

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26225-2016
Date of decision : 17.08.2023

Kashmir Singh ...Petitioner

Vs.

Punjab State Power Corporation
Ltd. and others ...Respondents

CORAM: HON’BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Shashi Kumar Rattan, Advocate
for the petitioner.

Ms. Anu Chatrath, Sr.Advocate with
Mr. Nikhil Singh, Advocate
for the respondents-PSPCL.

DEEPAK MANCHANDA, J.(Oral)

1. Petitioner has filed this writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of mandamus directing the respondents to promote him as Upper Division Clerk (General) from the date when respondent-Department has filled up 236 posts and appointed UDCs by way of direct recruitment w.e.f.June 2016, alleging the same have not been made as per the prescribed ratio of 40:40 each, amongst the direct appointees and appointment on promotion from LDCs.
2. The brief facts leading to the present petition are that the petitioner was appointed on work charge basis at Mukerian Hydal Project, Talwara, District Hoshiarpur w.e.f. 16.02.1982 and continued to work with the

Department. The petitioner was appointed on regular basis as Jr. Meter Reader on 04.08.1998. He passed the examination and was promoted as Lower Division Clerk (LDC) vide promotion order dated 14.04.2005(Annexure P-1). Thereafter he passed all the four Departmental Accounts Examination for promotion to the post of Upper Division Clerk (UDC) and the 4th such examination he passed on 04.08.2014. It has been averred that the erstwhile P.S.E.B. vide Office order dated 11.09.1985 (Annexure P-3) was pleased to make the certain Regulations governing the recruitment and conditions of service of persons appointed to the Punjab State Electricity Board Ministerial Services Class-II Cadre, defining the mode of appointment and the minimum educational and other qualifications and experience required for different classes of posts in the service, wherein so far as the mode of appointment of UDCs, 40% posts are to be filled by way of Direct-recruitment, 40% by promotion from amongst LDCs (40% of vacancies) and remaining 20% by promotion from amongst LDCs, who are not able to pass Departmental Accounts Examination(DAE).

3. The grouse raised in the petition is that in June, 2016, the respondents filled up 236 posts of UDC(General) by way of direct recruitment, but no departmental promotion as prescribed for appointment by promotion from amongst LDCs (40% of vacancies) were made by the Department. It has been averred that as per order (Annexure P-3), out of 236 posts of UDC (General), 94 vacancies/posts falls to the cadre of the petitioner. It has been submitted that seniority number of the petitioner is 10447 as per the seniority list of LDC issued on 28.05.2008 and all the LDCs shown in the said seniority list upto seniority number 10498 have been promoted as UDC, but the

petitioner has not been promoted. It has been alleged that action of the respondent-Corporation in not making departmental promotions as provided under Regulations 1985 issued vide order dated 11.09.1985(AnnexureP-3) and not promoting the petitioner being senior most LDC to the post of UDC is arbitrary, illegal, unconstitutional and against the principles of natural justice. For his claim he served a legal notice dated 12.10.2016 but no action has been taken by the respondents. Hence the writ petition.

4. Learned counsel for the petitioner submits that the petitioner has been working as Lower Division Clerk since 2005 and has passed the requisite Departmental Accounts Examinations in the year 2014 and is thus fully eligible to be promoted as Upper Division Clerk against 40% promotional quota earmarked for Lower Division Clerks having passed the examination. He further submits that as per seniority list of Lower Division Clerk issued on 28.05.2008, the petitioner is senior most to be promoted as Upper Division Clerk, therefore, action of the respondents not making departmental promotion as provided under Rule vide order dated 11.09.1985 (Annexure P-3) and not promoting the petitioner being senior most LDC to the post of UDC is arbitrary, illegal and against the principles of natural justice, therefore, he prays for issuance of necessary directions.

5. On the other hand, learned counsel for the respondents opposes the prayer of the petitioner and while referring to the reply dated 10.03.2018 filed by way of affidavit of Sh.Mohtam Singh, Additional Superintending Engineer, Operation Division, PSPCL, Mukerian, District Hoshiarpur submits that the petitioner after passing the Departmental Accounts Examination on 04.08.2014 became eligible to be promoted as UDC against 40% posts of total cadre

strength of 1191 to be filled up from LDCs qualified and as per 2012 Amendment in the Punjab State Electricity Board Ministerial Service Class-III Regulations, 1985, 476 posts came to the quota of 40% of cadre strength of UDC (General) to be filled from amongst LDCs qualified, whereas as per the Roster register, 600 qualified promotees are already working as UDC and claim of the petitioner can be considered only when the posts under promotion quota become available to be filled. She further submits that promotion of qualified LDCs to UDC under the 40% promotion quota have already been done up-to seniority No.10498 vide office order dated 10.12.2013, whereas at that time, petitioner had not passed the Departmental Accounts Examination, which he cleared on 04.08.2014, therefore, she prays for dismissal of the present petition.

6. I have heard learned counsel for the parties and perused the case file carefully.

7. The claim of the petitioner is that 40% of the vacancies of UDCs were filled in already, however, 40% of the vacancies of UDCs are to be filled in by way of promotion from LDC(40% of vacancies) in terms of Regulations 1989 issued vide order dated 11.09.1985 (duly adopted by the respondent-Corporation). The grouse of the petitioner is that although the respondents have filled up 236 posts of UDC (General) by way of direct-recruitment in June 2016, but departmental promotions from LDC (40% quota) to UDC have not been made. It has further been claimed that out of 236 posts, 94 vacancies/posts falls to the cadre of the petitioner.

8. The stand of the respondent-Corporation is that on the basis of 2012 Amendment in the 1985 Regulations, circulated the cadre strength

(number of sanctioned posts) vide letter dated 01.06.2016 and as per the sanctioned strength of cadre of UDC (General) there were total 1191 posts of UDC (General) and as per 2012 Amendment, 40% of 1191 posts of UDC (General) to be filled by direct recruitment comes to 476, 40% of 1191 posts to be filled in by promotion also comes to 476 posts and 20% of 1191 posts to be filled by promotion from unqualified comes to 239. The respondent-Corporation vide Advertisement (Annexure P-4) invited applications against 236 posts of UDC(General) to be filled by way of direct recruitment have already been filled up in pursuance of the earlier advertisement. The petitioner is concerned with 40% posts of total sanctioned cadre strength of UDC(General) i.e. 476 posts, to be filled up by promotion from amongst qualified LDCs, but as per roster register, 600 persons are already working against promotion quota to be filled from amongst qualified LDCs and as such, they are already in excess and the petitioner will get promotion as per his turn when the posts under promotion quota become available. It has further been pointed out that promotion of qualified LDCs to UDCs under the 40% promotion quota have already been done upto seniority No. 10498 vide office order No. 139 dated 10.12.2013, but at that time the petitioner was not considered because he had not passed the Departmental Accounts Examination (DAE) and had only passed the said examination on 04.08.2014.

9. In view of the aforesaid discussions and in the light of submissions made by the learned senior counsel for the respondents-Corporation that as against 476 posts, 600 persons are already working against promotion quota and since the petitioner cleared the Departmental examinations only on 04.08.2014 i.e. after 10.12.2013 i.e. the date when last such appointments were

made, there is no merit in the writ petition and the same being devoid of merit is dismissed.

(DEEPAK MANCHANDA)
JUDGE

17.08.2023

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