

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

LPA No. 696 of 2021 (O&M)

Date of decision: 02.02.2022

Puneet Arora

.... Appellant

Versus

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE H. S. MADAAN**

(Through video conferencing)

Present : Mr. Sunil K. Nehra, Advocate, for the appellant.
Mr. Sharan Sethi, Addl. A.G., Haryana.
Mr. Sanjiv Kumar Aggarwal, Advocate, for respondent No.3.

M.S. RAMACHANDRA RAO, J. (oral)

This Letters Patent Appeal is preferred by the appellant challenging the order dated 05.08.2021 passed in CWP No.14837 of 2021.

The appellant was working in Motilal Nehru School of Sports-respondent No.2 as a Clerk since 2017. The 3rd respondent was also holding the same post.

According to the appellant, from the post of Clerk, there is a channel of promotion to the post of both Accountant and Store Keeper.

He contends that he is senior to the 3rd respondent, that there was a DPC held on 17.05.2021 to the post of Accountant, and the appellant was promoted to the said post by the said DPC.

It is not in dispute that subsequent to this event, on 28.05.2021, the 3rd respondent gave a representation against the said promotion, contending that

her case was over-looked on the ground that she did not have SETC Part-II (Typing Test) qualification, but in fact she had appeared for the said test which was conducted on 05.04.2021 and she had passed the said test as per the e-mail communication received by her; and information regarding her passing of the said test was given by her through e-mail on 04.05.2021 to the competent authority well before the date of starting of the proceedings of the DPC for promotion to the post of Accountant on 17.05.2021. She contended that the competent authority never asked her to submit the pass certificate for the said test issued by HARTRON, and she was also fully eligible to be considered for promotion to the post of Accountant by virtue of her seniority as she had the requisite qualification as on 18.05.2021, the date when the promotion order was issued to the appellant.

The 2nd respondent then provided a hearing to both the appellant and the 3rd respondent.

In his order dt. 29.07.2021, he noted that the competent authority had failed to consider the pass certificate of the 3rd respondent which had been issued on 27.04.2021, that she was fully eligible for promotion as she possessed the requisite pass certificate from HARTRON on 27.04.2021, and the intimation of the same had also been given by her to the competent authority by e-mail on 04.05.2021, much before initiating the process of promotion on 17.05.2021. He, therefore, directed for consideration of the case of the 3rd respondent for promotion to the post of Accountant and cancelled the order of

promotion dt. 18.05.2021 issued to the appellant. He also directed the concerned authority to initiate fresh proceedings for promotion as per law within two weeks.

This was assailed by the appellant in CWP No. 14837 of 2021.

It was contended by the appellant before the learned Single Judge that the order dt. 29.07.2021 passed by the 2nd respondent was not warranted since the 3rd respondent was junior to him, that he was at Sr. No.18, and the 3rd respondent was shown at Sr. No.19 in the seniority list, and on basis of his seniority, he was rightly promoted to the post of Accountant.

The learned Single Judge, however, referred to the Rule 9(3) of the Motilal Nehra School of Sports, Rai (Group C) Service Rules 1997 which stated that “all promotions unless otherwise, provided, shall be made on seniority-cum-merit basis” and “seniority alone shall not confer any right to said promotion”, and directed the matter to be revisited by the DPC of the 2nd respondent, while further directing that the promotion already given to the appellant should not be given effect till final decision was taken by 2nd respondent. Learned Single Judge granted two weeks’ time to the Competent Authority to do the needful. Learned Single Judge also observed that he had not expressed any opinion on the merits or the eligibility of the appellant or the 3rd respondent.

This is impugned in this appeal by the appellant.

It is the contention of the appellant that though the 3rd respondent claims to have appeared for the qualifying examination on 05.04.2021, the certificate was issued by HARTRON bearing dt. 27.04.2021, but this was made

available by the 3rd respondent only on 28.05.2021 along with her representation made to the 2nd respondent. He also contended that the certificate dt. 27.04.2021 produced by the 3rd respondent appears to have been back dated by HARTRON and the 3rd respondent cannot be allowed to take advantage of it. He also found fault with the learned Single Judge, for not issuing notice to the 3rd respondent and deciding the Writ Petition.

We do not see any reason why HARTRON, which conducted the SETC Part-II (Typing Test) on 05.04.2021, should have back dated the certificate of pass in the said test issued on 27.04.2021 to the 3rd respondent. It is quite possible that the said certificate was not made available to the 3rd respondent before 17.05.2021, the date when the DPC allegedly met, and therefore, the 3rd respondent was disabled for submitting it to the Competent Authority.

Since, the case of the 3rd respondent was admittedly not considered by the DPC allegedly held on 17.05.2021 on the ground that she did not possess the said qualification, and since the material placed on record by the 3rd respondent indicates that she had actually passed the said examination, we do not see any error in the order passed by the 2nd respondent on 29.07.2021, cancelling the promotion order dt.18.05.2021 issued to the appellant and directing the concerned authority to initiate fresh proceedings for promotion as per law within two weeks.

We also do not find any error in the order passed by the learned Single Judge confirming the order passed by the 2nd respondent and directing

the Competent Authority to consider the case of both the appellant and the 3rd respondent for promotion to the post of Accountant as per the applicable rules.

It is now brought to our notice that after the Writ Petition was disposed of, there was a DPC held on 14.08.2021 and the same has been placed on record vide Annexure R-2 by the 3rd respondent.

In this proceeding, it is recorded that no meeting was conducted on 17.05.2021 and there were irregularities in the DPC proceedings. It was also noted that the 3rd respondent had passed the requisite SETC Part-II (Typing Test) and had duly informed the office of the same on 04.05.2021, i.e. two weeks before the promotions were given. Ultimately vide the said order, the 3rd respondent was given promotion to the post of Accountant and the appellant was considered for the post, of Store keeper and promoted vide Annexure R-1 dt.14.08.2021.

Learned counsel for the appellant now contends that the appellant was not considered for promotion to the post of Accountant in spite of the order of learned Single Judge, which directs the Competent Authority to consider him for the said post, and he was erroneously considered for the post of Store Keeper.

In this appeal, where the appellant has challenged the order dt. 05.08.2021 in CWP No. 14837 of 2021, it would not be proper course to go into the question, whether the 2nd respondent had violated the order of the learned Single Judge by not considering the case of the appellant for the post of Accountant as directed by the learned Single Judge.

It is no doubt true that on 18.08.2021, in this appeal, an observation was made that if any decision regarding further promotion is taken meanwhile, the same would be subject to decision of this Letters Patent Appeal.

For the reasons mentioned above, we do not propose to go into the correctness of order passed on 14.08.2021 by 2nd respondent.

Therefore, by granting liberty to the appellant to take appropriate steps, if the appellant feels that the order of the learned Single Judge is violated and the order dt. 14.08.2021 of 2nd respondent was not validly passed for any reasons, this appeal is dismissed. No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(HARMINDER SINGH MADAN)
JUDGE

02.02.2022

Hehlata

Whether speaking/reasoned: Yes/No.

Whether reportable : Yes/No