

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

CWP-3356-1996 (O&M)
Date of Decision: 04.05.2022

NAFE SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

ARUN MONGA, J. (ORAL)

CM-12595-2019

This is an application under Order 22 Rule 3 CPC for impleading the legal representatives of petitioner-Nafe Singh, who died on 25.12.2018. The legal representatives of deceased-petitioner are mentioned in para No.3 of the application.

For the reasons stated in the application, the same is allowed subject to all just exceptions. Amended 'Memo of Parties' is taken on record. Registry to take steps accordingly. Disposed of.

Main case

Petition herein, *inter alia*, is for issuance of a writ in the nature of *mandamus*, commanding the respondents to accord promotion to the petitioner as Work Supervisor/Water Pump Operator with effect from the same date as his junior (respondent No.4) was promoted. Consequential relief is also prayed for.

2. Petition was admitted for hearing on 03.02.1997. Lifetime wait of the petitioner to get his petition adjudicated turned out to be insufficient, as he died on 25.12.2018 and with that, so did his unfulfilled hope. His legal representatives are now pursuing the cause.

3. I have heard the competing contentions of the rival sides.

4. Having given my thought to the arguments addressed and after perusal of the record/pleadings, I am of the view that petition deserves to be allowed.

5. It is borne out that both petitioner as well as private respondent No.4 were working in the same very office i.e. Public Health, Sub Divn. Uchana, Tehsil Narwana. To be noted that, it is not disputed that promotion to respondent No.4 was accorded on 'out of turn basis', though he was junior to the petitioner, but of course on his representation that he is a matriculate. However, the petitioner was denied similar benefit.

6. It has been pleaded by the petitioner that when for the first time, he got to know in the year 1995 that respondent No.4 was given out of turn promotion merely because of his being a matriculate, he also submitted a representation dated 02.11.1995 (Annexure P-1). He also claimed his entitlement for equal treatment being a matriculate and in fact stated that his case was on a better footing being senior to respondent No.4.

7. Be that as it may, his claim for promotion was rejected on the ground that he had approached the competent authority after 11 years of the promotion of respondent No.4. It was in this background that he was compelled to file instant writ petition.

8. The defense taken by the respondents that the petitioner's case for promotion is time barred, is not supported with any administrative

instructions and/or the applicable rules governing the promotion. On the contrary, when it is the candid stand of respondents No.1 to 3 is that promotions were being accorded on the basis of qualification, the limitation would not apply for according the same benefit to the petitioner in the absence of any Rule/Instructions prescribing limitation qua the same.

9. Reference may be had in particular to the following stand taken in Para 3 of the preliminary objections and paras-3 and 4 of para wise reply :-

“3. That there are two type of Estt. whose seniority is to be maintained according to the statutory provision of service rules as under :-

<u>Sr. No.</u>	<u>Name of Estt.</u>	<u>Remarks</u>
1.	Work Charged Estt.	Seniority list to be maintained on the strength of work charged Estt. of a Division.
2.	Regular Mechanical	Seniority list is to be maintained on the strength of regular mechanical Estt. at Circle level which includes the strength of 3 Divisions.

x-x-x-x-x-x

Para-wise reply

3. *That the contents of para No.3 of the petition admitted to the extent that Purshotam Lal is matriculate. Rest of the para is wrong as mentioned hence denied. In fact Purshotam Lal was appointed as Beldar on work charged basis and was also promoted as Work Munshi and designation changed as Water Pump Operator with effect from 10.9.84 and 14.3.86 respectively but on work charge basis and according to the qualification of respondent No.4.*

4. *That the contents of para No.4 of the writ petition are wrong hence denied. It is wrong that no seniority list of cadre of the petitioner is issued by the respondents. The promotion of the respondent No.4 was made on the basis of his qualification and on the representation made by him. It is wrong that the facts regarding promotion of respondent No.4 were not in the notice of the petitioner prior to October-1995. Both, the petitioner and respondent No.4 were working in one office i.e. Public Health Sub Divn. Uchana, Teh. Narwana. Therefore the plea of the petitioner that the fact came in the notice of the petitioner in October-1995 is not maintainable at this*

belated stage. The representation of the petitioner annexed as annexure R-1 have no merit being time barred.”

10. In the aforesaid premise, it flies in the face of the respondents to have not accorded the benefit of promotion to the petitioner with effect from the date his junior was promoted. Though after having kept the matter pending for as long as 10 years, by virtue of his being matriculate, finally the petitioner was given promotion vide an office order dated 01.01.2015.

11. As an upshot of my discussion, the writ petition is partially allowed to the extent that when the respondents were made aware of the petitioner being matriculate, which has not been disputed in the return filed that either on the ground of his certificate not being valid and/or any misrepresentation, the request of the petitioner ought to have been considered on parity with respondent No.4 at least in the year 1995 itself, when he moved the representation dated 02.11.1995 (Annexure P-1).

12. Accordingly, the respondents are directed to accord ante dated promotion to the petitioner with effect from the date, he had made the representation dated 02.11.1995 by according him all notional benefits.

13. However, it is made clear that the petitioner (now represented by LRs) shall not be entitled to any monetary benefits with effect from the date of representation i.e. 02.11.1995 until 2015 when the promotion was accorded since he did not work on the promotional post, but for the purposes of his retiral benefits, his pay fixation will be done as if he stood promoted in the year 1995, as aforesaid.

14. The necessary exercise be carried out within a period of three months from today. Further, the necessary correction be carried out in the

family pension and other retiral benefits within a period of three months upon being approached with the certified copy of the instant order.

15. Disposed of accordingly.

May 04, 2022
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No