

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

CWP No. 1838 of 1999 (O&M)

Date of decision : 12.12.2023

Roop Lal and another	Petitioners
	vs.
State of Punjab and others	Respondents

Coram: Hon'ble Mr. Justice Sanjeev Prakash Sharma

Present Mr. Arihant Goyal, Advocate, for petitioners.

Mr. D. K. Singhal, Additional Advocate General, Punjab.

Mr. R. D. Bawa, Mr. Samliel Gill and
Mr. Randhir Bawa, Advocates, for respondent no. 5.

SANJEEV PRAKASH SHARMA, J.

The petitioners by way of this writ petition challenges the orders dated 07.01.1999 (endorsed on 12.01.1999) passed by the official respondents whereby respondent no.5 was promoted as Kanungo from the quota of direct recruitment in the pay scale of Rs. 4550-7220.

2. Learned counsel for the petitioners submits that respondent no. 5 had been punished for removal from service in a departmental proceedings. In appeal, the punishment was reduced to stoppage of four annual grade increments with cumulative effect. The punishment awarded was reduced on 22.03.1996. He further submits that the petitioners were senior to respondent no. 5. In the seniority list (Annexure P-4), petitioners were at Sr. No. 42 and 44, while respondent no.5 was at Sr. No. 46.

3. Learned counsel for the petitioners further submits that during the currency of punishment, respondent no. 5 could not have been promoted.

Moreover, the case of the petitioners was not considered while granting promotion to respondent no. 5. Since the petitioners were senior to respondent no.5, they were entitled to be promoted first and prior to respondent no.5.

4. Reply has been filed on behalf of the official respondents, wherein it has been stated that total 20 seats of Kanungo for District Moga were approved including that of Sadar Kanungo. 3 seats were reserved for direct appointees and 17 seats were reserved amongst the patwaris for promotion. Since all the 17 posts were already filled, the petitioners, therefore, have no claim for promotion. Respondent no.5 was although junior to the petitioners but he has been appointed as Kanungo and he had worked as *Wasal Waqi Navis*, and the same was done in terms of the orders of the Commissioner, Faridkot. The pay scale of *Wasal Waqi Navis* was equal to that of the Kanungo. The appointment of respondent no.5 as Kanungo was not challenged at the relevant time. Thus, the petitioners cannot challenge the promotion of respondent no.5 to the post of Kanungo. The order passed by the Commissioner, Faridkot has also been placed on record.

5. Respondent no.5 has also filed his reply. Respondent no.5 has also taken similar stand as that of the State Government.

6. I have considered the submissions.

7. The petitioners are admittedly senior to respondent no.5. The State authorities have admitted in their written statement with regard to the aforesaid aspect. However, it is stated that respondent no.5 was earlier working as Tehsil Revenue Accountant / *Wasal Waqi Navis*. His case was recommended for promotion to the post of Kanungo. This Court finds that

the post of Kanungo is to be filled from the Patwaris and in terms of the seniority-cum-merit by promotion and 15% posts are to be filled by direct recruitment. The order of promotion, Annexure P-5, reflects that respondent no.5 was promoted as Kanungo meant for direct recruitment. No promotion could have been given against a direct recruitment post and the post was required to be filled solely from direct recruits. If at all the post is to be filled from emergent situation from promotees, the same could only be filled by following seniority. But the seniority rule has been departed and extra benefit has been given to respondent no.5.

8. Further this Court finds that respondent no.5 was already suffering punishment and the punishment was in currency at the time when the order of promotion was passed. Four increments were stopped permanently. Thus, the promotion in the year 1999 could not have been given. The action is found to be wholly arbitrary and illegal.

9. The ground taken by the official-respondents of not following the seniority is also found to be misleading. It is noticed that respondent no.5 was given additional charge of *Wasal Waqi Navis* on 07.10.1996, whereas he had been punished with a major penalty on 27.03.1996. It is surprising that the Patwari who has been punished with stoppage of four annual grade increments with cumulative effect should be given additional charge of a higher salary that too of Tehsil Revenue Accountant without following the principle of seniority.

10. It is a clear case of applying Rule of Thumb instead of Rule of Law. The concerned authority of the Revenue Department seems to have acted wholly arbitrarily and given benefits to a Patwari against whom there

was severe punishment of stopping of four annual grade increments. The charge against respondent no. 5 for which punishment was awarded, was that of having received bribe. Totality of the case reflects the functioning of the Revenue Department of the State which needs to be over hauled. The concerned officer, who has acted in the aforesaid fashion deserves to be reprimanded.

11. Without any further discussion, the writ petition is **partly allowed**. The order, Annexure P-5, dated 07.01.1999 (endorsed on 12.01.1999) is quashed and set aside. Pension of respondent no.5 shall be revised accordingly. However, no recovery shall be made. Since the post on which respondent no.5 was promoted was meant for direct recruitment, the petitioners cannot be granted any relief of promotion from the date respondent no.5 was promoted.

12. Pending applications, if any, shall stand disposed of.

13. No costs.

12.12.2023

vs

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No