

206 & 104

2023:PHHC:162963

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14591-2023
Date of Decision: 16.12.2023

AMIT KUMAR AND OTHERS

...Petitioners

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

2.

CWP-27881-2023

PRADEEP KUMAR AND OTHERS

...Petitioners

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas K. Sangwan, Advocate and
Ms. Monika Sangwan, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

Mr. Arvind Seth, Advocate for respondent No.9.

Mr. Pankaj Middha, Advocate
for respondent Nos. 3,12,13,17 & 27
In CWP-14591-2023.

HARSIMRAN SINGH SETHI, J. (Oral)

Written statement on behalf of respondent Nos.12 & 17 filed in Court are taken on record. Copy of the same has been supplied to the counsel opposite.

2. In the bunch of two petitions, the claim of the petitioners is that they should be given appointment from the date the candidates lower in merit than the petitioner have been granted appointment with all consequential benefits but on notional basis.

3. The facts leading to the filing of the present petition are that the respondents advertised the post of Clerk by advertisement No.5 of 2019, the said selection was finalized by the respondents in which the petitioners could not make within the selection zone. The said selection was challenged and the Coordinate Bench of this court while passing the order in CWP No.15672 of 2021 titled as Amit Kumar and others Vs. State of Haryana and other connected cases, decided on 25.04.2022 set aside the selection for the post of Clerk and directed the respondent to undertake the process of re-scrutiny and thereafter make appointment.

4. In the fresh exercise conducted by the respondent, the petitioners got selected. The claim of the petitioners is that though they have been selected and appointed now but the candidates who are lower in merit were appointed much prior to them hence, the petitioners are entitled for appointment from the date the candidates lower in merit were appointed with all consequential benefits such as seniority, increment etc.

5. Learned counsel for the petitioners submits that the petitioners are not interested in getting the arrears of salary in case they are granted appointment with retrospective effect from the date candidates lower in merit than the petitioners have been appointed, but the pay of the petitioners be fixed by treating their appointment from a retrospective effect by notionally granting them increment for the period they could be not allowed to discharge the duty on account of inaction on the part of the selecting agency.

5. Learned counsel for the respondent submit that the selection for the post in question was completed by the respondent-Commission and it was only due to certain irregularities of the Commission, that the selection to the post of Clerk was redone under the orders passed by the Court in terms of

the judgment of this Court in Amit Kumar(supra) and the petitioners have already been appointed. With regard to the grant of benefits with retrospective effect, the same is to be granted in accordance with rules governing the service.

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

7. It is a settled principle of law that whenever a direct recruitment is made, the appointment is to be made on the basis of merit of the competent candidate. In the facts and circumstances of the present case, in the first round of selection process which was undertaken by the respondent, the petitioners could not be selected and some other candidates got selected. Thereafter, in the fresh selection process which was undertaken in terms of the direction given by this Court in Amit Kumar (Supra) the petitioners were selected and some other selected candidates had to make way for them. The petitioners have already been granted appointment in terms of the fresh selection process undertaken by the respondent.

8. The net result is that certain candidates who are lower in merit than the petitioners are continuing in service since their initial selection and the claim of the petitioners is that since the appointment is to be given on the basis of the merit obtained in the selection, the petitioners are entitled for retrospective appointment from the date candidates lower in merit have been appointed with all consequential benefit such as seniority etc. including the increment.

9. The said claim of the petitioners has not been controverted by the learned State counsel by citing any rule.

10. Further, once, the non-selection of the petitioners at the first

instance was not due to their fault but was due to the procedure adopted by the Commission, the belated appointment of the petitioners to the post of Clerk cannot cause them prejudice. The said prejudice has to be removed and the same can only be done by giving appointment to the petitioners from the date when the candidates lower in merit have been granted appointment.

11. The present petitions are allowed. The respondents are directed to grant the petitioners the appointment from the date when the candidates lower in merit have been granted appointment. The petitioners will also be entitled for the increment as well as seniority from the date when the candidates lower in merit were granted the said benefit, however, no financial benefit will be admissible to the petitioners on account of retrospective appointment as undertaken by the petitioner before this Court. The same will be granted notionally only.

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

13. At this stage, learned counsel submits that the petitioners intend to approach the Civil Court to raise the claim for compensation for their wrongful denial of appointment at the initial stage. For this, no liberty is needed. In case the petitioners feel aggrieved against any action of the respondents they are within their rights to agitate their claim in case the same will be admissible to them under law.

13. A photocopy of the order be placed on the file of other connected case.

(HARSIMRAN SINGH SETHI)
(JUDGE)

16.12.2023

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

