

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

124

CWP-14837-2021

Decided on : 05.08.2021

Puneet Arora

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. H.S. Oberoi, Advocate
for the petitioner.

Mr. Harish Kumar Nain, AAG, Haryana.

Mr. Gopal Sharma, Advocate
for the caveator/respondent No.3.

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

G.S. Sandhawalia, J. (Oral)

The petitioner in the present writ petition filed under Article 226 of the Constitution of India seek setting aside of the impugned order dated 30.07.2021 (Annexure P-9), whereby the Deputy Commissioner-cum-Principal & Director, Motilal Nehru School of Sports Rai, Sonipat has set aside the promotion order dated 18.05.2021 (Annexure P-5), which was in favour of the petitioner, on the representation of respondent No.3-Ms. Kiran Rani.

It is not disputed that the case of respondent No.3 for promotion as Accountant was not considered by the DPC on 17.05.2021, on account of the fact that she did not fulfill the condition for promotion as a show cause notice had been issued to her regarding not passing SETC Part-

II (Typing Test). In such circumstances, the name of the petitioner had been recommended for the post of Accountant from the post of Clerk. The necessary order had thereafter been issued on the next day on 18.05.2021.

Counsel for the petitioner has submitted that the same was not justified, since admittedly respondent No.3 is stated to be the junior to the petitioner, while referring to the order of confirmation dated 04.08.2020 (Annexure P-3), wherein he is shown at Sr. No.18 and respondent No.3 is shown at Sr. No.19. It is, thus, submitted that the petitioner being senior was entitled for the promotion anyways and the order of the Deputy Commissioner dated 30.07.2021 (Annexure P-9) is not justified.

Notice of motion.

Mr. Nain and Mr. Sharma, accept notice on behalf of respondents No.1 & 2 and 3, respectively.

Keeping in view the fact that there are no dispute regarding the facts, since official communications are on record, reply on behalf of the respondents is not required.

Counsel for the private respondent No.3 has referred to the Motilal Nehru School of Sports, Rai (Group C) Service Rules, 1997 to contend that the promotion to the post of Accountant is to be made amongst Clerks as per Rule 9. Further reference is made to Rule 9 (3) to submit that it is not only the seniority alone which is to be considered but the promotion is stated to be on seniority-cum-merit basis also. The said

rule reads as under:-

“ (3) All promotions unless otherwise, provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.”

Keeping in view the above, this Court is of the opinion that the matter needs to be revisited by the DPC of the respondent-school, since it has been found as a matter of fact by the Deputy Commissioner that respondent No.3 has passed SETC Part-II (Typing Test) on 05.04.2021 and the certificate was issued on 27.04.2021. On account of the lack of said certificate, she had not been considered by the DPC, which would be clear from proceedings of DPC (Annexure P-5).

Accordingly, keeping in view the above, the present writ petition is disposed of with the directions to respondent No.2 to consider the case of eligible candidates for promotion to the post of Accountant as per the relevant rules. The promotion already given to the petitioner shall not be given effect till the final decision is taken by respondent No.2. Needful be done within a period of two weeks from the receipt of certified copy of this order.

Anything observed herein is only for the purpose of noting the controversy as such and this Court has not commented on the merits or eligibility of both the petitioner and the private respondent.

Disposed of.

August 05, 2021

Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No