

CWP No. 21764 of 2023

2023:PHHC:126879

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(112)

CWP No. 21764 of 2023

Date of Decision : 28.09.2023

Shailender Sheoran

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Petitioner in person.

Harsimran Singh Sethi J. (Oral)

The lawyers are abstaining from work due to a call for strike given by the Bar.

The petitioner appears in person. Petitioner was given option to seek adjournment so that his counsel could address arguments but petitioner submits that he himself intends to address the argument and does not want adjournment and wants his petition to be decided on merit.

The present petition has been filed challenging the order dated 21.05.2018 (Annexure P-9) by which, the reversion, which was allowed in favour of the petitioner from the post of Assistant to that of Auditor vide order dated 09.05.2018, was cancelled.

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

The petitioner was appointed as a Peon on 10.08.1999. From a Class-IV post, the petitioner was promoted to the post of Clerk on 26.07.2005 and thereafter, he was further promoted to the post of Auditor on 01.01.2008 as the post of Junior Auditor stood re-designated as Auditor. There were two channels of promotion from the post of Auditor. One channel of promotion is under the Haryana Food and Supplies Department Directorate (Group-C) Service Rules 1982 under which, a Junior Auditor (now designated as Auditor) is eligible for appointment as an Assistant/Accountant. Similarly, under the Haryana Food and Supplies Department Directorate (Group-B) Service Rules 1998 (hereinafter referred to as '1998 Rules'), from the post of Auditor, promotion can be effected to the post of Assistant Controller Food Accounts.

On 01.05.2012, the petitioner was promoted to the post of Assistant, on which post the petitioner joined. Thereafter, the petitioner filed applications in the year 2013 and 2015 seeking reversion to the post of Auditor, which was not accepted. In the year 2018, the petitioner once again sought reversion from the post of Assistant to that of Auditor and on 09.05.2018, the said request was accepted but within a period of 10 days, the said order dated 09.05.2018 was withdrawn vide order dated 21.05.2018, which order has been challenged by the petitioner after a period of 05 years in the present petition.

I have heard the petitioner in person and have gone through the record with his able assistance.

The grievance of the petitioner is that once he was given the benefit of reversion on 09.05.2018 from the post of Assistant to that of Auditor, the said order was wrongly withdrawn on 21.05.2018, hence, the said order dated 21.05.2018 is liable to be set-aside and he be treated in the Cadre of Auditor so as to consider his claim for further promotion as Assistant Controller Food Accounts as, one of his junior, who was junior to the petitioner in the Cadre of Auditor, is now being considered for the said post.

It may be noticed that the petitioner is trying to have a say as to which post, he should be considered for promotion. The petitioner was granted promotion from the post of Auditor to the post of Assistant on 01.05.2012. As per the petitioner, no option was sought from him while giving him promotion to the post of Auditor but he concedes the fact that he had accepted the said promotion and joined on the post of Assistant. Once, the petitioner joined on the post of Assistant that means, he waived his right to be considered for promotion under 1998 Rules to the post of Assistant Controller Food Accounts. Even if, it is assumed for the sake of argument that as per the petitioner, he had made certain representations seeking reversion to the post of Auditor in the year 2013 or 2015 and then in the year 2018, nothing had stopped the petitioner from challenging the order of his promotion, which was given to him on 01.05.2012 to the post of Assistant. There was no challenge raised by the petitioner to the said promotion as Assistant extended to him in the year 2012 rather, the petitioner enjoyed the benefit of the said post for a period of six years

when his request was accepted for reversion on 09.05.2018. Promotions and service benefits are to be regulated as per the service rules and no rule has been brought to the notice of this Court that employee once promoted, which promotion is accepted by the said employee, he/she can seek reversion to the lower post so as to seek further promotion to another cadre. In the absence of any rule granting liberty to an employee to seek reversion so as to seek further promotion in an another cadre, it cannot be said that impugned order dated 21.05.2018 violates any rule or any right vested in the petitioner.

Nothing has come on record that even after the said order was withdrawn on 21.05.2018, the petitioner raised any grievance for the next more than five and half years. Not only the petitioner continued to discharge the duties as Assistant for the last 11 years starting from 01.05.2012 onwards but had taken all the benefits of said post of Assistant including ACP. That being so, the prayer of the petitioner that he should be reverted to the post of Auditor and thereafter be considered for further promotion under 1998 Rules to the post of Assistant Controller Food Accounts raised in the year 2023 cannot be accepted.

Further, the petitioner had accepted a promotional avenue with his own consent despite knowing that he had other promotional avenues under 1998 Rules. Once a promotion under a particular avenue/Rules has been accepted by an employee and remains working on the said post for a period of 11 years, it cannot be said that the said promotion was against the will of the employee, especially when, there is

no challenge by the employee to the said promotion at any given point of time.

The petitioner submits that as per Rule 31 of the Haryana Civil Services (General) Rule 2016, an employee may be reverted from higher to a lower post on his written request, hence, he is entitled to be reverted to the post of Auditor. The said Rule only gives power to the Government to accept a request of transfer to a lower cadre but does not give right to an employee to claim reversion to a lower post. Further, the said request can only be accepted in case, the same does not cause prejudice to any other employee but in the present case, if the prayer of the petitioner is accepted and he is reverted to the post of Auditor so as to claim further promotion to the post of Assistant Controller Food Accounts under the 1998 Rules, the same will cause prejudice to the employees, who are working in the Cadre of Auditor and are yet to get promotions as they will lose the chance of promotion, whereas the petitioner has already enjoyed the benefits of promotion on the post of Assistant for a period of more than 11 years, hence, the right being claimed under Rule 31 of the Haryana Civil Services (General) Rule 2016 is not a vested right with the petitioner but only gives a jurisdiction to the employer to pass appropriate order in case, the same does not cause prejudice to any other employee.

No other argument is raised.

That being so, now approaching this Court qua the promotion extended to the petitioner in the Cadre of Assistant in the year

2012 and also against the order dated 21.05.2018, which was passed five and half years ago, no interference is called for by this Court.

Dismissed.

September 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No