

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15774 of 2016
Date of decision : 04.02.2020

Sunil Kumar

.... Petitioner

Versus

State of Haryana and others

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Karan Singh, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.

[1] Prayer in the writ petition is for quashing of order Annexure P/7 dated 02.05.2016 vide which the claim of the petitioner for consideration for promotion from the post of Peon to the post of Clerk was not sent by respondent No.3 to respondent No.2 in view of letter dated 29.03.2016 as also for the issuance of a writ of Mandamus for directing the respondents to grant seniority to the petitioner w.e.f. 20.05.1999 i.e. from the date of initial appointment in Municipal Council, Jind or at least w.e.f. 12.01.2000 i.e. from the date the petitioner was absorbed in the Industrial Training and Vocational Education, Haryana vide office order dated 12.01.2000 (Annexure P/2) and to consider him for promotion to the post of Clerk by placing him in the joint seniority list of Peons by assigning him seniority at the appropriate place.

[2] Brief facts of the case leading to the filing of the writ petition are that the petitioner was appointed as Peon on regular basis in the

18.05.1999. However, decision was taken by the Govt. of Haryana to abolish the Chungi as a result of which the staff working in the Municipal Committee Jind was declared surplus. Therefore, Govt of Haryana decided to absorb the surplus employees of Municipal Committee Jind in other departments, Corporations, Board etc. vide instructions issued by the Chief Secretary to Government of Haryana vide office letter No.42/180/90-5-GSI dated 12.11.1999. The name of the petitioner was sent to the Industrial Training and Vocational Education, Haryana by the Govt. of Haryana for absorption and appointment on the post of Peon vide office letter No.A1/90/51957 dated 20.12.1999, in pursuance of which the petitioner was appointed as Chowkidar in Govt. Vocational Educational Institute, Banaheri at Mundhal Kalan vide office order Annexure P/2, dated 12.01.2000 and in terms of the appointment letter, the petitioner joined service as Chowkidar on 17.01.2000.

[3] The Vocational Education Scheme was transferred from the Industrial Training and Vocational Education, Haryana to the Director of Secondary Education, Haryana along with the staff vide notification No. IT/VI/Merger/2008 dated 11.06.2008 whereupon the petitioner was assigned as Class-IV employee in Govt. High School, Dhakal, District Jind vide appointment letter, Annexure P/3 dated 24.08.2009. Pursuant thereto, the petitioner was appointed as Mali-cum-Water Carrier by the Headmaster, Govt. High School, Dhakal, Distt. Jind vide office order, Annexure P/4 dated 08.09.2009.

[4] That Director of Secondary Education, Haryana invited applications for Class-IV employees working in the Education Department who had been appointed between 01.08.1997 to 31.12.2000 for their promotion to the post of Clerk and concerned District Education Officers

and other field functionaries were directed to send cases to the directorate within 15 days where the employees were possessing the following qualification:-

- “1. 5 years service as Group D employee or Junior Attendant or restorer or Gasman or Gasman-cum-Mechanic or Table Player working in subordinate offices/institution of the department;
2. Passed matric or Higher Secondary Part-I or a recognized University or equivalent and;
3. Knows Hindi or English Typewriting.

A true translated copy of the letter dated 29.03.2016 is attached herewith as Annexure P/5.”

[5] The petitioner claimed that he had joined duty as Class-IV (Group D) on 20.05.1999 on regular basis and was possessing the qualification of matric with Hindi and B.A., besides, was knowing typewriting, therefore, fulfilled the educational qualifications, experience and other terms and conditions of letter, Annexure P/5, accordingly, he submitted an application for consideration of his name for promotion to the post of Clerk vide Annexure P/6. Although the application form of the petitioner was sent by the Headmaster of the School to the District Education Officer, Jind for further transmission to the Director of Secondary Education, Haryana for consideration of his claim for promotion to the post of Clerk, however, the District Education Officer, Jind refused to forward the case of the petitioner and the same was returned in original vide Annexure P/7 on the ground that that the petitioner had joined services in the Education Department in the year 2009 whereas the Department had sought the name of those Class IV employees who had joined prior to 31.12.2000. Stand of the petitioner was that he had joined duty on regular basis on 20.05.1999 in the Municipal Council, Jind and after retrenchment,

was appointed in ITI Department, Haryana as Class-IV vide appointment letter dated 12.01.2000 but the Vocational Education Scheme was transferred to the Education Deptt. Haryana and staff working in the said Scheme had been merged with the Education Department. Therefore, the petitioner was entitled to the seniority of Class IV w.e.f. 20.05.1999 i.e. the date of service and in any case w.e.f. 12.01.2000 i.e. date of which the petitioner had been appointed on regular basis in ITI Department.

[6] That the vocational Education Scheme where the petitioner was appointed on regular basis on 12.01.2000 had been merged in the Education Department in 2009 along with the staff working under the said Scheme. It was further the stand that the case of the petitioner for promotion to the post of Clerk was to be considered and decided by the Director, Secondary Education, Haryana i.e. the Appointing Authority, thus the District Education Officer had no authority to reject the claim of the petitioner for promotion to the post of Clerk and in any case, the claim of the petitioner for promotion could not have been rejected without compliance with the principles of natural justice.

[7] Written statement dated 30.10.2017 was filed by the District Education Officer, Jind on behalf of respondent Nos.1 to 3 while written statement dated 14.03.2018 was filed by the District Education Officer, Jhulana (Jind) on behalf of respondent Nos.1 to 3.

[8] In written statement dated 30.10.2017 stand is that on being declared surplus in the Municipal Committee, the petitioner was appointed as Chowkidar in Government Vocational Education Institute, Banaheri at Mundhal Kalan. The Vocational Education Scheme was transferred from the Industrial Training and Vocational Education Haryana and was merged with the Director of Secondary Education, Haryana along with the staff

whereupon the name of the petitioner was sent to the Directorate of School Education, Haryana by the ITI Haryana on the basis of which the petitioner was appointed as Class-IV employee in Govt. High School, Dhakal, District Jind vide appointment letter, Annexure P/4 dated 08.09.2009 inter alia on the terms and conditions contained therein the *official would join as the junior most employee in his categories on the date of appointment.*

On the basis of the same, it is contended that the benefit of past service rendered by the petitioner in the Municipal Committee before joining in the Education Department could not be counted. Stand is also taken in the aforementioned written statement that seniority list of Class-IV employees had to be prepared at the Directorate Level and that vide letter Annexure R-2 dated 03.05.2017 of District Education Officer in the context of CWP No.26060 of 2012 titled as Ram Mehar Singh vs State of Haryana and others, seniority list of Class-IV employees had been sent to the Directorate in compliance of Directorate Letter No.13/26-2013 HRME (5) dated 25.04.2017 containing list of total eligible Class-IV employees in District Jind as on 31.12.2006 for promotion to the post of Clerk (sent by respondent No.3 vide letter dated 20.04.2017) and the name of the petitioner finds mention at serial No.10 in the above said list of total Class IV employees but the petitioner was not eligible for promotion to the post of Clerk on account of his having joined the Education Department on 08.09.2009 whereas the department was going to promote those Class IV officials to the post of Clerk who had been appointed upto the year 2006 and that the petitioner would be promoted on his turn.

[9] Written statement dated 14.03.2018 on similar lines was filed by the District Education Officer, Jind.

[10] I have considered the submissions of learned counsel for the parties.

[11] Admittedly, the petitioner was appointed as Peon on regular basis in the Municipal Committee Jind vide appointment letter Annexure P/1 dated 18.05.1999 and he joined services on 20.05.1999. On abolition of Chungi, staff of Municipal Committee Jind was declared surplus whereupon the name of the petitioner along with that of all other surplus employees was forwarded for absorption. Pursuant thereto, the petitioner, vide Annexure P/2 dated 12.01.2000 was appointed as Chowkidar in Government Vocational Educational Institute, Banaheri at Mundhal Kalan. As per the terms and conditions of the order Annexure P/2, the petitioner was appointed as officiating Chowkidar in the Industrial Training and Vocational Education, Haryana on the condition that he would join as the junior most employee in his category as on date of appointment and would be placed below the employees working in the Industrial Training and Vocational Education, Department on the date of his joining and that inter se seniority would be determined separately but his pay would be protected and the appointment was made on further condition that the petitioner would not claim the benefit of past service towards seniority and other matters. The vocational Education Scheme was transferred from the Industrial Training and Vocational Education, Haryana to the Director of Secondary Education, Haryana along with staff whereupon the petitioner whose services had been placed at the disposal of the School Education, Haryana was appointed as Class-IV employee (Mali cum Water Carrier) in Government High School, Dhakal, District Jind by way of transfer on provisional basis inter alia on the conditions :-.

“4. You will be placed junior in seniority list in the cadre below the members of a service already working in this institution.

6. You will remain on probation for a period of two years from the date of joining in the deptt. The period can be extended in accordance with the existing rules on the subject. For assessing your performance during the period of probation your work and conduct will be taken into consideration. If your work and conduct during the probation period is not found satisfactory your services will be terminated without assigning any reason.

7. This offer of appointment is further subject to the Haryana State Secondary Education Field Offices (Group D) Service Rules, 1998 and all other rules and regulations and executive instructions issued or to be issued by the State Govt/ Deptt. from time to time. ”

[12] Even in the written statement dated 14.03.2008, it is mentioned that as per Order No.2/1/2011/HRME (5) dated 07.04.2011 terms and conditions of Class-IV employees transferred to the Education Department were as under :-

“These officials shall join as the junior most employees in their categories on the date of appointment. No benefit of past service in seniority matter shall be given. Hence, their appointments are made on the condition that he/she will not claim the benefit of past service towards seniority and other matter.

His/her appointment as on purely temporary post which is liable to be abolished at any time and carry no promise of subsequent employment. No offer of permanent vacancy can be made to them at present and in this respect. He/she have to take his/her chance like other who have been similarly recruited consequently their service may be terminated without notice where even there are no vacancy against which can be retained.”

A perusal of Annexure P/4 and the aforementioned details reveals that employees placed at the disposal of the Education Department were to join as the junior most in the categories on the date of appointment on probation, subject to Rules applicable and instructions issued from time to time and that no benefit of past service in seniority matter would be given and the appointments were further made on the condition that such employee would not claim the benefit of past service towards seniority and other matters etc.

[14] The written statement also refers to the seniority list of Class-IV employees prepared at the Directorate level as also that the District Education Officer, Jind vide letter No.E-3/2017/3027 dated 03.05.2017 (Annexure R-2) forwarded the seniority list of Class-IV employees in CWP No. 26060 of 2012 in case titled as Ram Mehar Singh vs State of Haryana and others and that out of the list of total eligible Class-IV employees as on 31.12.2006 in District Jind for promotion to the post of Clerk sent by respondent No.3 vide letter dated 20.04.2017, the name of the petitioner figured at serial No.10, but the petitioner was not eligible for promotion to the post of Clerk because he had joined Education Department on 08.09.2009 whereas the department was going to promote Class-IV officials to the post of Clerks as per seniority who had been appointed upto the year 2006. Thus, it is clear that as per letter, Annexure P/5 dated 29.03.2016 list of all Class-IV employees was forwarded who had been regularly appointed between 01.06.1997 to 31.12.2000 and were possessing 5 years service as Group D employees, besides, fulfilled other conditions.

[15] The petitioner, as has been noted above, no doubt was appointed as regular Peon in the Municipal Committee, Jind vide appointment letter, Annexure P/1 dated 18.05.1999 but on being declared

surplus, the petitioner vide Annxure P/2 dated 12.01.2000 was appointed as Chowkidar in Government Vocational Educational Institute, Banaheri at Mundhal Kalan. As per the terms and conditions contained in Annexure P/2, the petitioner was junior most employee in the category in which he had been appointed and he was placed below the employees working in the department on the date of his joining with inter se seniority to be determined separately but his pay was to be protected and his appointment was further made on the condition that he would not claim the benefit of past service towards seniority and other matters. Thereafter, the Vocational Education Scheme was transferred from the Industrial Training and Vocational Education, Haryana to the Director of Secondary Education, Haryana along with the staff vide notification No. IT/VI/Merger/2008 dated 11.06.2008. Vide order Annexure P/3 dated 24.08.2009, on transfer of Vocational Education Scheme from the Industrial Training and Vocational Education, Deptt. Haryana to the School Education Deptt. Haryana, the services of Class IV employees were placed on the disposal of the Directorate of School Education, Haryana whereupon the petitioner whose name figured in order, Annexure P3, was vide Annexure P/4 dated 08.09.2009 appointed as Class-IV Mali –cum-Water Carrier by way of appointment by transfer on provisional basis inter alia on the condition that he would be placed junior in seniority list in the cadre below the members of a service already working in the institution and that the appointment was against a temporary post which would be liable to be abolished at any time and carried no promise of subsequent permanent employment. Relevant Clause-4 is reproduced as under:-

“4. You will be placed junior in seniority list in the cadre below the members of a service already working in this institution”.

Thus, the petitioner was vide Annexure P/2 given appointment in the Industrial Training and Vocational Education, Department, Haryana, specifically on the condition that he would not claim past service towards seniority and other matters. Thereafter, on transfer of the Vocational Education Scheme from the Industrial Training and Vocational Education Department, Haryana to the School Education Department Haryana vide Annexure P/4 dated 08.09.2009, the petitioner was appointed to the post of Class-IV as Mali-cum-Water Carrier with the specific condition that he would be placed junior in seniority list in the cadre below the members already working in the institution and would be on probation and would be governed by instructions issued from time to time. Besides vide Order No.2/1/2011/HRME (5) dated 07.04.2011 it was clarified the officials would join as the junior most employees in their categories on the date of appointment and no benefit of past service in seniority matter would be given and their appointments were subject to the condition that the employee would not claim the benefit of his past service towards seniority and other matter. Thus, in view of the categorical conditions stipulated and as have been referred to above the claim is without basis.

[16] The petitioner has claimed seniority w.e.f. 20.05.1999 i.e. from the date of initial appointment in Municipal Council, Jind or at least w.e.f. 12.01.2000 i.e. from the date the petitioner was absorbed in the Industrial Training and Vocational Education, Haryana vide office order dated 12.01.2000 (Annexure P/2) and for considering him for promotion to the post of Clerk by placing him in the joint seniority list of the Peons by

assigning him seniority at the appropriate place.

As has been referred to in the written statement, the petitioner's name figures at serial No.10 in the seniority list on account of his having been appointed in the Education Department on 08.09.2009 whereas the department was going to make promotions to the post of Clerks as per seniority and who had been appointed upto the year 2006. The petitioner is claiming seniority over and above certain other persons working on the post of Peon in the Department of Education and who had been appointed upto the year 2006 without impleading them as a party. Besides, as per Annexure P/4 dated 08.09.2009, the appointment of the petitioner in the Education Department was on provisional basis subject to the condition that the employee would not claim the benefit of past service towards seniority and other matters. The aforementioned aspect of the matter was considered by a Division Bench of this Court in case CWP No.1743 of 1992 titled as Sat Pal Sharma vs State of Haryana decided on 05.09.2001 in which it was held as under:-

“6. In our opinion, the petitioners cannot seek a direction for counting the past service for fixation of seniority and grant of other service benefits and the writ petition is liable to be dismissed on the following grounds:

(a) After having given an unequivocal undertaking not to claim benefit of past service, the petitioners are stopped from seeking a mandamus for counting of past service towards seniority and pay fixation.

(b) xxx xxx xxx

(c) The writ petition suffers from non-joinder of necessary parties because those who are likely to be adversely affected by issuance of a direction to the respondents to count their past service for the purpose of fixation of seniority have not been impleaded as respondents.”

[17] Likewise, Hon'ble the Supreme Court in ***Mrigank Johri and others v. Union of India and others, 2017 (8) SCC 256*** categorically laid down that the terms and conditions laid down for absorption would govern the rights of the parties which would be binding on the parties. Relevant extract of the aforementioned decision is reproduced as under:-

- “29. *The contentions may be elaborate but the crux of the issue is whether the OM's referred to aforesaid which generally provide for the benefit of service rendered in the previous cadre in an equivalent post on being absorbed in another department would apply to a case where the absorption is on specified terms and conditions with the benefit of such past service in the previous cadre as well as the period of service rendered on deputation being denied ?*
30. *Our answer to this query is in the negative for which we proceed to pen down reasons.*
31. *It is no doubt true that the OM dated 29.5.1986 as modified by OM dated 27.3.2001 did provide for the benefit of the previous service rendered in the cadre. This is in effect also the ratio of the judgment in SI Rooplal case (supra). This would also be in conformity with the normal service jurisprudential view. However, it would be a different position if the absorbing department clearly stipulates a condition of giving willingness to sacrifice the seniority while preserving all other benefits for the absorbee (which are accepted) failing which the option was available to the absorbee to get himself repatriated to the parent department. The terms and conditions are categorical in their wording that the absorbees would be “deemed to be new recruits” and the previous service would be counted for all purposes “except his/her seniority in the cadre”. The appellant accepted this with open eyes and never even challenged the same. Their representations to give them the benefit*

of their past seniority was also turned down and thereafter also they did not agitate the matter in any judicial forum. The controversy was thus not alive and it was not open for them to challenge the same after a long lapse of period of time. In fact on the day of filing of the OM, any prayer to set aside the terms and conditions of absorption would have been clearly barred by time under Section 21 of the Administrative Tribunals Act, 1985.

32. *The appellants sought to rake up the issue only when the seniority list was finalized. This was preceded by the draft seniority list. Whatever may be the dispute of seniority qua other persons, insofar as the appellants were concerned, their seniority was based on the terms and conditions of their absorption. The position of the appellants in the seniority list was thus a sequitur to the terms and conditions of their absorption. We are of the view that it is precisely for this reason, anticipating that their claim would be time barred, that a challenge was laid only to the seniority list without challenging the terms and conditions of absorption though in the grounds, a plea was raised against the terms and conditions of absorption. Unless the terms and conditions of absorption were to be set aside, the seniority list prepared was in conformity with the same.*
33. *Even otherwise, as noted above, since the appellants accepted the terms and conditions of absorption, they could not plead otherwise.”*

[18] In the light of the position as noted above, the petitioner is not entitled to count his past service and cannot claim to have been appointed between 01.08.1997 to 31.12.2000 in the Education Department rendering him eligible for promotion to the post of Clerk from Class-IV employee.

Jind for promotion to the post of Clerk sent by respondent No.3 vide letter dated 20.04.2017, to the Directorate reflects the name of the petitioner at serial No.10 but the petitioner is not eligible for the promotion to the post of Clerk because he joined Education Department on 08.09.2009 whereas the department was going to promote Class-IV officials to the post of Clerks as per seniority who had been appointed upto the year 2006.

[19] Accordingly, finding no merit in the claim of the petitioner for consideration of his name for the promotion to the post of clerk on account of non-fulfilment of the condition stipulated in Annexure P/5, the writ petition being bereft of merit is dismissed.

04.02.2020

(B.S. Walia)
Judge

amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.