

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

CWP No.28571 of 2019

Date of decision : 07.02.2023

Gurmeet Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Samarth Sagar, Advocate
 for the petitioner.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

Mr. Maninder S. Saini, Advocate
for respondent No.4.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Article 226/227 of the Constitution of India, the petitioner seeks quashing of the order dated 29th of January, 2018 placed on record at Annexure P-7 whereby the petitioner has been ordered to be reverted back to the post of Work Mistry.

2. The petitioner was working as Work Mistry. He was promoted as Junior Engineer (Civil) vide order dated 3rd of January, 2017. The promotion order mentions other condition(s) stipulated as under :-

“7. This employee has not passed the Departmental test as per Rules, till the time he does not pass the Departmental test he shall keep on working in his own salary scale.”

3. Subsequent thereto vide order dated 22nd of June, 2017 the promotional increment was also granted to the petitioner along with grade

pay. However, before the petitioner could retire on attaining the age of superannuation on 31st of January, 2018, vide impugned order dated 29th of January, 2018 he was ordered to be reverted back for having not passed the departmental test.

4. Ld. Counsel for the petitioner submits that the order dated 22nd of June, 2017 granting the grade pay and the promotional increment to the petitioner will have an effect of waiving of Condition No.7 as stipulated in the order of promotion and, thus, the impugned order having been passed without issuing any notice to the petitioner cannot be sustained.

5. Per contra, Mr. Kang submits that the order has been passed in consonance with the Rules. The petitioner having not passed the departmental test as required vide promotional order could not have retained the promotional post and was thus liable to be reverted back.

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

7. Even if the order dated 22nd of June, 2017 granting the promotional increment and the grade pay to the petitioner is ignored for the sake of arguments, State Counsel does not dispute that as per the stipulation contained in the promotional order there was no condition that petitioner would be reverted back in case he does not pass the departmental test.

Apart from that it is not disputed that the order dated 29th of January, 2018 has been passed without issuing any notice to the petitioner and thereby is

in violation of the principles of natural justice

8. In view of the aforesaid fact, order dated 29th of January, 2018 reverting the petitioner to the post of Work Mistry being in violation of natural justice and in the teeth of the promotional order itself cannot be sustained. Resultantly, the same is ordered to be quashed. The respondents are directed to release the retiral benefits of the petitioner accordingly.

9. The petition stands allowed.

February 07, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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