

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

**C.W.P 457 of 2014 (O&M)
Date of decision : 22.01.2020**

Abdul RajakPetitioner
versus
State of Haryana and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jamshed Ahmed, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G. Haryana

RITU BAHRI, J. (Oral)

Petitioner is seeking quashing of notice dated 29.11.2013 (Annexure P-5) and order dated 30.12.2013 (Annexure P-10) whereby the petitioner has been reverted from the post of Mechanical Fitter-II to the post of Mechanical Fitter Helper after a period of six years on the ground that on the date of his promotion order dated 19.09.2007 there was no vacant post for Mechanical Fitter-II on which he could be promoted.

Petitioner was appointed as Mechanical Fitter Helper in October, 1988 in Public Health Engineering Department, Sub-Division, Hodal. He was transferred along with the post to Hathin, District Faridabad. The next promotion of the petitioner was to be on the post of Mechanical Fitter-II as per the Haryana Public Works Department, Public Health Branch, Circle Cadre, Engineering Establishment (Group 'C') Service Rules, 1988. As per the said Rules, 50% post of Mechanical Fitter-II was to be filled by way of promotion and remaining 50% by way of direct recruitment. The experience of seven years as Fitter Helper/Plumber Helper/Fitter Coolie is required for promotion.

Accordingly, after seven years of service the petitioner was promoted to the post of Mechanical Fitter-II, vide order dated 19.09.2007 (Annexure P-2).

Vide order dated 01.12.2009 (Annexure P-4) he was granted the benefit of revised

pay scale and Assured Career Progression (ACP) etc.

A show-cause notice was issued on 29.11.2013 (Annexure P-5) by which the petitioner was sought to be reverted on the ground that there was no vacant post of Mechanical Fitter-II on the date when he was promoted. Petitioner gave his reply dated 04.12.2013 (Annexure P-6) and thereafter the petitioner was not allowed to discharge the duties/function on the post of Mechanical Fitter-II.

The grievance of the petitioner in short is that many persons junior to him were promoted in the year 2010 as per promotion order (Annexure P-7) to the post of Mechanical Fitter-II. Petitioner could not be reverted on the ground that there was no post vacant available at the time of his promotion.

Earlier this Court allowed the writ petition on 21.04.2016, in view of judgment of ***Mohar Pal vs. State of Haryana and others, passed in CWP No. 5468-2011***. But the review application was filed by the State and this Court passed the following order on 23.01.2019:-

The present application has been filed by respondent-State for review of judgment dated 21.04.2016 passed by this Court in CWP No. 457-2014

Learned State counsel at the very outset contends that this Court allowed CWP No. 457-2014 (R-1) keeping in view the fact that junior to the petitioner i.e Mohar Pal who had filed CWP No. 5468-2011 was allowed and his reversion order was set aside.

Learned State counsel submits that in CWP NO. 5468-2011, this Court granted the liberty to the respondents to pass fresh order after verifying the vacancy position as it existed on 22.12.2005.

Learned State counsel has referred to order dated 17.01.2014, which was passed in compliance of the judgment dated 10.05.2012 in Mohar Pal's case (supra), vide which the promotion order of Mohar Pal vide office order dated 22.12.2005 were withdrawn. Learned State counsel further submits that the order dated 17.01.2014 has not been challenged by Mohar Pal till date and thus has attained finality.

Learned State counsel has admitted the fact that inadvertently order dated 17.01.2014 were not appended with written statement filed by

respondent No. 4 in the present writ petition.

However, learned State counsel submits that no recovery has been effected from the petitioner till date.

Heard learned counsel for the parties.

*It is not in dispute that the present writ petition was allowed in view of the judgment of **Mohar Pal's case (supra)**. Since the respondents has brought to the knowledge of this Court that vide order dated 17.01.2014, the promotion order of Mohar Pal vide office order dated 22.12.2005, were withdrawn, which has not been challenged till date, therefore, the present application seeking review of judgment dated 21.04.2016 passed in CWP No. 457-2014 stands allowed.*

CWP No. 457-2014

List as per roster

Interim order dated 14.09.2017 to continue.

The parties will assist the Court on the next date of hearing whether the seniority of the petitioner is maintained circle wise or statewide, as per Rules.”

The promotion order of Mohinder Pal were withdrawn vide office order dated 22.12.2005 and this order has not been challenged by Mohinder Pal till date and thus has attained finality.

Thus, the case of the petitioner was to be considered keeping in view promotion order of Mohinder Pal but now since the promotion order of Mohinder Pal has been withdrawn, the present petition is also dismissed. However, it is made clear that no recovery be effected from the petitioner, as there was no misrepresentation made by the petitioner at the time of grant of promotion vide order dated 19.09.2007.

January 22, 2020
G Arora

(RITU BAHRI)
JUDGE

***Whether speaking/reasoned
Whether reportable***

***Yes
No***