

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(211)

CWP-16322-2013

Date of Decision : November 15, 2022

Manoj Kumar

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anurag Goyal, Advocate, for the petitioner.

Mr. Roopse Sharma, Advocate, for
Mr. Anil Kumar Lamdharia, Addl. P.P, for respondent-State.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the grievance of the petitioner is that the petitioner has been reverted from the post of Hindi Teacher to that of a JBT Teacher vide order dated 14.06.2012, a copy of which has been appended as Annexure P-12.

Learned counsel for the petitioner argues that the petitioner was promoted to the post of Hindi Teacher in the year 2008, which promotion was perfectly valid but, without appreciating the facts in a correct perspective, the respondents have reverted the petitioner by the impugned order, which order is liable to be set aside.

After notice of motion, the respondents have filed the reply wherein, the respondents have stated that the petitioner was initially appointed as a JBT Teacher in District Karnal in the year 2002. Subsequently, on his own request, the petitioner was transferred to District Sonipat on 04.10.2006 and as, the cadre in which the petitioner was working, is a District cadre, the petitioner was to be given the seniority from

the date of transfer only in District Sonipat for considering him for further promotion to the post of Hindi Teacher but without considering the said fact and by taking into consideration the appointment of the petitioner from the year 2002, the petitioner was promoted to the post of Hindi Teacher on 01.10.2008. As per the respondents, the said promotion was challenged by the candidates of District Sonipat, who claimed seniority over and above the petitioner by filing CWP No.10970 of 2009, which petition was disposed of by this Court on the ground that all eligible persons will be considered for promotion to the post of Hindi Teacher including the petitioner therein. Thereafter, considering the facts on record especially that there are two JBT Teachers, who were senior to the petitioner and are still awaiting promotion, keeping in view the number of posts in the promotion cadre of Hindi Teacher, the petitioner was reverted to the post of JBT.

Learned counsel for the petitioner submits that once the respondent-State had given a statement that all the eligibles will be promoted to the post of Hindi Teacher, hence, there was no question of reverting the petitioner from the post of Hindi Teacher to that of JBT Teacher even if, any other senior was eligible to be promoted.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The facts which have been narrated hereinbefore are not in dispute. Keeping in view the said fact, this Court is to adjudicate whether the promotion of the petitioner as effected on 01.10.2008 to the post of Hindi Teacher is valid or not.

Keeping in view the facts mentioned, the promotion of the petitioner as effected on 01.10.2008 was on the ground that the petitioner

was appointed in the year 2002 but in District Karnal. The subsequent transfer of the petitioner in District Sonipat on 04.10.2006 was not taken into consideration while effecting the said promotion, which resulted into the fact that the candidates who were working as JBT in District Sonipat prior to the transfer of the petitioner on 04.10.2006 and has a preferential right to get promotion as compared to the petitioner, raised the grievance that an employee junior to them have been promoted to the post of Hindi Teacher ignoring their claim for promotion, which grievance was justified keeping in view the rules governing the service.

Learned counsel for the petitioner conceded a fact that after the transfer of the petitioner to District Sonipat, the date of continuance appointment in District Sonipat in the cadre of JBT, is to be taken from 04.10.2006 only and not a date prior to the said date. Hence, once the seniors of the petitioner were working as JBT in District Sonipat, were yet to be promoted, the promotion of the petitioner to the post of Hindi Teacher in preference to those candidates cannot be treated as a valid one.

Not only this, even after reversion of the petitioner to the post, there are two Teachers who are senior to the petitioner, who are still working in the cadre of JBT as there is no post in the higher cadre to accommodate them. That being so, the reversion of the petitioner cannot be treated as arbitrary.

Learned counsel for the petitioner submits that there is no doubt that there were seniors of the petitioner who were available for promotion but, they were not being promoted by the Department on the ground that their initial appointment is under dispute and legal proceedings qua the said dispute was pending consideration before the Hon'ble Supreme

Court of India. Therefore, though a senior might be available for promotion but they could not be promoted.

Nothing has been brought to the notice of this Court about any embargo upon the promotion of such seniors passed by any competent Court of law especially when those senior employees are working in the feeder cadre and had a preferential right to claim promotion once they were already discharging the duties.

Learned counsel for the petitioner has failed to point out that there was any restraint on the promotion of the person senior to the petitioner except a decision of the respondents as envisaged in Annexure P-7.

Keeping in view the above, once the seniors were available in the cadre of JBT, who had a preferential right than the petitioner for promotion to the post of Hindi Teacher, the petitioner could not have been granted promotion to the said post as granted on 01.10.2008, hence, the reversion order of the petitioner cannot be faulted with, which is based upon the said fact.

In view of the above, no ground is made out for interference by this Court and accordingly the writ petition is dismissed.

November 15, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No