

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

CWP-21603-2016

Date of decision: - 09.01.2019

Mithan Lal Gupta

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.S. Pathania Advocate,
for the petitioner.

Mr. Sunil K. Vashisht, Deputy Advocate General, Haryana
for respondent No.1.

Mr. Baldev Raj Mahajan, Senior Advocate,
Advocate General, Haryana with
Mr. Gagandeep Singh Wasu, Advocate
for respondents No.2 and 3.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 09.06.2016 (Annexure P-12), by which the claim of the petitioner for grant of promotion with effect from the date his junior Sh. Maha Singh was granted, has been rejected.

In order to appreciate the controversy, certain facts needed to be enumerated.

Petitioner joined as a Meter Reader on 20.12.1966. One Sh.

Maha Singh joined as a LDC on 30.05.1968. Another person, namely, Sh. Ramnath Singh joined as UDC on 09.02.1968. In order to get the promotion as UDC, an employee was required to pass four papers in accounts. Respondents-department decided that even after clearing of two papers out of four, the employee could be promoted as UDC. Petitioner cleared two papers out of the four papers on 23.12.1971 and he was promoted as UDC on 23.12.1971 itself. Sh. Maha Singh cleared two papers out of the four on 14.11.1974, he was promoted as UDC on 20.02.1975. It is a matter of fact that the petitioner cleared all the four papers as required upto 30.05.1974 whereas, Sh. Maha Singh, who was junior to him, cleared all the papers only on 19.05.1975. It is also a matter of fact that Sh. Ramnath Singh, who was directly appointed as UDC, cleared his papers on 18.10.1979.

Thereafter, the petitioner was promoted as a Commercial Assistant on 02.11.1992 and Sh. Maha Singh was promoted as a Commercial Assistant on 04.06.2003. Petitioner was further promoted as a Circle Assistant on 25.11.2002 and by the said date, Sh. Maha Singh had not been promoted as a Circle Assistant. Thereafter, the petitioner got promotion as a Head Clerk on 18.12.2003. On the said date, Sh. Maha Singh was only working as a Commercial Assistant, which is two posts below than the petitioner. The petitioner retired as a Head Clerk on 31.08.2004. Sh. Maha Singh retired as a Commercial Assistant on 31.01.2007. The above averments show that the petitioner has been senior to Sh. Maha Singh in all the cadres and had also passed the required examination prior to Sh. Maha Singh.

After retirement, Sh. Maha Singh filed a civil suit in the year 2008 in which, Sh. Maha Singh claimed that one Sh. Ramnath Singh, who had passed the departmental examination in the year 1979, was being wrongly treated senior to him and Sh. Ramnath Singh was granted promotion on the higher rank whereas, Sh. Maha Singh should have been granted the promotion by treating him senior to Sh. Ramnath Singh on the ground that the candidate who passed the departmental examination in accounts in the cadre of UDC on an earlier point of time, was to be treated senior to a member of service, who passed the departmental examination on a subsequent date. The said civil suit filed by Sh. Maha Singh was allowed by the trial Court on 14.05.2012 and a direction was issued that Sh. Maha Singh was to be treated senior to Sh. Ramnath Singh for all intents and purposes and should be granted the benefit of promotion w.e.f. the date from which the promotions were granted to Sh. Ramnath Singh.

Feeling aggrieved against the said judgment, the respondents filed an appeal before the learned District Judge, Gurgaon, which was also dismissed on 26.07.2013.

Both the judgments dated 14.05.2012 and 26.07.2013 passed in favour of Sh. Maha Singh were challenged by the respondents by filing RSA No.494 of 2014. The said RSA was decided by this Court on 06.05.2014 and by a detailed order. This Court held that as Sh. Maha Singh had passed the departmental examination prior to Sh. Ramnath Singh while working as UDC, he was entitled to be treated senior to Sh. Ramnath Singh for all intents and purposes and should be granted promotion to the higher rank from the date the promotions were granted

to Sh. Ramnath Singh. The relevant paragraph of the order passed by this Court in RSA No.494 of 2014 is as under: -

“It was not argued case on behalf of the appellants that after passing of the departmental examination, plaintiff was still not entitled for consideration for promotion, despite the availability of the post. It was also not argued case on behalf of the appellants nor any relevant provisions of law were referred in this regard that if a senior employee does not pass the departmental examination for promotion, his junior, who had already passed the departmental examination for promotion, would not be considered for promotion before a senior who did not make himself eligible for promotion. In this view of the matter, it is unhesitatingly held that both the learned courts below proceeded on a factually correct and legally justified approach, while passing their respective impugned judgments and the same deserve to be upheld, for this reason also.”

After the dismissal of the above-said Regular Second Appeal, it is not disputed that the respondents filed a SLP before the Hon'ble Supreme Court, which was also dismissed. Meaning thereby, the finding recorded by the trial Court that an employee who passed the departmental examination as UDC at a prior point of time, is to be treated senior to an employee who passed the examination at a later stage.

It is not disputed by learned counsel for the respondents that after the litigation initiated by Sh. Maha Singh came to an end before the Hon'ble Supreme Court of India, an order was passed by the respondents on 30.10.2014 (Annexure P-3) granting the relief to Sh. Maha Singh of promotion with effect from the date the same were granted to Sh. Ramnath Singh.

After the grant of the said benefit, Sh. Maha Singh was

granted promotion as a Commercial Assistant from 31.12.1979 instead of 04.06.2003 and further promotion as a Circle Assistant from 16.07.1992 and then, as a Head Clerk from 22.07.1996 and then, he is treated as retired as a Head Clerk on attaining the age of superannuation on 31.01.2007. By the grant of this benefit, Sh. Maha Singh became senior to the petitioner by getting promotion to the next higher rank from a much prior date when the petitioner was given the said promotion.

As the petitioner was senior to Sh. Maha Singh and was not only similarly situated as Sh. Maha Singh in respect of passing of the departmental examination, but was on a better footing as he had passed the departmental examination much prior to even Sh. Maha Singh, petitioner approached this Court by filing a CWP No.1754 of 2016 claiming the same benefits, which was extended to Sh. Maha Singh, who was junior to him. The said writ petition was disposed of by this Court on 28.01.2016 by giving directions to the respondents to pass a speaking order on the legal notice, which the petitioner had served upon the respondents on 05.10.2015.

Keeping in view the said direction given by this Court, the respondents passed an order on 09.06.2016 (Annexure P-12) rejecting the claim of the petitioner on the ground of delay and laches. It was admitted by the respondents that while implementing the order passed by the trial Court, Sh. Maha Singh had become senior to the petitioner. This order dated 09.06.2016 (Annexure P-12) is under challenge in the present writ petition.

Upon notice of motion, reply has been filed on behalf of the

respondents defending the impugned order. In the reply, the objection has been taken that the petitioner had approached this Court after a period of 12 years of retirement and therefore, there is a delay in seeking the relief from this Court, which should be good enough to reject the prayer made by the petitioner in the present writ petition. Further, an objection has been taken that the petitioner is not similarly situated to Sh. Maha Singh as Sh. Maha Singh was appointed as a LDC, whereas, the petitioner was appointed as a Meter Reader. It has been projected that the cadre of Meter Reader and LDC are totally different and therefore, no relief can be claimed by the petitioner on account of grant of such relief to Sh. Maha Singh.

I have heard counsel for the parties and gone through the record.

It is an admitted fact that the petitioner was appointed as a Meter Reader prior to Sh. Maha Singh. It is further a matter of fact that the petitioner was promoted as UDC prior to Sh. Maha Singh. Petitioner was promoted on 23.12.1971, whereas, Sh. Maha Singh was promoted as such on 20.02.1975. This shows that for promotion to the post of UDC, there was no difference in the cadre of Meter Reader and the LDC. Had there been any difference in the cadre, than the respondents would not have promoted the petitioner as UDC from which cadre the present controversy started. Further, it is an admitted fact that till the petitioner and Sh. Maha Singh remained in service, Sh. Maha Singh remained junior to the petitioner in all the cadres. Rather, petitioner retired as a Head Clerk on 31.08.2004 and on the said date, Sh. Maha Singh was not even

promoted to the said post keeping in view his seniority below the petitioner. On 31.01.2007 Sh. Maha Singh retired as a Commercial Assistant, which is two cadres below that cadre from which the petitioner retired in 2004, meaning thereby, Sh. Maha Singh was junior to the petitioner throughout the service career.

Sh. Maha Singh after retirement in the year 2007, raised a grievance qua his promotion viz-a-viz Sh. Ramnath Singh, who was granted promotion prior to Sh. Maha Singh as well as to the petitioner herein. The grievance raised by Sh. Maha Singh was that unless and until a UDC passes the departmental examination, he cannot be confirmed and it is only those UDCs, who passes the departmental examination first, are to be treated senior. This contention has been upheld upto the Hon'ble Supreme Court of India, which is clear from the averments noted in the preceding paragraphs of this order. After the litigation initiated by Sh. Maha Singh came to an end, Sh. Maha Singh has been granted the benefit of promotions with retrospective effect by the respondents, vide order dated 30.10.2014. Sh. Maha Singh has been granted promotions with effect from the date Sh. Ramnath Singh was granted promotions and by the grant of the said benefit, Sh. Maha Singh became senior to the petitioner in all the cadres. The contention of the petitioner is that once a benefit has been granted to Sh. Maha Singh, the petitioner who is similarly situated as Sh. Maha Singh and is rather on a better footing than Sh. Maha Singh as the petitioner had passed the departmental examination prior to Sh. Maha Singh, he was entitled for the same benefit as extended to Sh. Maha Singh, vide order dated 30.10.2014. In view of

the above fact, it cannot be said that the service career of petitioner is in any way dissimilar to Sh. Maha Singh. Once, on a particular analogy of passing the examination on a prior point of time, Sh. Maha Singh has been given benefit of promotions by comparing his case to Sh. Ramnath Singh, the petitioner should have been extended the said benefit by the respondents themselves. The petitioner passed the examination at a prior point of time than Sh. Maha Singh, that is why, the petitioner was promoted as UDC on 23.12.1971, whereas, Sh. Maha Singh was promoted on 20.02.1975 i.e. four years after the promotion of petitioner. Hence, the difference being created by the respondents in case of the petitioner and Sh. Maha Singh to deny the benefit to the petitioner is totally illusory, hence, cannot be accepted.

The second contention which has been raised by the counsel for the respondents, which has been noted in the impugned order is that the case of the petitioner is liable to be rejected on the ground of delay and laches. As per the respondents, the petitioner retired in the year 2004, whereas the present writ petition was filed in the year 2016 claiming the said relief, which itself should be a ground to deny the benefit as being claimed by the petitioner in the present writ petition. In my opinion, the said argument is incorrect and cannot be accepted as Sh. Maha Singh was granted the benefit by the respondents, vide order dated 30.10.2014 (Annexure P-3) and it is only on the said date, Sh. Maha Singh became senior to the petitioner in all the cadres. Immediately, the petitioner filed a writ petition before this Court being CWP No.1754 of 2016, which was disposed of by this Court with liberty to the respondents

to pass appropriate orders on the prayer made by the petitioner seeking parity with Sh. Maha Singh. After his case was rejected by the respondents vide impugned order dated 09.06.2016 (Annexure P-14), petitioner immediately filed the present writ petition. There was no cause of action, which would have made the petitioner to approach this Court as Sh. Maha Singh remained junior to the petitioner till 03.10.2014 and was drawing less pension as compared to the petitioner upto the said date. It is only after the benefit was granted to Sh. Maha Singh on 30.10.2014, the grievance of the petitioner started and hence, it cannot be said that there is any delay in approaching this Court for the grant of relief, therefore, the ground taken by the respondents in the impugned order to deny the benefit to the petitioner is non-existence and is hereby rejected.

Further, once there was already an order passed in favour of similarly situated employee, which had attained finality, relief claimed by the petitioner should have been allowed. It was incumbent upon the respondents to implement the judgment passed in favour of Sh. Maha Singh qua the similarly situated employees including the petitioner. The retired employees should not be made to run to this Court to seek the same relief, which the respondents themselves have granted after the adjudication by competent Court of Law.

Reliance can be placed in this regard on the judgment of this Court rendered in **Satbir Singh Vs. State of Haryana**, 2002(2) S.C.T.

354. The relevant portion of the said judgment is as under: -

“When judgments attain finality to which the State is a party,

duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of **Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994 (7) SC 565 : 1995(1) SCT 527 (SC)** the Hon'ble Apex Court held as under : -

“The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court.”

In the present case, an opportunity was granted to the respondents-State to pass appropriate orders in the case of the petitioner, but on a hyper-technical ground, the relief was denied to the petitioner though he is not only similarly situated as Sh. Maha Singh but on a better footing.

In view of the above, the present writ petition is allowed. The impugned order dated 09.06.2016 (Annexure P-12) is set aside and a direction is issued to the respondents to consider the case of the petitioner for the grant of promotions with effect from the date the same were granted to Sh. Maha Singh, who was junior to him in all the cadres in his service career. After the grant of the said benefit, the petitioner shall be

granted notional benefits of fixation of pay and pension and the arrears shall be restricted to 38 months prior to the filing of the present writ petition.

Present writ petition stands allowed accordingly.

January 09, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No