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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17767-1997 (O&M)
Date of decision: 04.03.2024

ASHOK KUMAR AND OTHERS

...Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S. P. Laler, Advocate
for the petitioners.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

None for respondent No.3.

Mr. Abhishek Masih, Advocate for
Mr. B. S. Patwalia, Advocate
for respondents No.4 to 12.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing proceedings/decision on the representation of the petitioners in the meeting held on 27.09.1997 and further to issue a writ in the nature of *mandamus* directing the respondents to grant seniority to the petitioners above the private respondents by granting them seniority on the basis of their first appointment in the respondent-Bank and the merit list being prepared at the time of selection.

2. Learned counsel for the petitioners submitted that it is a case where the petitioners were to be appointed on the post of Clerk by the respondent-Bank but at the time of issuance of the appointment letters, they were appointed as Junior Accountants. He further submitted that thereafter, the Board of Directors took a decision that since the aforesaid appointments on the post of Junior Accountants were made by mistake, the services of the petitioners were dispensed with, to which the petitioners and some other persons filed an appeal before the Registrar Cooperative Societies, Haryana and vide order dated 03.11.1980 (Annexure P-1), it was so directed that so far as appellant No.1-Naresh Kumar is concerned, since he made an application only for the post of Senior Accountant therefore, he was to be appointed as Senior Accountant only. However, aforesaid Naresh Kumar is not a petitioner in the present petition. He also submitted that so far as appellants No.2 to 7 of the aforesaid appeal are concerned, the petitioners in this petition were part of aforesaid appeal as appellants No.4, 6 and 7. He further submitted that as per the aforesaid decision (Annexure P-1), so far as the present petitioners are concerned, they made application to be appointed to the post of Clerk and they should have been selected on the post of Clerk but they were appointed to the post of Junior Accountant and it was also directed that the salary of the petitioners for the time they worked on the post of Junior Accountant would not be recovered. He further submitted that there was another direction issued by vide para No.4 of the aforesaid order that the probation period and seniority of all these appellants will be treated from that date on which they joined the services of the Bank. He further submitted that the aforesaid order Annexure P-1 has since attained finality and it was a duty of the respondent-Bank now to have complied with

the aforesaid directions especially para No.4, wherein the seniority of the appellants was to be treated from the date when they joined the services of the Bank, which means that the day on which they initially joined as Junior Accountants and therefore, even if they were to be treated as Clerks, their seniority was to be counted from the date when they joined as Junior Accountants. He further submitted that however, the aforesaid seniority was not assigned to the petitioners and therefore, the present petition has been filed. He further submitted that so far as the petitioners and the private respondents are concerned, at this stage, there is no conflict between them because the petitioners as well as the private respondents have retired and now the subject matter of the present petition would only relate to fixing of seniority for the purpose of grant of notional fixation of pay, pension and retiral benefits in this regard.

3. On the other hand, learned counsel appearing on behalf of respondents No.4 to 12 submitted that so far as the private respondents No.4 to 12 are concerned, they have already retired and now qua them, no subject matter survives.

4. The respondent-Bank has already filed written statement, which is already on the record but nobody has appeared on behalf of the respondent-Bank.

5. I have heard the learned counsel for the parties.

6. Although learned counsel for the respondent-Bank has not appeared but the written statement which has been filed by the respondent-Bank has been perused by this Court. Learned counsel for the petitioner has relied

upon order dated 03.11.1980 (Annexure P-1) and the relevant portion of the same is reproduced as under:-

“2. Petitioner No.1 Shri Naresh Kumar, the application form of which was for the post of Senior Accountant and the selection of which was made on the post of Senior Accountant, is declared as legal;

3. Petitioners No.2 to 7, who have given applications for the post of Clerks, the selection should be made on the post of Clerks but the pay and other allowances they have drawn on the post of Junior Accountants, they may not be recovered because infact, they have worked on the post of Jr. Acctt.

4. The probation period and seniority of all these petitioners will be treated from that date on which they have joined the services of the Bank.”

7. It is a case where the petitioners made their applications for appointment to the post of Clerk but they were appointed to the post of Junior Accountant. Thereafter, the aforesaid mistake was rectified and by way of Annexure P-1, it was so decided that the petitioners would be entitled for being appointed to the post of Clerk but the recovery of salary from them would not be made. There was another important direction issued by the Registrar Cooperative Societies, Haryana that the probation period and seniority of all these petitioners will be treated from that date on which they have joined the services of the Bank. In this way, the petitioners were required to be put on the seniority list from the date when they joined as Junior Accountants. However, a perusal of the written statement filed on behalf of the respondent-Bank would show that a stand has been taken by the respondent-Bank that the petitioners have been given seniority on the date when they joined as Clerks, which is totally contrary to the aforesaid order Annexure P-1, which according to the learned counsel for the parties has since attained finality.

8. In view of the aforesaid facts and circumstances of the present case, the present writ petition is partly allowed. It is directed that all the three petitioners would be granted seniority from the date when they initially joined as Junior Accountants and not as Clerks and thereafter, the respondent-Bank is directed to fix the notional pay of the petitioners and thereafter, to re-fix the pension of the petitioners and pay all the consequential benefits pertaining to the grant of retiral/pensionary benefits, within a period of three months from today, along with interest @ 6% per annum.

04.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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