

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

LPA No. 249 of 2021 (O & M)
Date of decision: 06.12.2021

116

State of Haryana and others

....Appellant(s)

Versus

Chattar Pal and another

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Palika Monga, DAG, Haryana.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S.SANDHAWALIA, J. (Oral)

The present letters patent appeal is directed against the judgment of the learned Single Judge passed in CWP No. 10563 of 2017, Chattar Pal vs. State of Haryana and others decided on 10.02.2020. The learned Single Judge has quashed the order dated 09.05.2017 (Annexure P-7) passed by the appellant no. 3 herein. The learned Single Judge noticed that the petitioner had been promoted w.e.f. 26.07.1985 to the post of Water Pump Operator Grade II on account of a civil Court decree dated 01.04.1999 (Annexure P-2) and the impugned order was passed withdrawing the promotion order on the ground that there is no provision for promotion on work charge basis. It was noticed that the appeal filed by the department impugning the decree was dismissed earlier.

The defence of the appellants was that in ***LPA No. 1248 of 2009, Karam Singh and others vs. State of Haryana and others*** decided on 23.03.2012 (Annexure R-1) certain employees of Public Works Department, Karnal claimed promotion on the ground that they were senior to Dev Raj. It was noticed

that Dev Raj was promoted on the basis of Court decree and, therefore, the claim , as such, of those set of persons could not be held to be maintainable on account of the fact that there was a mistake as such in granting promotion to said Dev Raj. Resultantly, two writ petitions i.e. CWP Nos. 12215 and 12377 of 2008 were also dismissed alongwith the said LPA on the ground that claim for promotion on the basis that the juniors have been promoted had no legs to stand.

The learned Single Judge herein had, however, noted that Dev Raj's promotion had not been withdrawn and, therefore, the petitioner could not be treated separately. Accordingly, the writ petition was allowed granting the benefits of promotion to the respondent.

Counsel for the State has submitted that promotion was wrongly given as the writ petitioner was appointed on 17.02.1982 as Mali-cum-Chowkidar on work charge and had been wrongly promoted on work charge basis. It is submitted that regularization has taken place on 01.01.1987 and, therefore, the benefit has not been granted to the similarly situated persons, the writ petitioner would have no right. Qua Dev Raj, it is submitted that he had filed a civil suit, the decree passed therein had been upheld till the Apex Court in SLP (Civil) No. 10191 of 2006 on 10.07.2006 (Annexure A-4) and the said employee had been granted the promotion w.e.f. 26.03.1987 on work charge basis (Annexure A-5).

Thereafter, show cause notice dated 24.02.2009 had been issued to Dev Raj on account of the decision of the letters patent appeal on 23.03.2012 (Annexure R-2) and an order dated 28.07.2015 (Annexure A-2) had been passed that he would be regularized from 01.01.1987 and promoted as Water Pump Operator Grade II from 01.07.2002 in the regular cadre. Dev Raj, as such, was unsuccessful in the civil suit filed by him in the year 2016. The said suit had been

dismissed subsequently on 01.10.2021 and, therefore, the learned Single Judge was correct as such to rely upon the case of Dev Raj at that stage. Admittedly, the decree qua respondent no. 1-writ petitioner has been finalized on 01.04.1999. The same was sought to be reopened on the strength of the show cause notice dated 20.10.2016 (Annexure P-5) in view of the litigation before the Division Bench, as noticed above, of separate set of employees to which respondent no. 1 was not a party. The observations, as such, made therein would not be binding upon him and this Court is of the considered opinion that after a period of almost 18 years, the withdrawal of the benefits which had become final *inter se* the appellant and the employee could not have been opened by passing the impugned order dated 09.05.2017. The appellant-Superintending Engineer could not have sat over in appeal over the order passed by the Civil Court and reversed the same to the detriment of the employee. Moreover, the effect of the civil Court decree cannot be upset in such a manner. A perusal of the judgment of 01.04.1999 (Annexure P-2) would go on to show that no such defence was taken that the promotion was wrongly made in the work charge cadre, as such.

In such circumstances, reopening of the case of the plaintiff-writ petitioner at its own instance was rightly held not to be justified by the learned Single Judge.

Keeping in view the above, this Court is of the opinion that the judgment and decree passed by the civil Court, as such, was *in-personam inter se* the parties and the benefit cannot be withdrawn from the writ petitioner by an administrative order. The relief granted by the learned Single Judge does not suffer from any illegality or irregularity which would warrant interference. The

present letters patent appeal is accordingly dismissed.

(G.S. SANDHAWALIA)
JUDGE

06.12.2021
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No