

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 16390 of 2012 (O&M)

Date of Decision: 09.02.2023

Parminder Kumar

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjay Majithia, Senior Advocate
with Mr. Sumit Sinha, Advocate
for the petitioner(s).

Mr. Gurpreet Singh, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

CM-9563-CWP-2017

1. While taking the documents (Annexures A1 to A3) on record,
the application is allowed.

CM-18263-CWP-2018

2. While taking an additional affidavit of the petitioner along with
the document (Annexure P17) on record, the application is allowed.

CM-2256-CWP-2023

3. While taking the order dated 11.01.2021 passed by the Deputy
Commissioner, Sangrur, on record as Annexure A1, the application is
allowed.

CWP-16390-2012

certiorari to quash the order dated 02.03.2012.

5. In essence, the petitioner assails the correctness of the order placing him at the tail of the seniority list of the Clerks prepared by the office of the Deputy Commissioner, Sangrur. The relevant facts, in brief, are required to be noticed.

6. Initially, the petitioner was recruited as a Clerk at Government Ayurvedic Hosptial, Bhatinda. On clearing the type test, he completed his probation period on 11.07.2007. In the year 2006, a new district Barnala was carved out of the old district Sangrur. Subsequently, the petitioner came to be appointed as a Clerk in the office of the Deputy Commissioner, Barnala, on 02.04.2008. He was given the benefit of previous service as his pay was protected. Subsequently, he was placed in the pay scale of Junior Assistant on 24.06.2009. The petitioner and Sh.Darshan Singh, who was working as a Junior Assistant in the office of the Deputy Commissioner, Sangrur, applied for mutual transfer, though, they were members of their respective district cadre. The Financial Commissioner and Secretary to Government of Punjab, Department of Revenue and Rehabilitation, permitted swapping of their postings subject to the following condition:-

“2. The seniority to the employees shall be assigned from the date of their joining at the place of their appointment by way of transfer.”

7. The petitioner joined in the office of the Deputy Commissioner, Sangrur, whereas, Sh.Darshan Singh joined in the office of the Deputy Commissioner, Barnala. Now, the petitioner's grievance is that he has been placed at the tail of the seniority list of the Clerks. On the other hand, the

Assistants is common, therefore, the petitioner having foregone his seniority is required to be placed at the tail of the seniority list of the Clerks.

8. It is noted here that the services of the petitioner are governed by the Punjab Civil Services (Revised Pay) Rules, 1998. After completing five years of minimum service, a Clerk is entitled to be considered for grant of pay scale of Junior Assistant which is higher than the pay scale of Clerks. As per the amendment brought vide notification dated 04.09.2000, it was provided that the cadre of the Clerks shall be divided into the Clerks and Junior Assistants in the ratio of 50:50. Previously, their cadre was divided into Clerks, Senior Clerks and Junior Assistants in the ratio of 20:40:40.

9. This Court has heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

10. It is the case of the respondents that the pay of the petitioner has been protected, but since he has foregone his seniority, therefore, he has correctly been placed at the tail of seniority list of the Clerks as there is only one common cadre for all such posts. On the other hand, the learned senior counsel representing the petitioner submits that on the one hand, the pay of the petitioner has been protected, whereas, on the other hand, he has been made the junior most amongst the Clerks, like a new recruit.

11. This Court has evaluated the arguments of the learned counsel representing the parties. It is evident from the reading of clause (2) of the letter dated 22.09.2009 that in order to ensure his transfer, the petitioner agreed to forego his seniority amongst the employees who were on the same post i.e. Junior Assistants. However, he never agreed to forego his entire service as a Clerk. To recapitulate the facts, the petitioner was appointed in

the year 2008. After completing his probation period, the petitioner was

placed as Junior Assistant on account of the experience gained by him as a Clerk from 2004 to 2008 at Government Ayurvedic College, Bhatinda. The petitioner was initially appointed as a Clerk on 10.06.2004 at Government Ayurvedic College, Bhatinda. He, on clearing the type test, had successfully completed the probation period on 11.07.2007. In these circumstances, if the petitioner is placed as the junior most Clerk in the seniority list, the same shall result in wiping out his entire experience which he has duly earned by serving all this while.

12. Keeping in view the aforesaid facts, the present writ petition is allowed and the order dated 02.03.2012 is set aside. At the most, the petitioner is liable to be placed at the tail amongst the Junior Assistants but not at the tail of the seniority list of the Clerks.

(Anil Kshetarpal)
Judge

February 09, 2023
“DK”

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