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[2023:PHHC:041401]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COCp-756-2006 (O&M)
Date of decision: 17.03.2023

Dr. Prem Swaroop Gaur

... Petitioner

Vs.

H.C. Disodia

.. Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.D. Bawa, Advocate
for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

This contempt petition is pending since 2006 and was admitted on
02.04.2009 and thereafter, it was again listed for hearing.

The petitioner alleges violation of the order dated 03.10.2000, vide
which CWP-7185-1993 was disposed of by passing the following order: -

*“I am of the considered opinion that there has been no exercise of
mind in accordance with the rules applicable at that time and the*

seniority list as such has not been correctly finalized, which has been annexed as Annexure P-16 which has been impugned by the petitioner. The Govt. has to keep in mind the rules and its own instructions vide which the posts were divided in the ratio 50:50 and then subsequently in the ratio of 75:25 and at the same the judgment rendered by this Court in CWP No.382 of 1991 in which a categorical direction had been given that in the absence of any rules, the seniority has to be determined in accordance with rule 19 by taking into consideration the length of service. Apart from this, another factor which is required to be noticed by the Government is that the promotions of various officers had been made vide orders, Annexure P-7, P-8 and P-9 and the said promotions to Class I were made subject to the approval of Haryana Public Service Commission. The Commission rejected the said recommendations made by the Government, meaning thereby that the said officers had no right to remain in HVS I. This would include the petitioner as well as his name has also been recorded in the order, copy Annexure P-8. However, the distinguishing feature in the case of the petitioner is that he had competed to be appointed in HVS I by way of direct recruit and had been appointed to Class Service (HVS I) vide order dated 20-

3-1979 copy Annexure P-1. Thus, the rejection by the Commission regarding the case of the petitioner would not affect him and he shall be taken to be in HVS I w.e.f. 1979 unless his right as a promotee is redetermined in accordance with law as had been claimed by the learned Deputy Advocate General.

By any stretch of imagination, the seniority list, Annexure P-16 cannot be substituted and the same, therefore, deserves to be quashed. The petition is allowed with costs and the seniority list, copy Annexure P-16 dated 29.7.1999 is quashed. The Government is directed to redraw the seniority list of HVS I after affording proper opportunity of being heard (including personal hearing) to the persons concerned and also keeping in mind the 1930 Rules, instructions issued from time to time in the year 1974 and 1979 and the judgment rendered by this Court in CWP No.382 of 1988 decided on 8.3.1991 and also other facts such as direct appointees to HVS I by the Commission. Their entry shall have to be considered from the date of recommendation.

It has been brought to my notice by the learned counsel for the petitioner that the petitioner is attaining the age of superannuation on September 30, 2000. If that be so, the exercise in re-determining the seniority in HVS Class I be carried out by

the Government within a period of three months from the date of receipt of copy of this order from this Court or a certified copy from the petitioner whichever is earlier. The consequential benefits shall flow from including the right of consideration of the petitioner to the post of Director, Animal Husbandry, from the date it becomes available and the petitioner is eligible in accordance with law. If the petitioner is promoted to the rank of Director, Animal Husbandry by giving deemed date, the pay fixation of the petitioner for the purpose of retiral benefits shall also be made accordingly. The costs are assessed at Rs.3000/-."

Learned counsel for the petitioner submits that in compliance of the order dated 03.10.2000, seniority list has not been re-drawn and consequential relief, if any, was to be granted to the petitioner including right of consideration to the post of Director, Animal Husbandry from the date, it becomes available, is also not granted to him. It is argued that the petitioner has claimed his position at Sr. No.2 instead of Sr. No.4 in the seniority list dated 21.02.2002 and when the final seniority list was issued on 05.08.2003, he was placed at Sr. No.26 by including the officers, whose approval is taken from the Haryana Public Service Commission from the back date. It is further submitted that the petitioner, on an earlier occasion, filed a contempt petition, which was dismissed as withdrawn on 09.05.2005 and thereafter, present

petition was filed.

Learned counsel further submits that a person namely Dr. K.S. Dangi, who is junior to the petitioner, was granted revised pay scale w.e.f. 01.06.1996 and thus, the respondents have violated the directions of this Court.

In the affidavit of Financial Commissioner & Principal Secretary to Govt. of Haryana, Department of Animal Husbandry & Dairying, it is stated that directions have been fully complied with and the seniority list was re-drawn on 05.08.2003 and after affording an opportunity of hearing to the petitioner, a detailed speaking order was passed on 31.08.2004, copy of which is attached as Annexure R-1 and due amount of Rs.1,75,650/- as arrears of pay was also disbursed to him on 25.11.2005. It is further stated that seniority list dated 05.08.2003 was prepared after affording an opportunity of hearing to the petitioner, as he was placed at Sr. No.26.

A perusal of the record shows that even the petitioner filed some rejoinders contesting the seniority list, as if this Court is deciding this contempt petition as writ petition. Again an affidavit of the same authority was filed reiterating the stand taken above.

In another affidavit filed on behalf of the respondents, complete details of promotion vis-a-vis the petitioner and Dr. H.S. Dahiya holding the current duty charge of the Director are given. It is stated that vide memo dated 20.10.2005, Dr. H.S. Dahiya, then Milk Commissioner, Haryana was granted

the pay scale of 15100-18300 (revised) w.e.f. 01.01.1996 and the petitioner was also granted the same pay scale subsequently, therefore, there is no violation of the directions of this Court.

The petitioner again filed rejoinder and additional affidavit, to which replies were filed by the respondents, stating that necessary compliance has already been made.

In the affidavit dated 17.07.2015 of Deputy Secretary to Govt. Haryana, Animal Husbandry & Dairying Department, in reply to a Court query, it is stated that one Shyam Lal Yadav was given the benefit of emergency period and his promotion to the post of Deputy Director was advanced to 01.10.1977 instead of 21.04.1978 and he became senior to the petitioner and by following a procedure, he was further promoted to the post of Deputy Director and therefore, it is denied that right of the petitioner has not been considered in the light of judgment of this Court.

As noticed above, this petition is pending since long and could not be disposed of on account of successive affidavits/rejoinders filed by the parties, by trying to expand the scope of the order with regard to subsequent promotions given to various persons, as duly replied by the respondents in their successive affidavits, only point before this Court is whether there is compliance of the order dated 03.10.2000.

After hearing learned counsel for the parties, this Court, on the

basis of affidavits filed by the respondents, finds that there is no willful disobedience of the order dated 03.10.2000 passed by this Court, as the same has duly been complied with and even the monetary benefits have been given.

Accordingly, this petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

17.03.2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No