

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

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IN VIRTUAL COURT

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**CWP No. 11531 of 2021
Decided on: 16.7.2021**

Varinder Kumar

.....Petitioner

Versus

Himanshu Kukkar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rajive Atma Ram, Senior Advocate with
Mr. Arjun Partap Atma Ram, Advocate, for the petitioner

Mr. D.S. Patwalia, Senior Advocate with
Mr. Salil Sablokh, Advocate, for respondents No. 1 to 4

Rajbir Sehrawat, J.(Oral)

This petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus, directing the respondent State to continue treating the petitioner senior to the private respondents and not to apply the judgment dated 6.4.2021, passed in CWP No. 7571 of 2020 (Annexure P-13) to the petitioner, who was not a party thereto.

Further prayer of the petitioner is to issue a writ of certiorari quashing the orders Annexure P-10 and P-11, both dated 1.6.2020 and review, recall and set aside the order dated 6.4.2021, passed in above mentioned writ petition. It is also prayed by the petitioner that the entire record of the case be summoned and the service of advance notice upon the respondents be dispensed with.

A bare perusal of the file shows that this Court has already dealt with the controversy in details and have decided the issue on merits in CWP No. 7571 of 2020. The petitioner himself has attached the copy of the judgment with this petition. This Court does not find anything new in the present petition to re-visit the earlier judgment passed by this Court.

Although counsel for the petitioner has submitted that the relevant rule has not been dealt with in the earlier judgment passed by this Court, however, a perusal of the judgment shows that the argument; which is raised now; is based on an appendix to the Rules and the said argument was duly raised and noted in Para 8 of the judgment. The same has already been dealt with in Para No. 16 of the earlier judgment itself. The Court is not supposed to mention each and every word of a rule book for deciding a case. The Court is required to deal with and decide the arguments raised by the parties. Even if the rule or part thereof is not specifically mentioned in the judgment but the argument and the aspect as contained in the rule; has otherwise been argued by the parties and has been duly dealt with by the Court, that would be a due adjudication on the issues; and mere non-mentioning of the Rule would be no ground to review the earlier judgment. Moreover, the earlier case was concerned with rule of seniority, which has been duly noted and dealt with. The rule being quoted by the petitioner now is only an appendix to the rule, which has something to do with eligibility for promotion and not with the seniority; at all. Otherwise, as mentioned above, even the arguments qua eligibility and work experience have also already been dealt with in the judgment.

The counsel for the petitioner has also argued that the petitioner

has gone unheard at the time of passing of the earlier judgment because he was not a party to the petition. However, even this argument is irrelevant. In the earlier judgment, this Court had decided the general issue of determination of seniority between promotees and the direct recruits. The direct recruits had common interest with the petitioner. Since the persons having common interest with the petitioner were already present before the Court and had represented their interest in all possible dimensions, including the one which is being raised by the petitioner now, therefore, the fact of the petitioner not being a party to the petition would not make any difference qua the issue already decided by this Court. Moreover, there was nothing to prevent the petitioner from coming to the Court earlier, if the law permitted him. He slept over the matter to await the judgment in the earlier case. As a response to this query, the counsel has submitted that the petitioner had no cause of action earlier because he was made senior to the promotees by the department itself. However, even this argument is against facts and law. Vide the order which was impugned by the promotees in the earlier petition, the promotees were given particular deemed dates of promotion, which were before the date of direct recruitment of the petitioner. Thereafter, the seniority was only a statutory consequence of the promotees becoming members of the cadre from those deemed dates of promotion. If at all, and if any, administrative action of the Government was to give cause of action to the petitioner; that would be the original action of grant of promotion to the promotees; and not the consequent grant of statutory seniority to them. There is nothing in the rules which may permit the petitioner to assume this dichotomy of order of promotion and consequent seniority.

Therefore, even as per assertions of the petitioner, he very much had a cause of

action to approach the Court against the promotion of the promotees. However, he deliberately slept over the matter. Interestingly, even now the issue being raised by the petitioner, on the basis of the Appendix to the rules, is only regarding eligibility for promotion of the promotees. What he is doing now could have been done by him earlier as well. However, he kept his ammunition reserved, which has lost its impacting energy now. Otherwise also; to make the things more clear, suffices it to say; that a person who was not even born on a cadre on a date when the promotees were promoted, has no right to question the seniority of such promotees except on the ground of any promotion in excess of Quota of such promotees under the Rules. The present petition is nothing but an attempt to keep the issue entangled in litigation so as to defeat the rights of the promotees; by default.

In view of the above, finding no ground to interfere, the present petition is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

16.7.2021

Ashwani

Speaking/Non-speaking : Yes/No
Reportable/Reasoned : Yes/No