

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

CWP-16722-2021

Date of Decision :08.03.2022

Vijay Kumar

..Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Madan Pal, Advocate for the petitioner.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed for quashing of order dated 02.11.2015 (Anenxure P/6) by which the petitioner was reverted from the post of Clerk to that of a Peon as well as order dated 05.12.2019 (Annexure P/11) whereby, the representation filed by the petitioner challenging the said reversion order, has been dismissed.

Learned counsel for the petitioner argues that though, the petitioner has already retired from service but, the order dated 02.11.2015 reverting the petitioner from the post of Clerk to that of a Peon was bad in law. Learned counsel for the petitioner submits that though, it is a conceded position that certain stipulations were made in the order dated 25.10.2013 (Annexure P/3) by which, the petitioner was promoted from the post of Peon to the post of Clerk but those stipulations i.e. passing the State Eligibility Test in Computer Appreciation and Application (SETC) from HARTRON was bad in law and, therefore, non-fulfilment of the said

stipulation of the promotion order, could not have been made a ground for reverting the petitioner to the post of Peon from that of Clerk.

The second argument, which has been raised by the learned counsel for the petitioner is that after the reversion of the petitioner vide order dated 02.11.2015 (Anexure P/6), the petitioner has passed the State Eligibility Test in Computer Appreciation and Application (SETC) from HARTRON and was again promoted to the post of Clerk on 10.03.2016 and after the said promotion to the post of Clerk, the petitioner will again regain his seniority from the date, he was initially promoted as Clerk i.e. 25.10.2013 and consequently, he has to be treated senior to respondent No.4, who was promoted as Clerk on 26.6.2014. Learned counsel for the petitioner argues that as respondent No.4 has further been promoted as Assistant on 19.06.2017, which date is prior to the superannuation of the petitioner, the petitioner had a preferential right for promotion to the said post of Assistant, on the date when respondent No.4 was promoted.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

It is a conceded position that the petitioner was promoted to the post of Clerk vide order dated 25.10.2013 subject to the following conditions:-

1. He will be on probation for a period of one year.
2. He shall qualify the State Eligibility Test in Computer Appreciation and Applications (SETC) from HARTRON as per instructions of Govt. NO.42/164/2008-2GS-11 dated 11th October, 2013 within the period of probation of one year extendable by one year failing which he will be reverted back.

As per the said conditions, the petitioner was required to pass

State Eligibility Test in Computer Appreciation and Applications (SETC) from HARTRON within the time framed, which eligibility test concededly the petitioner did not pass within the time frame prescribed and keeping in view the said fact the petitioner was reverted from the post of Clerk to that of a Peon vide impugned order dated 02.11.2015 (Annexure P/6).

The argument of the learned counsel for the petitioner that condition No.2 reproduced hereinbefore, was bad in law and, therefore ,reversion order dated 02.11.2015 (Annexure P/6) is liable to be set aside, cannot be accepted, for the reasons that there was no challenge by the petitioner to the condition No.2, at any stage i.e. neither after the promotion was effected on 25.10.2013 nor when order of reversion of the petitioner was passed on 02.11.2015. Even in the present writ petition, the said condition is not under challenge.

That being so, condition imposed in the order of promotion has to be complied with by the petitioner. Once, the petitioner failed to comply with condition No.2 of the promotion order, no grievance can be raised by him with regard to his reversion from the post of Clerk to that of a Peon by impugned order dated 02.11.2015 (Annexure P/6).

The second argument, which has been raised by the learned counsel for the petitioner is that after the petitioner was again promoted to the post of Clerk vide order dated 10.03.2016, he regained his seniority over respondent No.4, who had been promoted on the post of Clerk on 02.06.2014. This argument is also fallacious as claim of gaining seniority over respondent No.4 is by placing reliance on promotion order dated 25.10.2013, which order already stood withdrawn by the respondents and petitioner was reverted to the post of Peon in 2015. Petitioner was again

promoted to the post of Clerk only on 10.03.2016 i.e. after the date of promotion of respondent No.4 to the post of Clerk.

That being so, it cannot be said that on the date when respondent No.4 was further promoted as Assistant i.e. 19.06.2017, the petitioner was senior to respondent No.4. The date of promotion of petitioner to the post of Clerk has to be taken as 10.03.2016 and not 25.10.2013 as being claimed.

Keeping in view the above, no infirmity can be found in the impugned order dated 02.11.2015 (Annexure P/6) reverting the petitioner from the post of Clerk to that of a Peon and order dated 05.12.2019 (Annexure P/11) whereby, the representation filed by the petitioner challenging the said reversion order has been dismissed.

Accordingly, the present petition stands dismissed.

March 08, 2022
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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