

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104+226)

CM No.14353 of 2023 in/and
CWP No.9561 of 2019 (O&M)
Date of Decision : 29.08.2023

Dinesh Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Sangita Dhanda, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No.14353 of 2023

Application is allowed.

Documents are taken on record.

CWP No.9561 of 2019

1. The present petition has been filed challenging the order dated 31.10.2017 (Annexure P-15) by which, the claim of the petitioner for promotion to the post of Laboratory Technician from a Class-IV post has been rejected.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The petitioner was appointed on Class-IV post vide order dated 07.09.2021, copy of which is attached as Annexure P-3. It is averred in the petition that upon appointment to a Class-IV post, the petitioner was posted in a Laboratory and was discharging the duty of the post of a Laboratory Attendant, which is also a Class-IV post. The petitioner has attached the experience certificate issued by the respondents themselves to confirm that the petitioner was working in the Laboratory as Laboratory Attendant since 03.05.2002 onwards.

4. During the period when the petitioner was working on a Class-IV post of Laboratory Attendant, he sought permission to enhance the qualification, which permission was granted to him and the petitioner got a training done in the field of Laboratory Technician. Thereafter, the petitioner made a request that as the petitioner has attained the qualification for the post of Laboratory Technician, he be granted the benefit of promotion to the said post, which prayer of the petitioner was not accepted on the ground that after being appointed to a Class-IV post, the petitioner was initially directed to perform the duties of a Peon though from the year 2002 onwards, the petitioner was working as a Laboratory Attendant but as per the respondents, the work of the Laboratory Attendant was wrongly assigned to the petitioner, hence he can only be promoted as Clerk from a Class-IV post. Hence, keeping in view the Rules governing the service, as the petitioner does not belong to feeder cadre of Laboratory Attendant for promotion to the post of Laboratory Technician, the prayer of the petitioner has rightly been declined. It has been further mentioned that during the pendency of the

present petition, by treating the petitioner as a Peon, he has already been promoted in 2018 to the post of Clerk which is a Class III post.

5. Learned counsel for the respondents further submits that the qualifications prescribed for the post of Laboratory Attendant were not fulfilled by the petitioner upto the year 2014 hence, treating the petitioner as a Laboratory Attendant from the year 2002 cannot be permitted hence, the petitioner is not entitled to be treated as a Laboratory Attendant for further promotion to the post of Laboratory Technician.

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

7. It is a conceded fact that the petitioner was initially appointed on a Class-IV post without there being any designation mentioned in the said appointment order, copy of which has been appended as Annexure P-3 with the present petition. It is also a conceded position that as per the experience certificate given by the respondents themselves, starting from May, 2002 onwards, the petitioner kept on working as a Laboratory Attendant and not on the post of Peon.

8. Keeping in view the facts and circumstances mentioned hereinbefore, the claim of the petitioner is to be evaluated as to whether, he can claim the benefit of the promotion to the post of Laboratory Technician or not.

9. Once it is a conceded position that in the year 2014, the petitioner gained the minimum required qualification for appointment to the post of Laboratory Attendant and the petitioner had already been working on the said post on the asking of the respondents themselves since 2002 onwards and had more than 10 years experience of working

on the post of Laboratory Attendant, treating the petitioner as a Peon by the respondents for further promotion is not at all correct. It does not lie in the mouth of the respondents that on one hand they take the work of the post of Laboratory Attendant from the petitioner but for further promotion, they will treat the petitioner as a Peon. These two views of the respondents which are totally divergent, hence cannot be accepted. Once it is a conceded position that the petitioner was working as a Laboratory Attendant since 2002, the petitioner needs to be treated as a Laboratory Attendant for further promotion, in case he fulfills the required qualification for the post of Laboratory Technician.

10. Qua the argument that the petitioner only gained the qualification for appointment to the post of Laboratory Attendant in the year 2014, the respondents are well within their jurisdiction to consider the experience on the post of Laboratory Attendant so as to consider him for further promotion from the year 2014 only. The eligibility which is provided for promotion to the post of Laboratory Technician, will be adhered from the date when the petitioner got the required qualification for appointment to the post of Laboratory Attendant and in case the petitioner has requisite experience on the post of Laboratory Attendant for further promotion to the post of Laboratory Technician, then only he will be considered eligible for promotion to the post of Laboratory Technician.

11. Learned counsel for the respondents submits that the permission for acquiring higher qualification which the petitioner gained was granted with the condition that he will not claim any benefit of the said higher qualification. It may be noticed that the present order is not

being passed on the basis of the higher qualification obtained. The present order is being passed on the ground that the respondents allowed the petitioner to work as a Laboratory Attendant after being appointed on a Class-IV post, which fact has been conceded by learned counsel for the respondents hence, once as per the Rules governing the service Laboratory Attendant is entitled for promotion to the post of Laboratory Technician, he is also entitled for the said consideration.

12. Hence, in the facts and circumstances of the present case, the respondents are directed to consider the petitioner as Laboratory Attendant for all intents and purposes while working on a Class-IV post and consider his claim for promotion to the post of Lab Technician in accordance with law along with the other Laboratory Attendants on the basis of seniority in the said cadre, keeping in view the vacancy in the cadre of Laboratory Technician and the date when the petitioner attained the qualification for appointment to the post of Laboratory Attendant i.e. 2014. Let the said consideration be completed within a period of two months from the date of receipt of a copy of this order.

13. Petition stands allowed.

August 29, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No