

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

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CWP-4623-2019

Date of Decision :-06.12.2023

Devender Singh**...Petitioner****Versus****State of Haryana and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Devender Punia, Advocate for the petitioner

Mr. Saurabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, prayer of the petitioner is that he be granted benefit of fixation of pay in the cadre of driver from the date the petitioner has been given seniority keeping in view the facts and circumstances of the present case.

2. As per the facts mentioned in the present petition, the petitioner competed for appointment to the post of driver in pursuance to the advertisement dated 10.12.2012 issued by the respondents. The candidates were required to undergo a driving test, in which test the petitioner failed and he was not allowed to compete further. The disqualification in the driving test was challenged by the petitioner by way of filing CWP-14358-2014 before this Court wherein, a direction was given by this Court to re-conduct the driving test of the petitioner, which driving retest was passed by the petitioner and ultimately he was appointed as driver by the respondents.

The petitioner was allowed to join duty on 25.06.2018.

3. The petitioner claimed that he should be given the notional appointment from the date the candidate lower in merit than him was appointed and his pay should be fixed on the basis of the marks obtained by him. The said request of the petitioner was accepted by the respondents and the petitioner was given seniority at serial No.5 below one Harinder Singh and above Devender Singh s/o Ram Chander Singh keeping in view the marks secured by the petitioner. Though, the benefit of seniority was given to the petitioner but he has not been given benefit of notional appointment from the date the candidate lower in merit namely, Devender Singh s/o Ram Chander Singh was appointed. The grievance raised in the present petition is that the petitioner be given notional appointment from the date when Devender Singh s/o Ram Chander Singh has been appointed by fixing his pay notionally so that the petitioner does not suffer any prejudice on account of delayed appointment.

4. Respondents are contesting the claim of the petitioner on the ground that once the petitioner failed to clear the driving test when the same was held on 13.05.2013, even after clearing the said driving test on 08.08.2017, the petitioner cannot claim benefit of antedated appointment from the date the candidate lower in merit has been appointed as the petitioner can only be appointed prospectively and not retrospectively.

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

6. The only question raised is as to whether the petitioner is to be given antedated appointment from the date the candidate lower in merit than him has been given appointment or the action of the department in

appointing the petitioner prospectively in the year 2018 is to be accepted.

7. From the facts narrated hereinbefore, it is clear that the failure of the petitioner to pass the driving test held on 13.05.2013 was under cloud due to which fact on the direction of this Court, the petitioner was allowed to re-appear for the driving test, which driving test was cleared by the petitioner. After clearing the driving test, the merit of the petitioner was prepared and being within the zone of selection, petitioner was appointed as driver.

8. Further, the petitioner has been given seniority as per the merit obtained in selection process, which fact is clear from the letter dated 25.06.2018 (Annexure P/6). Petitioner has been given seniority in the cadre of driver from the date the candidate lower in merit has been appointed hence, it cannot be said that appointment date of the petitioner will be after the candidate, who is lower in merit. Keeping in view the fact that seniority has been given to the petitioner from a particular date when the candidate lower in merit has been appointed, the petitioner needs to be given consequential benefit of his deemed appointment from the date the candidate namely, Devender Singh s/o Ram Chander Singh, who was lower in merit than the petitioner, was appointed.

9. By non-grant of appointment from antedate will create anomaly as the candidate having been appointed in 2018 will be treated senior to the candidate, who has been appointed in the year 2014, which is not permissible hence, once the respondents themselves have found the petitioner entitled for seniority from the date the candidate lower in merit was appointed, the petitioner is also entitled for the grant of benefit of deemed appointment from the date person lower in merit was appointed.

10. Keeping in view the above, present petition is allowed. Petitioner will be deemed to have been appointed from the date Devender Singh s/o Ram Chander Singh was appointed. The benefit of retrospective appointment will be notional for the purpose of fixation of pay only and the petitioner will not be given financial benefit for the said period.

11. Let the present order be complied with within a period of two months from the date of receipt of copy of this order.

12. Civil miscellaneous application pending, if any, is also disposed of.

December 06, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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