

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23186 of 2016

Date of Decision: 27.02.2019

Dalip Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.J.P.Rana, Advocate, for the petitioner.

Mr.Ravi Pratap Singh, AAG Haryana.

Mr.Deepak Manchanda, Advocate, for the respondent No.4.

Ms.Amrita Nagpal, Advocate, for

Mr.Shireesh Gupta, Advocate, for respondent No.5.

RITU BAHRI, J. (ORAL)

Petitioner is seeking direction to the respondents to immediately promote the petitioner from the post of Leading Fireman to the post of Sub Fire Officer/Assistant Fire Station Officer from the date of promotion of his junior i.e. 07.07.2011 (Respondent No.5) in view of the order dated 18.12.2015 (Annexure P-9) passed by the Commissioner Municipal Corporation, Ambala, in compliance of the order dated 17.12.2014 passed in CWP No.25846 of 2014 (Annexure P-8).

The brief facts of the case are that petitioner was initially appointed as Fireman on the recommendation of Selection Committee vide appointment letter dated 26.12.1990 and joined as Fireman at Ambala and his services were regularized vide order dated 31.03.1993. Thereafter, petitioner further passed the course of Leading Fireman in the year 1998

and requested for promotion to the post of Leading Fireman. Thereafter, he was promoted to the post of Leading Fireman on 01.01.2003 and posted in the office of Municipal Council, Ambala Sadar. Thereafter, the petitioner transferred from Ambala Sadar to Municipal Council, Ambala City and since then he is working in the office of Municipal Council, Ambala City with his full devotion and sincerity. Thereafter petitioner passed the course of Sub Fire Officer in the year 2009 and accordingly informed the respondents and requested for promotion to the post of Sub Fire Station Officer. Thereafter, without considering the eligible claims of the petitioner for promotion to the post of Assistant Fire Station Officer, the respondent No.3 who is junior to him and he was promoted as Leading Fireman on 20.09.2006 has been promoted as Assistant Fire Station Officer whereas he is still working on the post of Leading Fireman. On the perusal of the record of Sh.Pankaj Kumar he was initially appointed as Fireman on 01.10.1997 and later on promoted as Leading Fireman on dated 20.09.2006. Further, Sh.Pankaj Kumar was promoted on the post of sub Fire Officer when he was posted as Leading Fireman in Municipal Corporation Naraingarh by the Deputy Commissioner, Ambala vide order dated 04.07.2011. Accordingly, on the perusal of the record it has been noticed that Sh.Pankaj Kumar is junior to the Sh.Dalip Kumar. It is also mentioned here that after the constitution of Municipal Corporation, Ambala dated 17.03.2010 by the State Government Sh.Pankaj Kumar was promoted on the basis of Seniority List only of Municipal Committee, Naraingarh. In the case of petitioner Sh.Dalip Kumar, after the constitution of Municipal Corporation post of the Assistant Fire Station

Officer was kept in diminishing cadre and accordingly no such post Assistant Fire Station Officer is available with the Municipal Corporation, Ambala. Keeping in view the above mentioned fact petitioner could not be promoted. Finally it was observed in the order dated 18.12.2015 (Annexure P-1), petitioner could be promoted on the post of AFSO at some other Municipal Committee/Council/Corporation, where the post is vacant or in the alternative the post of AFSO may be revived from the diminishing cadre.

On notice, written statement has been separately filed by respondent No.2 on 23.05.2017 and a reference has been made to the order passed by this Court in CWP No.22216 of 2015 decided on 19.04.2017 wherein, petitioner No.1 and 2 have sought similar relief i.e. for promotion to the post of Assistant Fire Station Officer to the post of Assistant Fire Station Officer. This writ petitioner has been dismissed in terms of the decision dated 12.04.2017 of the Commissioner, Municipal Corporation, Yamuna Nagar-Jagadhari, that petitioners are not entitled for promotion. Having regard to the decision taken by the respondents that it is a diminishing cadre. Consequently, there are no vacancies and vacancies have been ceased. Hence, the writ petition was dismissed. It has been further clarified that respondent No.5 was promoted in Municipal Council, Naraingarh, as per the seniority list of the District cadre post as per the provisions of the Haryana Municipal Service Rules, 1982 by the Deputy Commissioner, Ambala being the competent/appointing authority. After the constitution of Municipal Council, Ambala City and Ambala Sadar, the services of employees of Municipal Committees and Councils were

governed under the Haryana Municipal Corporation Employees (Recruitment and conditions) Service Rules, 1998, the services of employees of Municipal Committees and Councils (in case of respondent No.5) were governed under the Haryana Municipal Service Rules, 1982. It is further submitted that as far as the promotion of the petitioner is concerned, it is pertinent to mention here that after the constitution of Municipal Corporation, Ambala, the Govt. has sanctioned various posts in Municipal Corporation, Ambala vide memo dated 07.03.2011 vide which 3735 posts were sanctioned in diminishing cadre, wherein two number of posts of Sub Fire Station Officer have also been sanctioned in diminishing cadre in Municipal Corporation, Ambala and thus, because of non-availability of post of Assistant Fire Station Officer with Municipal Corporation, Ambala, the petitioner cannot be promoted by respondent No.4. With regard to the promotion of Ram Karan and Rajbir Singh who were juniors to the petitioner and they were given promotion because the said two leading Firemen were transferred to other Municipal Committees/Councils as Leading Firemen and have been promoted by the concerned competent authorities where they were transferred/posted. It is further submitted in the reply that at present Haryana Fire Service Rules, 2016 have come into force w.e.f. 21.06.2016, as per these service rules, for promotion to the post of Sub-fire officer departmental test is required for promotion from Leading Fireman to Sub Fire Officer. It is also relevant to point out that department has already written to the Haryana Institute of Public Administration, Gurugram for conducting the departmental test for promotion of various posts of Fire Services and it will shortly conduct the

departmental exam after completion of some inter-departmental formalities.

In a short reply filed by respondent No.4, it has been mentioned that respondent No.5 was promoted in Municipal Committee, Naraingarh as per the seniority list of the district by the Deputy Commissioner, Ambala being the competent authority, as per the provisions of the Haryana Municipal Service Rules, 1982. Whereas, in the Municipal Corporation, the employees are governed by the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 as in the case of the petitioner, where the answering respondent is the competent authority. Hence, the seniority list as determined by the Deputy Commissioner, Ambala (in case of Municipal Committee/Council) is not applicable in the case of the petitioner. It is further submitted that as far as the promotion of the petitioner is concerned, it is pertinent to mention here that after the constitution of Municipal Corporation, Ambala, the Govt, has sanctioned various posts in Municipal Corporation, Ambala vide which 3735 posts were sanctioned in diminishing cadre, wherein two number of posts of Sub Fire Station Officer have also been sanctioned in diminishing cadre in Municipal Corporation, Ambala and thus, because of non-availability of post of Assistant Fire Station Officer with Municipal Corporation, Ambala, the petitioner cannot be promoted by the respondent No.4.

On 28.09.2017, the Director, Urban Local Bodies, Haryana, was present in Court along with Commissioner, Municipal Corporation, Ambala, pursuant to this Courts' order dated 12.05.2018, was directed to look into the entire matter and file his personal affidavit, i.e. the Director shall file his personal affidavit, stating as to how the petitioner, who

contends he is senior to respondent No.5 by 6 ½ years, was promoted much after the aforesaid respondent, the petitioner having joined as a Fireman (as contended) on 15.03.1990 in the Municipal Council/Committee, Ambala with respondent No.5 having been appointed thereto on 30.09.1997, in the same Council/Committee.

In compliance of the order dated 28.09.2017, an affidavit has been filed by Director General, Urban Local Bodies-cum-Fire Service, Haryana, Panchkula, the services of the petitioner and respondent No.5 were governed in accordance to the provisions of “Haryana Municipal Services (Integration, recruitment and Conditions of Services)Rules, 1982”, wherein the appointing authority of the petitioner and respondent No.5 was the Deputy Commissioner, Ambala. Respondent No.5 was given the work of the vacant post of sub Fire Officer on temporary basis at Municipal Committee, Naraingarh vide order dated 29.11.2006 issued by the then Director, Urban Local Bodies, Haryana, alongwith three other officials to maintain the proper working of the fire stations. Thereafter, the above said order dated 29.11.2006 were withdrawn on dated 17.04.2007 in accordance to the Chief Secretary, Haryana instructions dated 17.02.2006, wherein all Heads of the Departments were directed to stop forthwith practice of assigning current duty charge to the officials. But the respondent No.5 namely Sh.Pankaj Kumar had taken the stay from the Hon'ble High Court on 28.04.2007 by filing the CWP No.6263 of 2007 and due to that remaind at Municipal Committee, Naraingarh as officiating Sub Fire Officer. He was promoted as Sub-Fire Officer later in 2011 by Deputy Commissioner, Ambala against vacancy in Municipal Committee,

Naraingarh being municipal Council Cadre.

In the reply, Section 422 (1) of the Haryana Municipal Corporation Act, 1994 says that when any municipality including, area comprising rural area or a part thereof, if any, is declared and constituted a Corporation under Sections 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.

Consequently, the service of the petitioner was to be under governed by the “Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 “ whereas the service of the respondent No.5 was remained under the provisions of “Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 1982”. Accordingly, the appointing authority of the petitioner was changed as Commissioner, Municipal Corporation, Ambala whereas appointing authority of the respondent No.5 i.e. Sh.Pankaj Kumar remained as Deputy Commissioner, Ambala. That as a matter of fact the services of the petitioner now came to be governed by different services rules and they became members of separate cadres.

It is further submitted in the reply that respondent No.5 was transferred from Naraingarh to Ambala due to the administrative exigencies vide order dated 17.09.2012 as there was no Fire Station Officer and Sub Fire Officer was working at Ambala City in Municipal Corporation,

Ambala, . It is pertinent to mention here that respondent No.5 remained posted at Faridabad, Gurugram and present he is working at Sirsa. On the contrary, the petitioner has always remained stationed at Ambala, throughout his service tenure on his own interest i.e. his hometown. This is a matter of fact that many a times employees want to stay put at a given station throughout their services so as to be in the home town or near by place which scuttles their promotion avenues.

In the present case , Haryana Government has enforced “the Haryana Fire (Group-C) Service Rules 2016” vide notification dated 03.06.2016 under Haryana Fire Service Act, 2009 in which 97 posts of Sub Fire Officer have been sanctioned. Vide Govt. Order dated 01.03.2017, the Fire Services of various Municipalities and Market Committees have been integrated w.e.f. 01.04.2017. Resultently, the services of all Fire officers/officials have fallen into the state level services. As per these service rules, for promotion to the post of Sub Fire Officer, a departmental test is required which is being conducted through HIPA, Gurugram for which date has already been fixed. The petitioner has also applied for this promotional test to the post of Sub Fire Officer and his rule number is 170041. This shows that petitioner accepted the condition of service rules and is willing to appear for the said departmental test, therefore, if as and when the petitioner will pass the departmental test his promotion case will be considered positively by the department.

In the present case, the promotion to the post of Assistant Fire Station Officer after constitution of Municipal Corporation, Ambala, dated 17.03.2010, cannot be made as this post was kept in diminishing cadres and

accordingly no such post Assistant Fire Station is available with the Municipal Corporation, Ambala.

In view of the above submission made in the affidavit, if petitioner qualifies the examination as per the Haryana Fire (Group-C) Service Rules, 2016, his case will be considered in accordance with law.

In view of the above, the present writ petition is dismissed.

Order accordingly.

(RITU BAHRI)
JUDGE

27.02.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No