

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

CWP-2747-2018

Date of decision : 09.02.2023

Gagan Kumar

..... Petitioner

versus

Punjab State Power Corporation Ltd. and another **..... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. G.S. Bal, Senior Advocate with
 Mr. Laxman Choudhary, Advocate
 for the petitioner.

Dr. Malvika Singh, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

Petitioner seeks writ in the nature of certiorari quashing condition No.1 contained in the order dated 30.12.2010 (Annexure P-4) having an effect of debarring him from being considered for promotion as Senior Assistant for all times to come.

2. Petitioner was appointed on compassionate basis as LDC on 22.02.2002. He was promoted as Upper Division Clerk on 05.08.2004 and further promoted as Assistant Revenue Accountant on 29.06.2009. On 23.06.2010, the petitioner was further promoted as Senior Assistant vide Annexure P-2. The petitioner sought transfer back to Gurdaspur vide Annexure P-3. On his request, his promotion to the post of Senior Assistant was ordered to be annulled vide Annexure P-4 dated 30.12.2010. While reverting the petitioner back from the post of Senior Assistant to the post of Assistant Revenue Accountant, following condition was imposed:-

“Notes:

1. The reversion of the above employee has been done in his personal interest. As such, his name shall not be considered in future for promotion as Senior Assistant.
2. He will not get any benefit of his service rendered as Senior Assistant.
3. The pay of the employee as ARA would be the same which he would have drawn had he not been promoted as Senior Assistant.
4. On reversion and transfer/posting he shall not be entitled to any Travelling Allowance or joining time.
5. In case any recovery or disciplinary proceedings are found against him while working as Senior Assistant, it would apply to him even on his lower post. This order has been issued with the approval of the Competent Officer.”

3. Learned Senior counsel submits that there is no provision in the rules whereby such condition can be imposed which have an effect of closing the doors of promotion for all times to come and thus the condition imposed cannot be sustained.

4. Counsel appearing for respondent-Corporation submits that it is a case wherein the petitioner first accepted the promotion and thereafter gave up the same. Though, such situation is not contemplated under the rules, but the authority can debar an employee from consideration for promotion who refuses to accept promotion for two years in light of Rule 18 of the Punjab Civil Service (General And Common Conditions of Service) Rules, 1994.

5. I have heard counsel for the parties and have gone through the records of the case.

6. Trite it is that a public authority is governed by rule of law. Action of a public authority has to be on the strength of a valid set of rules/law. Admittedly, the rules do not contemplate such situation wherein an employee first accepts promotion and thereafter gives it up. Even if Rule 18 is extended to cover the situation as has arisen in the present case, an employee cannot be kept out of zone of consideration for promotion beyond the period of two years. Learned counsel for the respondent does not deny it.

7. Resultantly, condition as enumerated at note number 1 in order dated 30.12.2010 (Annexure P-4) cannot be sustained and is thus ordered to be quashed.

8. The present petition is allowed. Respondents are directed to consider the claim of the petitioner in accordance with law afresh.

(PANKAJ JAIN)
JUDGE

09.02.2023

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Whether speaking/reasoned : Yes

Whether Reportable : No