

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP-6963-1997 (O&M)
Reserved on : July 25, 2022
Pronounced on: 22.08.2022

Balbir Singh and others

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Shubham Saroha, Advocate for
Mr. S.P.Laler, Advocate,
For the petitioners.

Mr. R.D. Sharma, DAG, Haryana.

Mr. Kanwaljit Singh Senior Advocate with Ms. Neha Anand Mahajan,
Advocate for respondent No.7.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to promote the petitioners on the post of Gauge Reader or Mate on the basis of their seniority as their juniors have already been promoted on these posts.

2. Learned counsel for the petitioners submits that petitioners joined service as Beldars on work charged basis on different dates in the Irrigation Department. Their services were regularized w.e.f. 01.01.1987. He submits that petitioners are seeking parity with the private respondents stating that despite being junior to them they were promoted on the post of Mate while at the relevant time, the petitioners continued to work as Beldar.

3. The stand of the official respondents in paras 4, 5 and 6 of the written statement is as under:

“4. That in reply to para 4 of the writ petition, it is submitted that Sh. Bhir Chand son of Sh. Mohinder Paul was initially appointed as Mate on 13.7.89 and not as Beldar as contested by the petitioners. The services of Sh. Bhir Chand son of Sh. Mohinder Paul was also regularized as Mate as per policy of Haryana Govt. This

fact was also produced in this Hon'ble High Court in connection with hearing of Civil Writ Petition No. 9154 of 1996. Since the petitioners were initially appointed as work charged Beldars and they cannot be treated on par with Sh. Bhir Chand son of Sh. Mohinder Paul whose initial appointment as Daily Wages Mate.

5. That in reply to para 5 of the writ petition it is submitted tht as per tentative seniority list of Work charged Beldars (Annexure P-1). There are more than 158 & 182 work charged Beldars senior to the petitioners and hence the claim of the petitioners for promoting them as Mate and Gauge Readers by passing their seniors could not be considered valid. As regards the promotion of Sh. Khushi Ram & Sh. Ram Sarup as work charged Gauge Readers, they had forfeited all their benefits of their post as Beldar and they were paid work charged Gauge Readers as their appointments to the post of work charged Gauge Reders was fresh one. They were also given the initial scale of the post.

6. That in reply to para 6 of the writ petition it is submitted that Sh. Tek Chnd initially appointed as work charged Mate on 1.6.192 and Sh. Mohinder Singh ws appointed as daily wages Gauge Reader on 10.5.1988 and their services were regularized on he above posts as per decision of the Hon'ble Punjab & Haryana High Court dated 21.1.97 in Civil Writ Petitin No. 7390 of 1996. Hence the claim of the petitioners re not admitted."

7. In separate written statement filed by private respondent No. 7(Bhir Chand), it is stated that he had been initially appointed as Mate but by virtue of order Annexure P-2 dated 25.03.1996, due to some inadvertence and bonafide mistake, his services were regularized as Beldar instead of regularizing him a Mate. Against this, he had filed a writ petition No. 9154/1996. Order dated 12.08.1996 Annexure R-7/4 was then passed by the Executive Engineer, Water Services Division, Kurukshetra, whereby the services of respondent No. 7 were designated as Mate from 13.07.1989. His writ petition became infructuous and was dismissed as such vide order dated 19.08.1996 Annexure R-7/5 passed by this Court.

8. I have heard rival contentions and shall proceed to render my opinion thereon. First and foremost learned counsel for the petitioners strenuously argues that respondent No.7 concededly was regularized from 01.02.1996 i.e. later than the petitioners. Notwithstanding that the petitioners were regular employees prior in time and were seniors, and yet they were not promoted on the post of T-mate/Gauge Reader while the same benefit was accorded to the aforesaid private respondent by way of promotion.

9. Learned counsel for the State as also the learned Senior Advocate for private respondent No. 7 contend that the petitioners seem to have been misled into instituting the petition under the impression that the private respondents appointment on post of T Mate/Gauge Reader was by way of promotion from the post of Beldar. The fact of the matter, as stated in the written statement, is that the appointment of the private respondents as T Mate/Gauge Reader was by way of selection and not by promotion from the post of Beldar. Respondent No.7 Bhir Chand was initially appointed as Mate on 13.7.89 and not as Beldar. Similarly, the other private respondents' appointment as Mate/Gauge Reader was by selection and not by promotion from the post of Beldar. It has been asserted that on appointment of the other two private respondents (Sh. Khushi Ram & Sh. Ram Sarup) as work charged Mate/Gauge Reader by selection, they had forfeited all their benefits of their post as Beldar and their appointment to the post of work charged Gauge Readers was fresh one.

10. In their replication dated 09.11.1997, the petitioners referred to office order dated 25.05.1996 Annexure P-2 entry at serial No. 8 showing the initial appointment of Bhir Chand respondent as Beldar from 13.7.89 and also mentioned that in pay bill for May, 1996 his designation was written as Beldar. The specific stand of the official respondents is that he was initially appointed as Mate on 13.7.89 and not as Beldar. Same is also the categorical stand of Bhir Chand respondent. Pay bill dated 09.09.1989 Annexure R-7/6 shows that salary for the period 13.7.89 to 31.7.1989 was paid to Bhir Chand on the post of Mate. Order dated 12.08.1996 Annexure R-1 issued by the Executive Engineer, Water Services Divisin, Kurukshetra and the order dated 19.08.1996 Annexure R-7/5 passed by this Court also reflect that Bhir Chand was initially appointed as Mate from 13.07.1989. Obviously, by sheer accidental mistake, his designation was mentined as Beldar instead of Mate and the same mistake got carried over to the to his pay

bill dated 29.05.96 for May, 1996. In view of this, I am not inclined to accept the petitioners version that Bhir Chand respondent was initially appointed as Beldar. On this point, I would rather go with the definite version of the official respondents and that of private respondent No. 7 to the effect that he (private respondent No. 7) was initially appointed as *Mate* on 13.7.89. It appears that the petitioners are simply trying to capitalize on a sheer accidental mistake and to gain undue advantage on account of mention of the designation of Bhir Chand as Beldar instead of Mate in the order dated 25.05.1996 Annexure P-2, which mistake somehow also got carried over to his pay bill dated 29.05.96 for May, 1996. In this view of the matter, it does not lie in the mouth of the petitioners to contend that respondent No.7 was promoted from the post of Beldar to that of Mate undeservingly and without considering their claim for promotion.

11. In view of these facts and circumstances, I am rather inclined to accept the argument of the learned State Counsel and the learned Senior Advocate for private respondent No. 7 that there is no parity or comparison between the appointment of private respondents as Gauge Reader/Mate by selection and the petitioners' claim for promotion from the post of Beldar to that of Gauge Reader/Mate.

12. It does seem from letters dated 16.05.1988 annexure P-4 and dated 13.01.988 Annexure P6 from the XEN to the Superintending Engineer, Bhakra Canal Circle, Kaithal that the application of petitioner Balbir Singh for appointment as Gauge Reader and his affidavit foregoing claim for benefit of regular service as Beldar had been submitted. That by itself, did/would not entitle him to selection and appointment as Gauge Reader.

13. Perusal of the record reveals that though in the pleadings, there is an assertion by the petitioners that their juniors have been promoted as T Mate and Gauge Reader but they have been denied promotion. However, it is merely a bald

plea without there being any supporting material produced on record or otherwise established in course of arguments. The seniority list is contained at Annexure P-1 with the writ petition and is not in dispute. When seen from the seniority point of view, there seems substance in the stand of the respondents that petitioners cannot be allowed to steal a march over their senior counter parts numbering about 150/180 as specifically stated in para 5 of the written statement. The claim of the petitioners for promotion by ignoring those of their seniors cannot be allowed merely because at one time their names were forwarded and/or affidavit for the purpose was taken from them cannot be accepted.

14. No doubt, promotion is an integral part of the service benefits but the same is to be carried out in accordance with the applicable Rules as well as keeping the seniority list of all those working on the feeder post. Petitioners having failed to establish that there has been any violation of any seniority list are not entitled to seek promotion over their seniors and in any case, it transpires that during pendency of the writ petition, they have superannuated from service in the years 2016-19, respectively.

15. As an upshot of the discussion above, the writ petition is dismissed.

(ARUN MONGA)
JUDGE

August 22, 2022

vandana

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