

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No. 1510-LPA-2022 and
CM No. 1509-LPA-2022 in/and
LPA No. 651 of 2022
Date of Decision: 29.11.2022

Vijay Kumar

.....Appellant

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Rajesh Bansal, Advocate,
for the applicant-appellant.

G.S.SANDHAWALIA, J. (ORAL)

CM No. 1510-LPA-2022

Allowed, as prayed for.

CM No. 1509-LPA-2022

By this application, the applicant-appellant seeks condonation
of delay of 42 days in re-filing the appeal.

For the reasons given in the application, which is duly
supported by an affidavit of the appellant, the application is allowed and
the delay of 42 days in re-filing the appeal is condoned.

LPA No. 651 of 2022

Present appeal has been preferred against the order dated
08.03.2022, passed by the learned Single Judge, whereby the Civil Writ
Petition No. 16722 of 2021, filed by the appellant has been dismissed, in

which the relief of promotion to the post of Clerk has been sought from 25.10.2013.

Learned Single Judge repelled the arguments raised that the appellant is entitled for promotion to the post of Clerk from 25.10.2013 (Annexure P-3), which was a conditional order for promotion at that stage since the appellant had to qualify the State Eligibility Test in Computer Appreciation and Application (SETC) from HARTRON, as per the instructions of the Government dated 11.10.2013 (Annexure P-2).

It was noticed by the learned Single Judge that the appellant has been reverted on 02.11.2015 (Annexure P-6) from the post of Clerk to a Peon, on account of the fact that he was on probation and had not cleared the said test. That order was never subject matter of challenge in any proceedings at that point of time and the appellant as such was satisfied with the reversion order. In the meantime, private respondent no. 4 who was working as a Data Entry Operator on contract basis had been regularized as a Clerk against the sanctioned post with the same condition of clearing the State Eligibility Test in Computer Appreciation and Applications (SETC), within the probation period of two years. She also got a promotion to the post of Officiating Assistant on 19.06.2017.

In the meantime, the appellant was granted the benefit of the promotion for the 2nd time on the same conditions on 10.03.2016 (Annexure P-7). He, thereafter, passed the State Eligibility Test in Computer Appreciation and Applications (SETC) on 08.11.2016 as per the certificate issued by the HARTRON on 13.12.2016 (Annexure P-8). The

issue that he be given the benefit of seniority over the person who had cleared the test earlier and had earned promotion also was rejected by the Chief Electrical Inspector on 05.12.2019 (Annexure P-11). Resultantly, he filed the writ petition challenging the orders and for treating himself as Clerk w.e.f. 25.10.2013 and also seeking seniority from 25.10.2013.

The learned Single Judge in such circumstance has noticed above, that no grievance had been raised by him at the initial stage when the order dated 02.11.2015 reverting the appellant from the post of Clerk to that of a Peon was passed. Thus, the appellant was satisfied or had no grouse against the order of reversion but after a period of 07 years raised a seniority dispute. He had clubbed the said relief by filing the civil writ petition in 2018 and seeking direction for claiming seniority. The learned Single Judge then rejected the claim of seniority by noting that the private respondent had been promoted to the post of Clerk in the meantime and has been further promoted and had become senior and therefore, observed that that no infirmity can be found in the order of the department dated 05.12.2019.

We do not find any manner in which the relief can be granted to the present appellant. The private respondent was similarly placed and had got promoted by clearing the said test and had thus, become senior in her own right. It was on account of a failure of the appellant himself as the order was a conditional order that during probation he has to clear the said test and he has not passed the same. The seniority could be claimed if the first conditional order dated 25.10.2013 had been

complied. Since the said order no longer stands after the reversion order passed on 02.11.2013, the department has not erred in any manner by treating him and taking his seniority from 10.03.2016 since he cleared the said test on 08.11.2016 in the prescribed period.

In such circumstance, we do not see any reason to interfere in the impugned order of the learned Single Judge.

Consequently, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

November 29, 2022
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No