

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-59-2023

Date of decision :11.01.2023.

RAKESH KUMAR

...PETITIONER

Versus

PUNJAB AND HARYANA HIGH COURT
AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Jitenderpal Singh, Advocate and
Mr. Ajay Bhardwaj, Advocate for the petitioner.

Mr. Ashish Bansal, Advocate for respondents No.1 and 2.

Mr. Rohit Bansal, Senior DAG, Advocate for respondent No.3.

SUVIR SEHGAL, J.

Petitioner has approached this Court under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari quashing impugned order dated 16.12.2022, Annexure P-11, passed by District and Sessions Judge, Moga-respondent No.2 whereby permission for submission of application against 21 posts of Punjab Civil Services (Executive Branch) (for short "PCS(EB)") from Register A-II (Process Year-2021) has been declined. Petitioner has further sought issuance of a writ in the nature of mandamus directing respondent No.2 to forward the off-line application form dated 05.12.2022, Annexure P-10, along with Annexure A, B and requisite certificate while treating the petitioner as eligible, being a confirmed employee, to respondent No.1 for further forwarding the same to respondent No.3-Punjab Public Service Commission, before the last date i.e. 12.01.2023 and for a consequential direction to respondent No.3 to consider the candidature of the petitioner for the post.

Facts leading to the filing of the present petition are that the petitioner was appointed on the post of Clerk by respondent No.2 vide appointment letter dated 13.03.2013, Annexure P-1, on a temporary basis on the recommendation made by respondent No.1. On completion of 04 years' service, he was granted the benefit of first ACP w.e.f. 19.05.2017. He was promoted to the post of Reader-III Senior Assistant vide order dated 03.03.2020, Annexure P-3. He was granted annual grade increment w.e.f. 01.03.2014 and 01.03.2015. In order to fill up posts of PCS(EB) from Register A-II, respondent No.3 issued letter dated 10.11.2022, Annexure P-6, inviting online applications from eligible members of Group A and B services serving in connection with the affairs of the State of Punjab. The advertisement required submission of online application form on or before 10.12.2022 and the last date of depositing the hardcopy of the form along with other documents through the Head of the Department is 12.01.2023. Petitioner submitted the online application on 05.12.2022, Annexure P-10. When he came to know that hardcopy of the application is not being forwarded by respondent No.3, he approached this Court by filing CWP-29398-2022. As an advance copy of the petition had been served upon the respondents, they produced a copy of order dated 16.12.2022, Annexure P-11, which has been impugned herein, declining the permission. The writ petition was withdrawn by the petitioner on 20.12.2022, Annexure P-12, with liberty to assail the order passed by respondent No.2. Hence, this petition.

Upon notice, written statement has been filed on behalf of respondents No.1 and 2, contesting the petition. It has been submitted that the claim of the petitioner and other similarly placed employees has been

rejected as they were appointed on temporary post and have not been confirmed against a permanent post. It has been submitted that they do not meet the eligibility criteria.

Counsel for the petitioner has urged that Rule 8 of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, (hereinafter referred to as “Rules of 1997”) provides a maximum probation period of three years, which has been completed by the petitioner and he stands automatically confirmed against the substantive post of Clerk. It is his specific argument that there is nothing on the record to show that the work and conduct of the petitioner is unsatisfactory and nothing adverse has been conveyed to him. Counsel submits that in the cadre of Clerk, he was granted the benefit of first ACP on completion of 04 years’ satisfactory service and even on the promoted post, he has been released the annual grade increment, which show that he is working as a confirmed employee. Reference has also been made by the counsel to orders, Annexures P-13 and P-14 to submit that similarly situated employees working at District Courts Ferozepur and Fazilka have been granted permission by the respective District and Sessions Judge. Reliance has also been placed by the counsel upon interim order dated 09.12.2022, Annexure P-15, passed by this Court in CWP-28318-2022, **Sukhpal Singh and others versus State of Punjab and others.**

Countering his arguments, counsel representing respondents No.1 and 2 has argued that petitioner is working on temporary basis and has not been confirmed against a permanent post. It has been submitted that there is only one permanent post of Assistant/Reader Grade-III in the

Sessions Division and petitioner, who stands at serial No.11 in the tentative seniority list, cannot be confirmed before the confirmation of his seniors. He has filed a copy of letter No.2886/EB dated 18.10.2022 by District and Sessions Judge Moga, respondent No.2, which is taken on record as Mark 'A', circulating tentative seniority list of employees in the Sessions Division. Still further, it has been urged that there is nothing on the record to show that the employees, who have been granted permission vide orders, Annexure P-13 and P-14, were confirmed employees. It is his submission that pleadings of CWP-28318-2022 show that the Head of the Department had specifically recorded that the work and conduct of the petitioners' therein was satisfactory and their cases had been sent for confirmation, though no confirmation order had been passed. He submits that the petitioner cannot claim any parity with them.

I have heard counsel for the parties and have considered their respective submissions.

Rule 8 of Rules of 1997, which is relevant for the purpose of determination of the controversy involved in the present case, is as under:-

“ 8. Probation of Persons Appointed to service:

(1) Persons appointed to any post in the service shall remain on probation for a period of two years, if recruited by direct appointment and one year in the case of promotion, provided that-

(a) Period spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) In the case of an appointment by transfer any period of work on an equivalent or higher rank period to appointment to the service may in the discretion of the appointing authority be allowed to count towards the period of probation;

(c) Any period of officiating appointment to the service shall be reckoned as period spent on probation.

(2) If, in the opinion of the appointing authority the work or conduct of a member of service during the period of probation is not satisfactory, it may-

If such person is recruited by direct appointment dispense with his services, or revert him to a post, on which he held lien prior to his appointment.

If appointed otherwise:-

(1) revert him to his former post; or deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of the period of Probation of a person, the appointing authority may-

(a) if his work and conduct has, in its opinion been satisfactory:

(i) Confirm such person from the date of his appointment if appointed against a permanent vacancy.

(ii) Confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy.

OR

Declare that he has completed his probation satisfactorily if there is no permanent vacancy:

Provided that the total period of probation including extension if any, shall not exceed three years.”

This Rule provides for initial probation period of two years in case of direct recruits and proviso thereto lays down that extension can be granted but the total period of probation will not exceed three years. The law regarding confirmation on completion of probation period is well settled. It has been held by the Supreme Court in **High Court of Madhya Pradesh through Registrar and others versus Satya Narayan Thavar (2001) 7 SCC 161 (Para 11)** as under:-

“11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject matter of consideration before this Court, times without number in

various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment, a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.”

In the view of this Court, the case at hand falls in the last category of cases discussed by the Supreme Court in the judgment reproduced above. Rule 8 of Rules of 1997 requires a definite action to be taken by the authority by recording that the work and conduct of the employee in its opinion has been satisfactory and thereafter a confirmation order is required to be passed. The Rule does not contemplate of automatic or deemed confirmation. In the absence of any specific order having been passed by the authority certifying satisfactory completion of the period of probation, petitioner cannot be treated to have been confirmed. The argument raised on behalf of the petitioner, therefore, deserves to be rejected.

Furthermore, it may be noticed that even in the E-service book of the petitioner, Annexure P-4 (at page 58 of the paper book), it has been mentioned “TEMPORARY” in the column of employee type. The column ‘service confirmation date’ is blank, which clearly spells out that the petitioner has not been confirmed. Still further, an examination of the tentative seniority list, Mark ‘A’, shows that the petitioner is placed at serial No.11 in the seniority list of Reader Grade III and it has been explicitly mentioned that he is a temporary employee. Respondents No.1 and 2 have taken a stand that there is only one confirmed post of Reader Grade III in the Sessions Division and till the time, employees placed senior to the petitioner are not confirmed, he does not have any right, either to confirmation or to claim that he stands automatically confirmed. It deserves to be mentioned that, except for a bald averment, there is no material on the record to show that petitioner is similarly placed as employees in orders, Annexures P-13 to P-15.

In view of the above discussion, this Court does not find any error in the reasoning recorded by respondent No.2 in the impugned order, Annexure P-11, which does not call for any interference.

Petition being devoid of merit, is hereby dismissed with no order as to costs.

11.01.2023

(SUVIR SEHGAL)

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JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No