IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.21660 of 2019
Date of decision:19.08.2019

Ashwani Narang ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner has come to this Court with the following prayer:-

"Civil Writ Petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari to quash the order dated 05.08.2019 (Annexure P-8) by which petitioner was ordered to be reverted from the post of Excise & Taxation Officer to the post of Assistant Accountant; further a writ in the nature of mandamus be issued to consider the claim of the petitioner for promotion as Superintendent/Assistant Excise & Taxation Officer/Excise & Taxation Officer from the date of his juniors have been promotion and further direction be issued that the benefit already granted to the petitioner may not be recovered from him".

As per the averments, on 17.12.1987, petitioner was appointed as Accountant by way of direct recruitment and thereafter, on 06.08.2004, post of Accountant merged in the Assistant Cadre. The prevailing Rules of Haryana Excise and Taxation Department (Group B) Service Rules 1988 envisaged that 6.2/3% posts of Assistant Excise & Taxation Officer were to be filled from the seniority list of Assistants and Senior Scale Stenographers. As per the aforementioned Rules, petitioner, vide order dated 23.08.2006 (Annexure P-1) was promoted Assistant Excise and Taxation Officer and thereafter, on 01.12.2019 (Annexure P-2) promoted as Excise and Taxation Officer.

Mr. R.K.Malik, learned senior counsel assisted by Mr. Sandeep Dhull, Advocate appearing on behalf of the petitioner submitted that there was a litigation before this Court challenging the aforementioned Rules and vide judgment dated 21.02.2013 (Annexure P-3), writ petitions were dismissed and Rule 9 was struck down. However, during the interregnum, department had come out with new Rule of 2011 i.e. Haryana Excise & Taxation Department (Group B) Service (Amendment) Rules, 2011 fixing percentage of promotion and as well as direct recruitment. Though order of this Court is of 2013, upheld by the Hon'ble Supreme Court in 2018 and has been implemented in impugned order without affording opportunity of hearing alongwith other similarly situated persons which is not sustainable as there is no compliance of natural justice.

I have heard learned senior counsel for petitioner, appraised paper book and of view that there is no force and merit in the submissions of Mr. Malik.

The facts narrated above are not in dispute, much less quashing of Rules of 1998 and upholding of judgment by the Hon'ble Supreme Court in Civil Appeal Nos.3498-99 of 2018 (Annexure P-4). There cannot be any grouse to the petitioner that order of this Court has been implemented in 2009, if at all, the petitioner is aggrieved, he had independent remedy to challenge the order of the Court affecting his rights, if certain facts regarding factum of seniority and affect of order resulting into promotion of junior have not been considered but not in the manner and mode as indicated above. The impugned order is in compliance of Hon'ble Supreme Court's order.

Prayer of Mr. Malik for considering the case of petitioner *vis-a-vis* claim of promotion is wholly bereft of the pleadings or any representation. In such circumstances, in the absence of same, direction cannot be issued to the respondents.

No ground for interference is made out.

Dismissed.

(AMIT RAWAL)
JUDGE

August 19, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No