decision:-06.03.2019.

Jangbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ram Niwas Sharma, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana for
respondent Nos.1 and 2.

Mr. Subhash Ahuja, Advocate for respondent No.3.

ARUN MONGA, J. (Oral)

1.) The present writ petition has been filed, *inter alia*, seeking a writ in the nature of certiorari for quashing the order dated 01.05.2015 (Annexure P-6) vide which the claim of the petitioner for stepping up of his pay at par with his junior has been rejected on the ground that he was firstly promoted from Peon to Record Keeper and then Clerk, whereas his junior Karambir Singh Rathi (respondent No.4) was directly promoted from Peon to Clerk.

2.) I have perused record and heard learned counsel for the parties.

3.) It is irrefragable position that in the feeder cadre, petitioner was senior to respondent No.4 Karambir Singh Rathee who were both serving as Peons before their promotion to the post of Clerk.

4.) Learned counsel for respondents contend that the petitioner is not entitled to the step up of his pay at par with his junior/respondent No.4

as he was earlier promoted from Peon to Record Keeper, whereas, respondent No.4 was directly promoted from Peon to Clerk and, therefore, the benefit of the step up of the salary had been rightly denied to the petitioner.

5.) Learned counsel for the petitioner contends that the petitioner was assigned seniority in the cadre of Clerk w.e.f. 10.02.2001 i.e. the date when he was promoted on *ad hoc* basis and he was regularized vide order dated 08.07.2010 (Annexure P-2). As against this, respondent No.4 was promoted directly on a regular vacancy as Clerk on 24.03.2011 w.e.f. 04.08.2010. Seen from that angle, the petitioner having rendered service as Clerk w.e.f. 2001, even initially on *ad hoc* basis for a period of 9 years, is entitled to grant of benefit of step up of his pay so as to draw the similar salary as was granted to respondent No.4. The learned counsel has relied on a judgment rendered by this Court titled as **“Kewal Singh Vs. State of Punjab and Others”** reported as **2015 (1) RSJ 695**. The relevant whereof is extracted hereinbelow:-

“9. It is a settled principle of law that a person who gains employment in terms of accepted modes of public appointment cannot be deprived of the benefits of service rendered by him on ad hoc basis for the purposes of seniority and other related service benefits.”

6.) I am in respectful agreement with the view taken by the learned Single Judge in the judgment, *ibid*. Per contra, learned counsel for the respondent relies on a judgment rendered by the Supreme Court in case titled as **“State of Haryana and Others Vs. Sita Ram and Others”** reported as **2014 (1) SCT 515**.

7.) I have gone through the said judgment and am of the view that the same is not applicable to the present case. What has been held there is that the use of term “regular service” rendered by an employee after regular employment could only be counted for computation of length of service for the purpose of extending the benefit of time bound promotional scales or promotional increments and, therefore, service rendered on temporary/*ad hoc* or work charged basis is not to be counted for the purpose. In the present case, the petitioner is seeking benefit of step up of his pay on the ground that he was appointed as a Clerk in the year 2001 which is way back compared to the respondent No.4 who was concededly appointed as a Clerk in the year 2011 though w.e.f. 2005. Seen from another angle, since the petitioner was appointed as Clerk in 2001 though on *ad hoc* basis, he is entitled to step up of his pay so as to draw his salary equivalent to the respondent No.4, who was promoted much later than the petitioner.

8.) In view of the above discussion and the reasoning therein, impugned order dated 01.05.2015 (Annexure P-6) is set aside and respondents are directed to treat 10.02.2001 as the petitioner's date of appointment as Clerk and re-compute his pay accordingly. It is, however, made clear that the pecuniary benefits to be granted to the petitioner shall be disbursed only for a period of 38 months prior to institution of the present writ petition along with interest @ 6% per annum.

9.) Petition is allowed.

(ARUN MONGA)
JUDGE

March 06, 2019.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.