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2023:PHHC:166573

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17085-2023
DECIDED ON: 07.08.2023

ANIL KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kshitij Sharma, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Article 226-227 of the Constitution of India has been invoked to issue a writ in the nature of certiorari to cause the impugned order dated 03.05.2023 (Annexure P-17) passed by Respondent no.3- Chief Administrator, HSVP, whereby the claim of the petitioner that he is senior to Sh. Gobind Lal has been rejected with a further prayer to quash the promotion order dated 24.01.2018(Annexure P-11).
2. Learned counsel for the petitioner contends that the petitioner and his junior Sh. Gobind Lal were appointed as Assistant Draftsman with the respondent department on 19.03.1982 and a seniority list dated 04.03.1986 was issued by the respondent-department, wherein the petitioner was shown at S.No.5 and Sh. Gobind Lal was shown at S. No.6 meaning thereby, the petitioner is senior to Sh. Gobind Lal. He further contends that the petitioner was promoted to the post of Head

Draftsman Garde II on 20.04.1988 that is prior to the promotion of Sh. Gobind Lal, who was promoted on 08.08.1988, thereafter, again a seniority list dated 10.05.2005 was issued for Head Draftsman Grade I, wherein, the petitioner was shown at S. No.9 and Sh. Gobind Lal was shown at Sr. No.10. Thereafter a tentative seniority list was issued on 15.01.2009 (Annexure P-6), which pertains to Head Draftsman-Grade I, wherein, the petitioner was shown at S.No. 9 and Sh. Gobind Lal was shown at S. No.10, which was never questioned by Sh. Gobind Lal at any stage. It is, thus clear that the petitioner was always senior to Sh. Gobind Lal, which was in the knowledge of the latter, and no challenge was ever raised to the same.

3. It is submitted on behalf of the petitioner that suddenly, a wrong seniority list was issued by the respondent-department on 30.06.2014 (Annexure P-7) wherein, the petitioner was shown at S. No.7 and Sh. Gobind Lal was shown at S. No.5, to which the petitioner filed objections. The petitioner was promoted to the post of SDE (Civil) on 23.01.2018, which was subject to the outcome of the writ petition i.e CWP-1022-2017 titled Gobind Lal vs. State of Haryana. Sh. Gobind Lal, who stood retired on 31.10.2016, was promoted w.e.f. 22.09.2016.

4. Heard.

5. Admittedly the petitioner is stating that the incorrect seniority list is stated to be of 30.06.2014. As against this list, the petitioner is stated to have given representations dated 18.07.2014 and 16.08.2016, which are attached as Annexures P-8 and P-9. The petitioner also filed a writ petition against this seniority list, which was ultimately dismissed as not pressed. No leave has been reserved by the petitioner in the said case to file a subsequent writ petition. In view of the withdrawal of the writ petition, the bar of Order 2 Rule 2 comes into play. The writ petition has been filed now (even though specifically) does not lay challenge to the

seniority list dated 30.06.2014, wherein the petiitoner claims to be shown junior to Sh. Gobind Lal (as Head Draftsman Grade 1). The error in the said list even assuming there was one, and its consequence would inevitably continue to adversely impact the petitioner even in the higher post, and this is something the petitioner could have well conceived at that stage. Yet the petitioner abandoned his claim, without reserving any liberty to challenge this list and its adverse consequences.

6. The petitioner can, thus not be allowed to complain against the adverse consequences, i.e. being ranked as a junior to Sh. Gobind Lal. On the other hand, Sh. Gobind Lal did not withdraw his writ petition and continued to agitate his claim of seniority.

7. The claim of the petitioner is belated and the writ petition of the petitioner is barred on account of estoppel and res-judicata.

07.08.2023
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(SANDEEP MOUDGIL)
JUDGE

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