

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CWP No. 30364 of 2018 (O&M)

Date of Decision : 21.08.2023

Dan Bahadur

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Madhav Pokhrel, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed challenging the order dated 22.11.2018 (Annexure P-9) by which, the petitioner was reverted from the post of Driver to that of Peon.

2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

3. The petitioner was appointed as a Peon in the Office of the District & Sessions Judge, Ambala vide order dated 28.02.2000 (Annexure P-1). In the year 2003, certain posts of Peon in the Office of Legal Rememberancer and Secretary to Government of Haryana, Department of Law and Legislative Department were advertised. The petitioner appeared for the interview and he was appointed on the post of

Peon by way of transfer on 21.05.2003. Since then, the petitioner is working with the respondent-department. In the year 2007, after the services of the petitioner were confirmed in the Cadre of Peon, one driver, who was working with the department, namely, Vishnu Dutt, was transferred to the Department of Transport in the year 2010. The petitioner was given an assignment of the driver by the respondents. From the year 2010 onwards, the petitioner started discharging the duties of the post of Driver and by the impugned reversion order dated 22.11.2018 (Annexure P-9), the petitioner was again posted as Peon. The said order is under challenge in the present petition.

4. Learned counsel for the petitioner argues that once the petitioner was promoted as a Driver and was asked to discharge of the duties of the said post for a period of eight years, he could not have been reverted to the post of Peon again and that too without conducting any enquiry and also without issuing any show cause notice. Learned counsel for the petitioner prays that petitioner be allowed to discharge the duties of the post of the Driver.

5. Learned State counsel, on the other hand, submits that though, it is a matter of fact that vide order dated 25.08.2010 (Annexure P-7), the competent authority had appointed the petitioner as a Driver in the pay scale of the Driver as a stop gap arrangement, which arrangement had already been converted into temporary appointment on 08.11.2010 but as there is no provision of promotion from Class-IV to that of a Driver, which is a Class-III post, the petitioner cannot claim a right

against the said post of Driver, hence, he was rightly reverted to the post of Peon, which was his substantive rank, hence, no claim can be raised by the petitioner.

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

7. Once, the competent authority after considering all the facts including the eligibility of the petitioner for appointment to the post of Driver appointed him as a Driver vide order dated 25.08.2010 (Annexure P-7), he could not have been reverted to the post of Peon after a period of eight years, by treating the said post of Peon as a substantive rank. Though, in the order dated 25.08.2010 (Annexure P-7), it was mentioned that petitioner is being appointed as a Driver as a stop gap arrangement but once, the petitioner continued to work on the said post for a period of eight years, it cannot be said that the said appointment was a stop gap arrangement in any manner, especially when the stop gap arrangement had already been change to a temporary appointment. Working on a particular post for a period of more than eight years means that the said appointment is substantive for all intents and purposes.

8. Further, the argument of learned counsel for the respondents that no promotion can be claimed from the post of Peon, which is a Class-IV post to that of a Driver, which is a Class-III post. It may be stated here that Government of Haryana has already issued Instructions for promotions of Class-IV and Class-III posts. Once, the said Instructions exist, according to which, Class-IV employee can be

appointed/promoted to a Class-III post and in the present case, respondents themselves have passed orders Annexure P-7 & Annexure P-8 appointing the petitioner as a Driver, it cannot be said that the said appointment was de-horse any rule.

9. Keeping in view the above, once nothing has been brought on record to show that the work and conduct of the petitioner was not in accordance with law or he was not qualified to hold the post of the Driver, merely reverting the petitioner on the post of Peon after a period of eight years on the ground that promotion of the petitioner was a stop gap arrangement, is totally arbitrary and illegal, hence, the impugned order dated 22.11.2018 (Annexure P-9) is hereby set-aside.

10. The writ petition is allowed in above terms.

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As the main petition has been allowed, the present application stands disposed of.

August 21, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No