

CWP-18803 of 1997 (O&M)

2024:PHHC:1040C3



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

CWP-18803 of 1997 (O&M)

Reserved on: 05.08.2024

Pronounced on: 12.08.2024

Om Parkash

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Suryaveer Surjewala, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. The petitioner has approached this Court by filing the instant petition under Article 226 of the Constitution of India, seeking a writ of *certiorari*, quashing the order dated 01.12.1997 (Annexure P-13), whereby the promotion order of the petitioner dated 26.07.1997 from the post of T-Mate to Pump Operator, has been withdrawn.

2. Brief facts, as have been pleaded in the present petition, are that the petitioner, who is matriculate in second division and completed his Diploma in Fitter Trade from ITI and later on acquired the qualification of B.Ed and M.A., was appointed as T-Mate through Employment Exchange w.e.f. 22.12.1979 in Canal Lining (Mechanical Sub-Division No.4, Kaithal, of Division No.10) and was brought on regular cadre w.e.f. 01.01.1987 as T-Mate. The petitioner was due for promotion to the post of Pump Operator and his case was duly considered by the respondents by exchanging various communications



and finally the petitioner was promoted vide order dated 26.07.1997 to the post of Pump Operator. However, the said promotion order was withdrawn by the respondents vide order dated 01.12.1997, without issuing any show-cause notice or granting an opportunity of personal hearing to the petitioner. The said order has been impugned in the present petition.

3. Written statement on behalf of the respondents has been filed, contesting the claim of the petitioner and it has been submitted in the written statement that while considering the claim of promotion of the petitioner, seniority of other T-Mates senior to the petitioner was not considered as six T-Mates were still senior to the petitioner, therefore, his promotion order has rightly been withdrawn vide order dated 01.12.1997.

4. During the pendency of the present petition, on an application filed by one Ram Chander for being impleaded as party-respondent in the present petition, he has been impleaded as respondent No.5 vide order dated 17.11.1998.

5. After hearing the learned counsel for the parties, following order was passed by a Division Bench on 17.11.1998: -

*“Newly added respondent No.5 has filed reply.
Copy furnished to the learned counsel for the petitioner.*

*Let the official-respondents file specific affidavit to
the following effect: -*

*(i) Are there any qualifications laid down by executive
instructions, rules or otherwise for the post of Water
Pump Operator?*

*(ii) Has any person not having the qualification of
Matriculation and I.T.I. been promoted to the post of*



Water Pump Operator? If so, when such last promotion was made?

(iii) *What was the pay scale of post of Water Pump Operator as on 1.5.1990?*

Adjourned to 24.12.1998.

Copy of this order attested by the Special Secretary of this Court be given dasti to Shri S.M. Sharma, DAG, Haryana for onward transmission to the concerned quarter.”

6. In pursuance to the said order, affidavit dated 23.12.1998 of Sh. V.K. Singal, Executive Engineer, Construction Division No.10, Kaithal, District Kaithal, has been filed wherein it has been stated as under: -

- “1. *That as far as this Division i.e. Construction Division No.10, Kaithal is concerned, no such person without the qualification of Matric with I.T.I. Diploma has been promoted from T.Mate to Pump Operator.*
2. *That the pay scale of Pump Operator as on 1.5.90 was 1200-30-1560-EB-40-2040 as per F.D. No.6/23/3PR(FD).88/26.07.1991.*
3. *That the appointment of T-mate as First entry into Govt. service is made through Employment Exchange. No essential qualification is required. Only experienced hand person who assist in mechanical work is preferred.*
4. *That the appointment of Pump Operator as first entry in the Government Service is made through Employment Exchange. The qualification required is matriculation with I.T.I. Diploma.*



5. *That the pay scale of T.Mate is : as on 31.12.95: 750-12-870-EB-14-940. As on 1.1.96 on revision of pay scale is Rs.2550-55-2660-EB-60-3200.*

The pay scale of Pump Operator as on 31-12-95: 1200-30-1560-EB-40-2040. As on 1.1.96 on revision of pay scale 4000-100-4800-EB-100-6000.”

7. Learned counsel for the petitioner has contended that the impugned order dated 01.12.1997 (Annexure P-13), withdrawing the promotion order dated 26.07.1997, was passed by the respondents without issuing any show-cause notice or granting an opportunity of personal hearing to the petitioner. He further submitted that no reasons have been assigned in the said order for withdrawing the promotion order dated 01.12.1997. He further submitted that when the petitioner was promoted to the post of Pump Operator, he was the only person eligible for the said promotion as he was matriculate with ITI Diploma and whereas the other persons who were allegedly senior to the petitioner, were not fulfilling the said qualification and, therefore, he was rightly promoted to the post of Pump Operator and the action of the respondents in withdrawing his order of promotion is totally illegal and arbitrary.

8. *Per contra*, learned State counsel has tried to justify the passing of impugned order by stating that while considering the case of the petitioner for promotion to the post of Pump Operator, the claim of other persons senior to him was not considered and, therefore, his order or promotion was rightly withdrawn by the respondents. He has further



submitted that earlier the petitioner had filed a civil suit No.367 of 1997 before the Civil Courts at Kaithal for permanent injunction against his reversion from the post of Pump Operator and the said suit was dismissed as withdrawn vide order dated 21.10.1997 and since no permission for filing of fresh suit/writ was sought, therefore, the present writ petition is not maintainable.

9. I have heard learned counsel for the parties and perused the record.

10. It has been stated by the learned counsel for the petitioner that during the pendency of the present writ petition, petitioner was again promoted to the post of Pump Operator in the year 2008 and he retired as such on 31.05.2016.

11. The only question which arises for consideration before this Court is as to whether the impugned order dated 01.12.1997, withdrawing the promotion order of the petitioner dated 26.07.1997, is legal and valid or not.

12. The facts are not in dispute that the petitioner joined the services as T-Mate on 22.12.1979 and w.e.f. 01.01.1987 he was taken in the regular cadre as T-Mate and was further promoted to the post of Pump Operator on 26.07.1997. Since in the pleadings of the case, there was no reference to the relevant rules governing the service of the Pump Operator, therefore, the Division Bench of this Court vide order dated 17.11.1998 directed the respondents to file an affidavit on the following three points: -



- (i) Are there any qualifications laid down by executive instructions, rules or otherwise for the post of Water Pump Operator?
- (ii) Has any person not having the qualification of Matriculation and I.T.I. been promoted to the post of Water Pump Operator? If so, when such last promotion was made?
- (iii) What was the pay scale of post of Water Pump Operator as on 1.5.1990?

13. In pursuance to the said order, affidavit of Sh. V.K. Singal, Executive Engineer, Construction Division No.10, Kathal, dated 23.12.1998 was filed wherein it has been stated that no such person without the qualification of Matric with I.T.I. Diploma has been promoted from T-Mate to Pump Operator and appointment of T-Mate as first entry into Government service is made through Employment Exchange and no essential qualification is required and only experienced-hand person who assists in mechanical work is preferred and for appointment to the post of Pump Operator as first entry in the Government service is made through Employment Exchange and the qualification required is matriculation with I.T.I. Diploma. In the said affidavit, it has been admitted that no person without the qualification of matric with I.T.I. Diploma has been promoted from T-Mate to Pump Operator. Since the other persons, maybe senior to the petitioner, were available and only petitioner was fulfilling the abovesaid qualification, therefore, he was rightly promoted vide order dated 26.07.1997. In the impugned order while withdrawing the promotion order of the petitioner, no reasons have been assigned. Further, neither any show-cause notice was issued to the petitioner before withdrawing the



promotion order nor an opportunity of personal hearing was afforded. The action of the respondents is in violation of the principles of natural justice as it is well-settled law that an order which has civil consequences cannot be passed without complying with the principles of natural justice. Another fact which is required to be noticed at this stage is that the promotion of the petitioner was made vide order dated 26.07.1997 after thorough correspondence between various officers of the respondents as is clear from a bare perusal of Annexures P-1 to P-11 and the promotion of the petitioner was made against a sanctioned post. Therefore, the promotion of the petitioner made on 26.07.1997 cannot be faulted with. Further, perusal of Annexure P-5 shows that although three persons were senior to the petitioner, however, since they were not having requisite qualification of matriculation with I.T.I. Diploma in terms of Haryana Government letter dated 26.07.1991, therefore, name of the petitioner was recommended for promotion vide letter dated 30.11.1995 (Annexure P-5), which reads as under: -

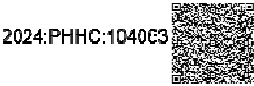
“To

*The Superintending Engineer,
Construction Circle,
Kaithal,*

*Sub: Application for promotion for the post of Pump
Operator of Sh.Om Parkash T.Mate.*

Ref:- Your letter No. 9037/15-E dt. 30.11.95.

*In this connection it is intimated that the Sr.No. of
the above named workman falls at Sr. No. 4 of the
seniority list. The date of appointment of all the workman
is as under :-*



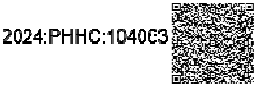
Sr. No.	Name & Designation	Dt. of appointment
1.	Sh. Rameshwar Dass s/o Natha Ram	1.11.79
2.	Sh. Khazan Singh	23.11.79
3.	Sh. Om Parkash s/o Kehar Singh	19.11.79
4.	Sh. Om Parkash s/o Sh. Anant Ram	22.12.79

As already intimated vide this office No. 593/4-E dt. 26.7.95 Sh. Om parkash T.mate is a Matriculate with I. T. I. Diploma, His name has also been recommended by the S. D.O. for promotion as already intimated vide this office number referred above. Other workers has no qualification for this post.

So it is requested that he may be promoted against the post lying vacant as Sh. Hari Ram P/Opt. who was brought on regular cadre on 28.11.83 has been promoted as Chargeman. Sh.Om parkash. T. Mate fulfill all the conditions as contained in Haryana Govt. letter No. 3/3PR(FD)-88 dated 26.7.91.

sd/- Executive Engineer,
Construction Divn. no. 10,
Kaithal.”

14. So far as the objection raised by learned State counsel that present writ petition is not maintainable as the petitioner had earlier filed civil suit for permanent injunction against his reversion and same was withdrawn on 21.10.1997 is concerned, it may be noticed that in the civil suit, written statement was filed by the respondents wherein a preliminary objection was taken that the suit of the plaintiff is premature as no order of reversion has been passed and whenever any order against the plaintiff is passed, he will be at liberty to avail legal proceedings against the said order. Thereafter, impugned order dated 01.12.1997 was passed by the respondents.



15. Since the petitioner was the only T-Mate amongst these four persons eligible and had a right for consideration for promotion for the post of Pump Operator and was rightly promoted vide order dated 26.07.1997. Further, the impugned order dated 01.12.1997 (Annexure P-13) has also been passed in violation of principles of natural justice as neither any show-cause notice was issued nor opportunity of personal hearing was afforded to the petitioner before withdrawing his promotion and no reasons have been assigned in the impugned order.

16. In view of the above, present petition is allowed. Impugned order dated 01.12.1997 (Annexure P-13) is hereby set aside. Respondents are directed to grant all the benefits of the post of Pump Operator w.e.f. 26.07.1997 till he was promoted in the year 2008, with all consequential benefits, including revision of his pensionary benefits. Necessary calculations shall be made and necessary benefits be released to the petitioner within a period of three months from the date of receipt of certified copy of this order.

12.08.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No