

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 11381 of 2020 (O&M)

Date of decision : November 22nd 2021

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Satyawan Singh

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Rohit Nagpal and Mr. Nilesh Bhardwaj, Advocates
for the petitioner.

Mr. Lokesh Sinhal, Sr. Additional Advocate General,
Haryana.

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H. S. Madaan, J.

1. Petitioner – Satyawan Singh, then aged 57 years, working as Superintending Engineer with Municipal Corporation, Gurugram, has brought the instant writ petition against respondents - State of Haryana through its Chief Secretary, Haryana Civil Secretariat, Chandigarh; Additional Chief Secretary to Government of Haryana, Urban Local Bodies Department, Haryana Civil Secretariat, Chandigarh and Deputy Secretary, Urban Local Bodies, Department of Urban Local Bodies, Haryana Civil Secretariat, Chandigarh, seeking issuance of a writ in the nature of certiorari for

quashing order dated 18.12.2019 qua the present petitioner (Annexure P-22), show cause notice issued pursuant to said order dated 30.4.2020 (Annexure P-19), notice of personal hearing dated 30.7.2020 (Annexure P-25) and all other subsequent proceedings arising out of the order dated 18.12.2019.

2. Briefly stated, facts of the case, as per version of the petitioner are that the petitioner had joined the respondent-department as Junior Engineer on 17.4.1985 on *ad hoc* basis but his appointment had been made by following proper procedure of selection and against a sanctioned post. His services were regularized on 30.9.1988. In the year 2000, the seniority list of Junior Engineers was circulated. However, according to the petitioner it was erroneous because many employees who were junior were shown as senior to their counter parts and vice versa and though some of his juniors were also shown senior to the petitioner, in the seniority list of 2000; that as per service rules application to the petitioner for promotion to the post of Municipal Engineer, 10 years experience as Junior engineer (Diploma Holder) was required; that the petitioner became eligible for such promotion in the year 1995; that the petitioner was promoted on 20.5.2009 as Municipal Engineer. After carrying out correction in the seniority list, his date of promotion was changed from 20.5.2009 to 12.1.2004. He was further granted step up pay by the department w.e.f. 14.1.2002, vide order dated 6.12.2013; that in terms of erroneous seniority list, which was further amended and circulated in the year 2008, the petitioner was

shown at Sr. No. 7 and one Ramesh Kumar Verma was shown at Sr. No. 6; that however, one Hari Kishan Sharma filed a civil suit contending that Ramesh Kumar Verma was junior to him; that as a result of decision in the suit, respondents were directed to further modify the seniority list and Ramesh Kumar Verma, who was shown senior to the petitioner was held to be junior to the petitioner as well as to Hari Kishan Sharma; that while the seniority list was finalized and the picture became clear on 30.9.2009, the amended minimum qualification, for the post of Executive Engineers, as degree, was made mandatory for promotion to the post from feeder post. The petitioner made representation to the department for correction of seniority list. As far as condition for decree for the post of Executive Engineer is concerned, in a similar case, in CWP No. 8273 of 2014 titled as Sham Sunder Singla vs. State of Haryana, this Court vide order dated 16.12.2016, had granted the benefit of promotion to the petitioner, who was a Diploma holder Assistant Engineer. The petitioner was promoted as Executive Engineer w.e.f. 21.8.2009, Superintending Engineer w.e.f. 10.8.2016. Though the petitioner was given benefit of retrospective promotion from the date his juniors were promoted, however, the consequential benefits were not granted, despite the petitioner making representation to the department dated 4.6.2019, but that had not evoked any response; that when the post of Chief Engineer became vacant and petitioner being senior most Superintending Engineer, working in the department, made a representation 18.3.2020, for consideration for

promotion to the post of Chief Engineer; that the petitioner was shocked and surprised to receive a show cause notice dated 30.4.2020, asking him to show cause as to why deemed promotion granted to him may not be revoked and he be reverted to his original post; that the petitioner sent reply to the show cause notice asking for certain documents under the Right to Information Act, so that he could give reply to the show cause notice that rather goes to show that the double standard being adopted by the department; that the petitioner filed reply to the show cause notice; that he came to know that the show cause notice had been issued on the basis of observation made by respondent no.2 in a speaking order passed in the case of another employees of Municipal Corporation, Faridabad.

3. Notice of the petition was given to the respondents, who had put in appearance, filing short reply, contending that the petitioner was issued a show cause notice dated 30.4.2020, Annexure P-19 regarding the withdrawal of the promotion order passed on 12.11.2018; he was granted opportunity of personal hearing vide order dated 30.7.2020, vide which the petitioner was asked to appear before the competent authority on 7.8.2020, but instead of doing so, he came to this Court and filed a writ petition. According to the answering respondents No. 1 to 3, the conditions of service of employees of the Municipal corporations in the State are governed by the provisions of the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 and Rule 11 of the said Rules provides that seniority shall be determined by the

length of continuous service on any post in the service. Prior to 30.10.2009, the employees of Haryana Municipalities were governed by the provisions of Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 1982, under which the minimum qualification for promotion to the post of Executive Engineer was 8 years experience as Municipal Engineer. Vide Notification dated 30.10.2009, the said provision was amended to provide that the minimum qualification for promotion to the post of Executive Engineer would be a Degree in Civil, Mechanical or Electrical Engineering from any institution recognised by the State Government with 8 years experience as Assistant Engineer/Municipal Engineer (Civil, Electrical, Mechanical). As regards promotion given to Ramesh Bansal and S.K. Aggarwal on 20.3.2004 and 4.10.2006, respectively, those are in accordance with conditions of service rules as applicable at that time, since requirement of Degree for promotion was not there. Even otherwise, the respondents are not competent to review the order dated 18.12.2019. According to such respondents, the writ petition is premature, since no adverse order has been passed against the petitioner. They prayed for dismissal of the writ petition.

4. I have heard learned counsel for the petitioner, learned counsel for the respondents, besides going through the record.

5. Admittedly, there is relationship of employee and employer between the petitioner and respondent. The employer has got administrative control over the employees working on its establishment. If the employer feels that an employee has committed

some misconduct or has indulged in an activity, which is in violation of conduct rules or for that matter has procured some advantage from the employer by concealment of any material fact or on account of some inadvertent mistake by the employer or any of its officers, then the employer has certainly a right to seek explanation from the employee in that regard. The employee should not show over-anxiety or over-reaction simply because the employer has asked him/her to explain certain facts.

6. In the present case, the petitioner is feeling aggrieved by order dated 18.12.2019, show cause notice dated 30.4.2020, notice of personal hearing dated 30.7.2020. None of such orders/notice has immediate adverse effect upon the service of the petitioner. The petitioner ought to have replied to the show cause notice and appeared for personal hearing before the competent authority to present his view point. If such authority was convinced by the explanation rendered by the petitioner that might have resulted in any adverse order not being passed against him affecting his service career. The respondents having not taken a final decision in the matter, the petitioner is feeling agitated unnecessarily and has rushed to the Court, filing the present writ petition.

7. Furthermore, there are no allegations of any malice or mala fide against any of the respondent No. 2 and 3 or any officer of respondent No.1.

8. The question which arises is whether any wrong committed while promoting an employee and permanently absorbing

him/her in the department, can be undone or not and whether passage of long time turns a wrong into right and employer becomes helpless in taking action in that regard. It can certainly be not so. The wrong done or some illegality committed in the process can certainly be probed, as per law observing Rule of natural justice in the light of Service Rules. Furthermore, it is not a case of review of any promotion carried out by earlier members of the Department, rather a wrong is being sought to be undone, the malice at a very initial stage. The petitioner has just been asked to render an explanation in that regard. If the respondents are not satisfied by the reply and pass any order adversely affecting the service of the petitioner, then he can take recourse to the remedies available to him under the law, on administrative side or judicial side, if so advised.

9. Learned counsel for the petitioner has contended that the respondents have committed contempt of the Court by passing orders regarding his employment despite orders passed by this Court restraining them from doing so. However, from perusal of the record, no such contempt comes out to be there. The petitioner has since retired from service; he is asking for his service benefits. The respondents are said to have passed a semi-speaking order on 16.4.201, copy of which has been placed on record as Annexure P-37. A perusal of this order order goes to show that as an additional dispensation, the petitioner has been given another opportunity to appear before the Additional Chief Secretary to Government Haryana, Urban Local Bodies Department, on 23.4.2021 to say

whatever he has to say in the matter, otherwise it would be considered that he has nothing to say in that regard. It also goes to show that no final order in the matter has since been passed by the respondents affecting the rights of the petitioner, so far.

10. Therefore, the present writ petition is clearly premature and is dismissed accordingly.

November 22nd 2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No