

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

Date of decision: August 24, 2022

1. CWP-5068-2001 (O&M)

Rajinder Kumar

.....Petitioner

versus

State of Haryana and others

.....Respondents

2. CWP-4938-2001 (O&M)

Suraj Bhan

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Alka Chatrath, Advocate for the petitioner(s).

Mr. R.D. Sharma, DAG Haryana.

Mr. Govind Rana, Advocate for respondent No.6 in both cases.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, bunch of above-mentioned two writ petitions is being disposed of, since not only the facts are similar but the law points and the issues raised therein are also common. For brevity, recitals are taken from CWP-5068-2001.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 23.03.2001 (Annexure P-4) passed by respondent No.2-Commissioner Rohtak Division, Rohtak whereby

petitioner has been reverted from the post of Naib Tehsildar to the post of Kanungo.

3. Claim of the petitioners are substantially on the ground that one Balwan Singh despite being junior to them has wrongly been/ is being retained on the post of Naib Tehsildar while on the other hand, petitioners were reverted from the said post as Kanungo, and therefore, the said reversion ought to be set aside as long as said Balwan Singh has been accorded the benefit of working on the post of Naib Tehsildar. It transpires that vide an earlier order dated 03.04.2001/04.04.2001 passed by a Division Bench of this Court, the impugned orders in both the writ petitions were set aside, but on the said order of the Division Bench being assailed in the Supreme Court, the matter was remanded back for fresh adjudication since the challenge to the appointment of Balwan Singh on the post of Naib Tehsildar was *sub judice* vide CWP-6721-2000 and CWP-14006-2000. The said Civil Appeal Nos.3405-06/2003 was decided vide order dated 25.04.2007 by the Supreme Court. Relevant part of the same is extracted herein below:-

“As the matter is pending before the High Court, we are of the opinion that the interest of justice would be met if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the writ petition filed by the appellants herein with the aforementioned two writ petitions. We make it clear that we have not gone into the merit of the matter and, thus, all contentions of the parties shall remain open. We would request the High Court to consider the desirability of disposing of the matter as expeditiously as possible.

The appeals are allowed.”

4. When the appeal was filed in the Supreme Court, at that time, CWP-6721-2020 was pending, but later on vide order dated 05.11.2001 passed by the Division Bench, same was dismissed in the following terms:-

“We have heard counsel for the parties. It is the admitted position that for the purpose of promotion from the post of Patwari to the post of Kanungo, the passing of a departmental examination is necessary. The petitioners passed the examination in the year 1992 and were promoted as Kanungos with effect from 09.02.1993 and 02.04.1993 respectively. Balwan Singh, respondent No.4 who was at one stage junior to the petitioners had passed the examination in the year 1990 and had been promoted as a Kanungo with effect from 22.08.1993, as per the list given in the writ petition. In this view of the matter, we find that no effective challenge can be made to Balwan Singh’s promotion. Dismissed.”

5. Likewise, other writ petition bearing CWP-14006-2000 was also dismissed vide judgment/ order dated 25.10.2016 by Single Bench of this Court in the following terms:-

“5. As a result of the foregoing discussion, the petitioner does not appear to have an actionable claim for promotion to the post of Naib Tehsildar only on account of fact that he had not qualified the departmental examination on the date when the vacancies occurred and the non-official respondents were available and eligible for consideration for promotion but could not be promoted because of the interim stay order. Even assuming that the letter was withdrawn later, the rights of the private respondents should appear to stand crystallized and by the deeming fiction of law would relate back to the date of occurrence of vacancies. It is well settled in the matter of promotion that the date of occurrence of vacancies is material date of consideration even though the promotion may take place later. Having said this and upheld the promotions of the private respondents from the retrospective dates then any future vacancies available after the date of passing of the departmental examination can go to the petitioner. This is a matter of calculation of vacancies with reference to the date of passing of departmental examination by the petitioner and in case, he has not been promoted he may make a representation to the Government department to consider him for promotion to the higher post on the date when the vacancy would be available to him as per turn. But for promotion to the higher post, the non-official respondents would be taken to have stolen a march over the petitioner and become senior to him for all intents and purposes by virtue of qualifying the departmental test prescribed for promotion. In this view of the matter, the question of senior and junior amongst the petitioner and the private respondents does not arise.

6. *Petition is dismissed.”*

6. On a Court query, learned State counsel submits that both the aforesaid orders i.e., order dated 05.11.2001 passed by the Division Bench as well as order dated 25.10.2016 passed by Single Bench have attained finality as no further steps were taken in either of these two cases to assail the same.

7. Being so, I am of the view that very premise on which the petitioners had erected the edifice to stake their claim on parity with respondent No.4-Balwan Singh collapses like a pack of cards.

8. No grounds for interference are made out.

9. Dismissed.

(ARUN MONGA)
JUDGE

August 24, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No