

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204) CM-17614-CWP-2023 in/and
CWP-23746-2014
Date of Decision : October 17, 2023

Dharmender .. Petitioner

Versus

State of Haryana and others .. Respondents

(204-2) CM-17626-CWP-2023 in/and
CWP-23779-2014

Jasbir Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

(204-3) CM-17647-CWP-2023 in/and
CWP-23740-2014

Tilak Raj .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Lochab, Advocate, for the applicant-petitioners
in all petitions.

Mr. Harish Nain, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-17614-CWP-2023, CM-17626-CWP-2023 and
CM-17647-CWP-2023

Present applications have been filed for recalling the order dated 25.09.2023 by which, the above mentioned writ petitions were dismissed in default.

Notice of the applications is given to the counsel opposite.

Learned counsel for the respondents raises no objection for the grant of prayer as made in the present applications.

Keeping in view the averments made in the applications, which are duly supported by an affidavit, the applications are allowed and the order dated 25.09.2023 is recalled and the writ petitions are restored to its original number and status.

CWP-23746-2014, CWP-23779-2014 and CWP-23740-2014

1. By this common order, three writ petitions, the details of which have been given in the heading, are being decided as all the petitions involve the same question of law on similar facts.
2. For the sake of convenience, the facts are being taken from CWP No.23779-2014 titled as Jasbir Singh vs. State of Haryana and others.
3. In the present writ petition, the petitioner was recruited to the post of Peon on 17.09.2008. At the time of recruitment to the post of Peon, the qualification possessed by the petitioner was 10+2. The next promotion from class IV post is to the class III post of Clerk.
4. On 11.10.2013, State of Haryana issued instructions that minimum qualification required for a class IV employee for promotion to the post of Clerk will be 10+2 instead of matriculation. Keeping in view the said instructions dated 11.10.2013 (Annexure P-1), the petitioner, who was having the qualification of 10+2, was promoted vide order dated 30.12.2013 in supersession of his seniors, who were matriculate.

5. Subsequently, the said instructions dated 11.10.2013

(Annexure P-1) was clarified to mean that the upgraded qualification of 10+2 will only be applicable prospectively upon the Peons, which are to be recruited after the issuance of the instructions dated 11.10.2013 (Annexure P-1) and keeping in view the said clarification dated 21.05.2014 (Annexure P-3), as large number of candidates who were senior to the petitioner but were still waiting for promotion to the post of Clerk, a show cause notice was issued to the petitioner on 28.08.2014 to show cause as to why the petitioner should not be reverted to the post of Peon as the seniors to the petitioner in the cadre of Peon are to be considered for promotion against the post of Clerk against which the petitioner was promoted as Clerk as those senior peon fulfill the qualification of matriculation and were eligible for promotion as Clerk keeping in view the clarification dated 21.05.2014 (Annexure P-3).

6. Reply to show cause notice was given by the petitioner on 15.09.2014 and thereafter, considering all the facts, the impugned order was passed on 29.09.2014 (Annexure P-6) by which, the petitioner was reverted from the post of Peon to that of Clerk. The said order is under challenge in the present writ petitions.

7. In reply to claim raised in the present petitions, the respondents have filed the reply stating that the petitioners were promoted in supersession of their seniors who were matriculate by applying notification of the Government dated 11.10.2013 (Annexure P-1) but as the said notification was clarified by the Government to be prospective in nature vide clarification dated 21.05.2014 (Annexure P-3), Peons who were senior to the petitioners and were eligible as per the clarification dated 21.05.2014 and were yet to be promoted, were liable to be promoted in preference to the

petitioners, hence, after giving due show cause notice, the petitioners have been reverted so as to accommodate the persons who were senior to the petitioners in the cadre of Clerk, hence, the grievance, which is being raised by the petitioners, is non-existent and is liable to be set aside.

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

9. The facts and circumstances which have been noticed hereinbefore, are not in dispute. The only argument which is being raised by the learned counsel for the petitioners is that letter dated 21.05.2014 (Annexure P-3) clarifying the instructions dated 11.10.2013 (Annexure P-1) should be made prospective and any promotion made before the clarification dated 21.05.2014 cannot be reviewed.

10. The said argument cannot be accepted.

11. Once a clarification was given to the instructions dated 11.10.2013 (Annexure P-1) according to which, qualification required for promotion to the class III post was enhanced from matriculate to 10+2 to mean that enhanced qualification will only be applicable upon class IV employees, who are recruited after 11.10.2013, the said clarification dated 21.05.2014 will relate back to the original notification. No grievance can be made by the petitioner in this regard. It cannot be said that any promotion made in contravention of the rules governing the service or the instructions by the Department, is liable to be sustained.

12. Further, it is also a settled principle of law that the instructions dated 11.10.2013 (Annexure P-1) enhancing the qualification for promotion to class III post are to be treated prospective in nature. No instructions can be made applicable with retrospective effect, hence, the clarification dated 21.05.2014 (Annexure P-3) by which, it has been clarified that the

instructions dated 11.10.2013 (Annexure P-1) will be prospective in nature, is in accordance with the settled principle of law.

13. The last argument, which has been raised by the learned counsel for the petitioners is that the reply filed by the petitioners to the show cause notice has not been taken into account while passing the impugned order.

14. It may be noticed that it is a conceded fact that certain Peons, who were senior to the petitioners, have not been promoted on the basis of the incorrect interpretation of the instructions dated 11.10.2013 (Annexure P-1). Once the show cause notice clearly depicted the fact that the Peons, who were senior to the petitioners, are entitled for promotion being eligible having matriculate qualification to their credit in preference to the petitioners, the petitioners cannot supersede those seniors class IV employees who are fully eligible. The petitioners are to make way for senior eligible Peons, who were wrongly ignored for promotion when petitioners were promoted as Clerk by wrongly interpreting the instructions dated 11.10.2013 (Annexure P-1). Hence, no grievance can be made by the petitioners qua their reversion so as to accommodate the senior Peons.

15. Rather, as per the impugned order, no reply has been received from the petitioners to the show cause notice, hence, filing of the reply is also a disputed question of fact, which need not to be gone in the present case keeping in view the facts and circumstances noticed hereinbefore.

16. Keeping in view the above, no ground is made out for any interference by this Court and consequently, the writ petitions are dismissed.

CM-17614-CWP-2023 in/and CWP-23746-2014 & other connected cases
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17. A photocopy of this order be placed on the file of other connected cases.

October 17, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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