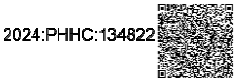


CWP-18553 of 1998 (O&M)



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18553 of 1998 (O&M)
Reserved on: 26.09.2024
Pronounced on: 15.10.2024

Kuldip Singh Bhatti (died) through his LRs
.....Petitioners
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. A.S. Nabhewala, Advocate,
and Ms. Gauri Sharma, Advocate,
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. B.S. Patwalia, Advocate,
and Mr. Abhishek Masih, Advocate,
for respondents No.4 and 5.

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Articles 226/227 of the Constitution of India, seeking quashing of order dated 27.11.1998 (Annexure P-7), whereby respondents No.4 and 5 have been promoted to the post of Deputy Director/Assistant Commissioner. Further, a writ of *mandamus* has been sought, directing respondents No.1 and 2 to promote the petitioner to the post of Deputy Director (Headquarter) with effect from the date of occurrence of vacancies by quashing the appointment of private respondents.

2. The brief facts, as have been pleaded in the petition, are that on the recommendations of the Punjab Public Service Commission,

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the petitioner was appointed as Law Officer in the Directorate of Local Government, Punjab, Chandigarh, vide appointment letter dated 24.06.1974 and he joined as such on 05.07.1974. There is another post of Deputy Director (HQ) in the Directorate which is governed by the Rules known as “Punjab Local Government State Service Class-I Rules, 1985” and is to be filled by way of promotion from amongst the administrative officers having five years service or amongst Class II officers having ten years of service on any one or more Class II posts. It is the case of the petitioner that the said post was earlier occupied by one Sh. K.K. Syal, who retired on 31.10.1987 on attaining the age of superannuation and thereafter the same was not filled and the petitioner was fully eligible for promotion against the said post and also submitted a representation dated 22.10.1987 for claiming promotion. It has further been averred that without considering the claim of the petitioner, on 11.11.1987, one Sh. R.K. Jain, PCS officer, was appointed as Deputy Director (HQ) and his appointment was questioned by the petitioner by filing CWP No.8520 of 1987. In the said writ petition, while issuing notice of motion on 11.11.1987, the operation of his order of appointment was stayed and it was further ordered that promotions, if any, should be made strictly in accordance with the Rules in question. The said writ petition was thereafter admitted on 13.09.1988 and the interim order was continued with liberty to the respondents to file an application for vacation of stay before the learned Single Judge. Thereafter, respondents No.4 and 5, who belonged to Municipal Council Cadre and were working as Class I

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Executive Officers have been promoted to the post of Deputy Director/Assistant Commissioner. It is further the claim of the petitioner that since private respondent No.5 – Ashok Kumar, who was working as Executive Officer, Municipal Council, Rajpura, has been promoted against the post of Deputy Director (HQ), Local Government Department, Chandigarh, without considering the claim of the petitioner, therefore, his promotion is illegal and be set aside and the petitioner be promoted against the said post. Hence, the present writ petition.

3. A detailed written statement has been filed by respondents No.1, 3 and 4, wherein it has been stated that the petitioner is a Law Officer, who is working in the Department of Local Bodies at Chandigarh. It has been stated that in the cadre of Municipal Council the highest post to which an Executive Officer can be promoted was Executive Officer Grade-I and there are total 27 posts of Executive Officers Grade-I in the Municipal Councils in the State of Punjab. Thereafter, they could only be promoted as Executive Officer Grade-I in the Municipal Corporation and since there were only four posts of Executive Officers in the Corporations effectively, there was no channel of promotion for the Executive Officer Grade-I working in the Municipal Councils and it was felt that number of persons who were appointed directly as Executive Officers Grade-I in the Municipal Councils used to retire on the same posts. Keeping in view the above, a proposal was initiated for creating the post of Assistant Commissioner (Corporation) and Deputy Director, so that further promotional avenues

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could be given to the Executive Officers working in the Municipal Councils. Keeping in view the said decision, ultimately, vide notification dated 18.11.1998, Punjab Municipal Corporation Service (Recruitment and Conditions of Service (Second Amendment) Rules, 1998 were framed and seven posts of Assistant Commissioners and two posts of Deputy Directors were created. Both these posts were interchangeable with each other. The posts of Executive Officers in the Municipal Corporation were abolished. The said posts were meant to be filled by promotion from amongst Executive Officer Grade-I working in the Municipal Councils having minimum experience of five years. Their salaries were to be borne out from the contribution from the Urban Local Bodies and Municipal Corporation funds and these nine posts were altogether different from the post of Deputy Director (HQ) against which petitioner was seeking promotion in his earlier writ petition which was governed by 1985 draft rules. It has also been submitted that the private respondents have not been promoted against the post of Deputy Director (HQ) and the same is still lying vacant and has not been filled up and the petitioner is trying to mislead this Court by stating that respondents No.4 and 5 have been promoted against the post of Deputy Director (HQ). It has further been stated that petitioner is not eligible for promotion under the 1978 (amended in 1998) Rules against which private respondents have been considered and promoted as the petitioner is not even an employee of the Municipal Council/Corporation Service rather is an employee of the Local Government Department. He is, therefore, not eligible for promotion



against these posts and, therefore, he has no locus to challenge the promotion of respondents No.4 and 5.

4. Present writ petition was admitted on 02.12.1999 and thereafter it has been listed for final disposal in the year 2024. During the interregnum, the petitioner has unfortunately died on 12.11.2002 and his LRs have been brought on record and whereas respondents No.4 and 5 have retired on attaining the age of superannuation.

5. Learned counsel for the petitioner has submitted that the petitioner has wrongly been ignored while promoting respondents No.4 and 5 vide order dated 27.11.1998 (Annexure P-7) as respondent No.5 – Ashok Kumar has been promoted against the post of Deputy Director (HQ) and, therefore, his promotion is liable to be set aside and directions may be issued to consider and promote the petitioner notionally w.e.f. 27.11.1998 with all consequential benefits.

6. *Per contra*, learned State counsel and learned counsel for respondents No.4 and 5 have submitted that firstly the petitioner himself is not eligible for the post against which respondents No.4 and 5 have been promoted and, therefore, the petitioner has no locus to challenge their promotion. Further, it has been submitted that respondents No.4 and 5 have been promoted against the newly created posts of Deputy Director and Assistant Commissioners, which belong to the Municipal Cadre whereas petitioner belong to Headquarter Cadre and is governed by separate set of Rules.

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

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8. The admitted facts which emerge from the abovesaid factual position are that the petitioner joined as Law Officer on 05.07.1974 in the Directorate of Local Government, Punjab. He was eligible for promotion to the post of Deputy Director (HQ) in terms of **Punjab Local Government State Service Class-I Rules 1985**. It is the case of the petitioner that the said post was occupied by one Sh. K.K. Syal, who retired on 31.10.1987 on attaining the age of superannuation and thereafter the same was not filled up. It is further his case that on 11.11.1987, Sh. R.K. Jain, PCS officer, was appointed as Deputy Director (HQ) and the said appointment was challenged by the petitioner in CWP No.8520 of 1987 in which following interim orders were passed: -

“Notice of motion for 5th January, 1988.

Operation of impugned order Annexure P-3 is stayed. Promotions, if any, should be made strictly in accordance with the rules in existence.

Sd/- Gokal Chand Mittal,

*Sd/- S.D. Bajaj
Judges.*

November 17, 1987

Admitted.

Interim order to continue with liberty to the respondents to file an application for vacation of stay before the learned Single Judge.

*Sd/- V. Ramaswami,
Chief Justice.*

*Sd/- G.R. Majithia
Judge*



13.9.1988.”

9. In the said writ petition, one of the prayer was for issuance of writ of *mandamus* directing respondent No.1 to consider the claim of the petitioner for promotion to the post of Deputy Director (HQ), Local Government, Punjab, as the petitioner is only Class-II officer having more than 30 years experience and is available in the department itself. During the pendency of the said writ petition, petitioner has unfortunately died on 12.11.2002 and his LRs were brought on record. The said writ petition was dismissed by this Court vide order dated 05.09.2008 by passing the following order: -

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“The short grievance of the petitioner is that he was appointed as Law Officer on 17.03.1974 in the Directorate of Local Government, Punjab, Chandigarh, as Class-II Officer. One post of the Deputy Director (Headquarters) became vacant on retirement of K.K.Sayal, on 31.10.1987 on attaining the age of superannuation. The petitioner represented to respondent No.1 that the post of Deputy Director (Headquarters) be filled up by promotion from amongst the Class-II officers from the department. He also mentioned that he has more than 13 years in his credit as Class-II Officer and is fully qualified for the post of the Deputy Director (Headquarters).

It is the admitted case of the parties that the post of the Deputy Director (Headquarters) was filled up by deputing respondent No.3, a P.C.S Officer. This deputation by transfer was in pursuance of a D.O. Letter dated 14.10.1987 from respondent No.2, wherein it is mentioned that no departmental Class-II Officer is eligible



to fill up the vacant post and requested the competent authority to depute a PCS Officer. This D.O. Letter further mentions that all the five Regional Deputy Directors, Local Bodies in the State are PCS Officers. It is stated by the petitioner that he was eligible and was required to be appointed by promotion to the post of the Deputy Director (Headquarters).

The claim of the petitioner is, however, disputed by the respondents. According to the respondents, there are no rules for regulating the promotion to the post of Deputy Director (Headquarters). In the absence of any such rules, it was deemed appropriate to fill up the post by transfer from other departments which procedure was adopted in the past and the post of the Deputy Director were filled up by the PCS Officers. The respondents have further stated that the petitioner was also considered for promotion alongwith the claims of other Gazetted officers of the Directorate, who hold cadre posts and were seniors to the petitioner, but none of them was found suitable for the said post.

I have heard the learned counsel for the parties at length.

The only ground urged on behalf of the petitioner is that the post of the Deputy Director (Headquarters) being a cadre post should not have been filled up by deputation from the ex cadre post. The petitioner who was a Cadre Officer, has not been considered for promotion, though he was in Class-II category. No material has been placed on record as to what is the mode and manner of promotion to the post of Deputy Director and what was the qualifications required to fill up the said post. It is not known whether the petitioner was from feeding cadre and whether the petitioner possess the requisite qualifications



prescribed or not. In the absence of any such material, it is not possible to effectively consider the claim of the petitioner. Apart from the above, the respondents have specifically mentioned that the request of the petitioner for promotion to the post of Deputy Director (Headquarters) was considered and examined along with the claims of other Officers of the Directorate, who hold cadre posts and are ranked senior to him on the basis of their higher pay scales, but none of them was found suitable. In view of this averment, no relief can be granted to the petitioner.

In view of the above, I find no merit in the present writ petition and the same is hereby dismissed with no order as to costs.

*Sd/-
(PERMOD KOHLI)
JUDGE”*

05.09.2008

10. From the perusal of the order reproduced above, it is clear that the stand of the respondents was that the petitioner was also considered for promotion along with other gazetted officers of the Directorate who held cadre posts and were senior to the petitioner, but none of them was found suitable for the said post. It appears that since the matter remained *sub judice* before this Court in CWP No.8520 of 1987, the department did not fill up the post of Deputy Director (HQ) and the said writ petition was dismissed by this Court on 05.09.2008 but before that, the petitioner died on 12.11.2002.

11. So far as challenge of the petitioner to the promotion of respondents No.4 and 5 is concerned, the same is not tenable as firstly the petitioner has no *locus standi* to challenge the promotions of

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respondents No.4 and 5 as the petitioner belongs to Headquarter cadre whereas respondents No.4 and 5 belong to Municipal cadre. Both set of employees are governed by separate rules. The services of the petitioner are governed by the Rules known as 'Punjab Local Government State Service Class-I Rules, 1985' and whereas services of respondents No.4 and 5 are governed by the Rules known as 'Punjab Municipal Corporation Service (Recruitment and Conditions of Service) Rules 1978', which have been amended in the year 1988.

12. Further, respondents No.4 and 5 were working as Executive Officers Grade-I in the Municipal Councils. In the cadre of Municipal Council, the highest post to which an Executive Officer can be promoted was the Executive Officer Grade-I. There were total of 27 posts of Executive Officers Grade-I in the State of Punjab. Thereafter, they could only be promoted as Executive Officer in the Municipal Corporation. As there were only four posts of Executive Officers in the Corporations, effectively there was no channel of promotion for the Executive Officer Grade-I, who were working in the Municipal Councils. Keeping in view this fact, a proposal was initiated for creating the post of Assistant Commissioner (Corporation) and Deputy Director, so that further promotional avenue could be given to the Executive Officers who were working in the Municipal Councils. Keeping in view this decision, ultimately vide notification dated 18.11.1998, Punjab Municipal Corporation Service (Recruitment and Conditions of Service (Second Amendment) Rules, 1998 were framed.

Thereafter, seven posts of Assistant Commissioners for Municipal

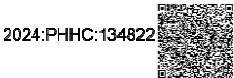
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Corporations of Ludhiana, Jalandhar, Amritsar and Patiala were created and two posts of Deputy Director i.e. one for Directorate office and one for Regional office were created. Both these posts were interchangeable with each other and the same were to be filled as per the qualification given in the amended rules and were to be filled up by promotion from the post of Executive Officer Grade-I working in the Municipal Councils having minimum experience of five years. Consequently, the private respondents were promoted against the said posts. It is further the specific stand of the State Government in the written statement that respondent No.5 has not been promoted against the post of Deputy Director (HQ), which is governed by the Rules of 1985 and the said post is still lying vacant. The said assertion of the State is fortified with the observations/findings recorded in the judgment dated 05.09.2008 in CWP No.8520 of 1987 filed by the petitioner himself. It has also been recorded in the said judgment that the claim of the petitioner for promotion was considered along with his seniors but none of them was found suitable for the said post of Deputy Director (HQ).

13. The Hon'ble Supreme Court in *Ajit Singh v. State of Punjab, 1999(4) SCT 1; Union of India and others versus Sangram Keshari Nayak, 2007 (3) SCT 512* and *Union of India and another versus Hemraj Singh Chauhan and others, 2010(2) SCT 421* has held that promotion is not a fundamental right, however, consideration for promotion is a fundamental right. The promotion can only be considered in terms of the rules governing the service of the employee.



14. Since the claim of the petitioner was considered by the respondents along with his seniors and none of them was found suitable and the matter remained *sub judice* before this Court with regard to said post of Deputy Director (HQ) in CWP No.8520 of 1987 and keeping in view the interim directions issued in the said case, the same was never filled up thereafter and the said writ petition was dismissed on 05.09.2008 and prior to that petitioner died on 12.11.2002. It is not the case of the petitioner that any of his junior working against Class-II post was promoted.

15. In view of the above, finding no merit in the present writ petition, same is dismissed.

15.10.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No