2023:PHHC:149367

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

CWP-24716-2023
Date of Decision: 23.11.2023

JAGDISH CHANDER

….Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

….Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioner.

Ms. Safia Gupa, AAG Haryana.

Mr. Padamkant Dwivedi, Advocte with
Mr. Rakesh Sandhu, Secretary, Haryana State Agricultural Marketing Board on behalf of respondent No. 2 to 5.

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SANDEEP MOUDGIL J. (ORAL)

1. Instant petition has been preferred under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing the order dated 23.11.2022 (Annexure P-1) whereby respondent No. 2 has rejected the case of the petitioner for granting him promotion from the date his juniors have been promoted.

2. Further a direction has also been sought to respondent No. 2 for regularizing the service of the petitioner w.e.f. 01.02.1990 as the Labour Court, Hisar has granted him the continuity in service with full back wages vide award dated 06.04.1994 (Annexure P-2).

3. Apart from the above, petitioner has also put a challenge to the final gradation list of Clerks as it stood on 01.12.2016 (Annexure P-13), circulated on 04.07.2018, which has been prepared subject to the final outcome of the LPA No. 311 of 2012 showing the petitioner at Sr. No. 411 and also the seniority list as stood on 26.02.2021 communicated vide letter No. Admn.-IV/26708-783 dated 09.05.2023 (Annexure 18-A), whereas the

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petitioner has come upto Sr. No. 6 therein, but has been shown junior to his fellow colleagues, who got promotion over and above him despite being juniors.

4. This Court while issuing notice of motion vide order dated 03.11.2023, called upon the Chief Administrator, Haryana State Agricultural Marketing Board (hereinafter to be referred as 'HSAMB') to file an affidavit explaining as to why the case of the petitioner has not been considered despite a direction issued by this Court vide its order dated 02.09.2022 and in case he fails to put forth any plausible explanation, Chief Administrator was also asked to remain present in the Court.

5. In view of the aforesaid order dated 03.11.2023, an affidavit of Mr. Rakesh Sandhu, Secretary, HSAMB has been filed today in the Court, wherein vide paras No. 3 and 4, it has been declared by the deponent as under:

> *"3. That the copy of the instant writ petition was received in the office NO of respondent No. 2 on 16.11.2023 and thereafter the file was put up for engagement of counsel and was forwarded to the Ld. Advocate General by the concerned staff. It was on 22.11.2023 when the counsel to defend the respondents No. 2 to 5 was engaged who was provided with the paper book and the notice of motion order dated 03.11.2023. The engaged counsel advised the answering respondents to withdraw the order dated 23.11.2022 as the same is not in terms of the directions issued by this Hon'ble Court while disposing of CWP No. 19711 of 2022vide order dated 02.09.2022.*
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> *4. That the advice of the engaged counsel was acted upon and the respondent No. 2 telephonically ordered to process the file for withdrawal of the order dated 23.11.2022, Annexure P-1, and pass a fresh speaking order after considering all the*

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relevant record and as per the legal advice. Accordingly, the order dated 22.11.2023 has been passed by the respondent-Board thereby withdrawing the impugned order dated 23.11.2022, Annexure P-1, and processing the file for passing a fresh speaking order. A copy of order dated 22.11.2023 is annexed herewith as Annexure R-1."

6. On perusal of the aforesaid affidavit, it has been stated by Secretary, HSAMB that Mr. Padamkant Dwivedi, Advocate has advised the respondents to withdraw the order dated 23.11.2022 being in violation to the orders passed by this Court in earlier CWP No. 19711 of 2022 vide order dated 02.09.2022. It is further evident from the affidavit that since the respondent No. 2 was out of station for performing last rites of her close relative, who has unfortunately left for heavenly abode, directed the Secretary to process the file for withdrawal of order dated 23.11.2022 (Annexure P-1) and to pass fresh speaking order as per the legal advance and after considering the relevant record. Thereafter, the file was processed and a speaking order dated 22.11.2023 has been passed for withdrawing the order dated 23.11.2022 (Annexure P-11).

7. As far as grant of relief in consequence to withdrawal of the order Annexure P-1 dated 23.11.2022 is concerned, Mr. Rakesh Sandhu, Secretary, HSAMB, who is present in the Court makes a statement to the effect that within a period of 02 weeks, the necessary orders for promotion from the deemed date shall be done i.e. the date from which his juniors were promoted along with considering his case for regularization with continuity of service as ordered by the Labour Court, Hisar as well as grant the benefit of salary, pay fixation and consequential benefits arising out of the same, apart from placing him at the appropriate place in the seniority issued vide circular dated 09.05.2023 as it stood on 26.02.2021.

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8. In light of the aforesaid statement made by Secretary, HSAMB, counsel for the petitioner is satisfied to the effect that the grievance raised in the instant petition stands duly addressed subject to passing of final orders as has been stated by the official present in the Court. Hence, the present writ petition is not pressed any further on behalf of the petitioner, however, he seeks liberty to the petitioner to raise a claim qua the arrears in accordance with law if he is entitled to.

9. The petition stands disposed of in aforesaid terms with liberty as aforesaid.

(SANDEEP MOUDGIL)
JUDGE

23.11.2023
Ajay Goswami

Whether Speaking reasoned *Yes/No*
Whether reportable *Yes/No*

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