

CWP No.27328 of 2018

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP No.27328 of 2018
Date of decision:09.02.2023**

Zile Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sandeep Thakan, Advocate
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana
for respondents No.1 to 3.

None for respondents No.4 to 7.

SUVIR SEHGAL, J. (Oral)

Petitioner has approached this Court under Articles 226/227 of the Constitution for issuance of a writ in the nature of mandamus directing the respondents to grant promotion to the petitioner to the post of Forest Guard w.e.f. 01.10.2013 when his juniors-respondents No.4 to 7 were promoted and to release all the consequential benefits.

Counsel for the petitioner submits that the petitioner was engaged as a Labourer, a Group-D post and his services were regularized w.e.f. 01.02.1996. By making a reference to the instructions dated 20.06.2006 (Annexure P-1), counsel submits that service of the petitioner is

governed by the service rules applicable to Malis, a Group-D service and he is entitled to be considered for promotion thereunder. Counsel submits that respondents No.4 to 7 are junior to the petitioner as is clear from the gradation list as on 01.01.2015 (Annexure P-2) and they have been promoted to the post of Forest Guard by office order dated 14.10.2013 (Annexure P-3) but the claim of the petitioner has not been considered. He has placed reliance upon the judgment of this Court in **CWP No.27797 of 2013 titled as Parmod Kumar Vs. State of Haryana and others, decided on 20.11.2017** (Annexure P-5) in support of his submissions.

Opposing the petition, State counsel submits that service of the petitioner has been regularized as a “Sharmik”, which is a diminishing cadre and there are no rules governing his service. It is his argument that the petitioner is not eligible for promotion to the post of Forest Guard.

I have heard counsel for the parties and considered their respective submissions.

The argument addressed by State counsel deserves to be noticed and rejected. There is no dispute that the petitioner has been engaged as a Sharmik, who is none other than a Labourer. Instructions (Annexure P-1), which are clarificatory in nature, provide that till the time service rules of labour category are not framed, they may be given all the facilities as given to Group D officials and their service will be governed with the service rules as are applicable to Malis, another Group-D service. State counsel has not been able to refer to any material on the record to

show that the rules have been framed to govern the service of a Labourer. A similar matter came up for consideration before a Coordinate Bench of this Court in **Parmod Kumar's case (supra)**, wherein it has been held as under:-

“He then points to the instructions, Annexure P-2, issued by the office of the Principal Chief Conservator of Forests, Haryana, to the Conservator of Forests, West, Hissar, stating as follows:

“With reference to the above referred letter it is intimated that till the Service Rules of Labourer Category are not framed, they may be given all the facilities as given to the Group D officials. Their service be considered under the same Service Rules, which are for the Group D Mali in the department.”

The said letter is seen to be endorsed on 20.06.2016.

Though the said letter is not from the Government but an internal communication of the department itself, however, I do not see how the stand taken by the Principal Secretary, in his aforementioned affidavit, is sustainable in any manner, because one the petitioner had been inducted into regular service, on a Group D post, he was bound to be treated to be appointed to a post existent in the cadre, even as per the service rules, and that is why, very obviously, the aforesaid letter dated 20.06.2006 has been issued on behalf of the Head

of the Department.”

The judgment of the writ court has been upheld in LPA No.638 of 2018 which was dismissed on 10.05.2018 (Annexure P-6) and the matter has attained finality. This Court is of the view that the petitioner is similarly placed as his counter-part Parmod Kumar and deserves to be given a similar treatment.

In view of the above position, writ petition is disposed of with a direction to the official respondents to consider the petitioner for promotion to the post of Forest Guard from the date his juniors were promoted and to grant him consequential benefits, in case he is found entitled to promotion. In case, petitioner is granted retrospective promotion, his salary on the promotional post shall be fixed on notional basis and he shall not be entitled to any arrears. This exercise be carried out within a period of four months from the date of receipt of certified copy of this order.

February 09, 2023

savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>