

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.7729 of 1999 (O&M)
Reserved on : August 29, 2024
Pronounced on : September 10, 2024

Bhag Singh
..... Petitioner
Versus
The Punjab Mandi Board and others
..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Madhav Pokhrel, Advocate
for the petitioner.

Mr. Charanjit Sharma, Advocate
for Respondent Nos.1 and 2.

Ms. Saachi Mahajan, Advocate for
Mr. Sujdeep Mahajan, Advocate
for Respondent No.3.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Article 226 of the Constitution of India, seeking quashing of the order dated 14.07.1998 (Annexure P-6), passed by Respondent No.2 – Secretary, Market Committee, Kapurthala, whereby Respondent No.3 – Ashwani Kumar has been promoted to the post of 'Mandi Supervisor – cum – Fee Collector' and further directions have been sought to promote the petitioner as 'Mandi Supervisor – cum – Fee Collector' and release the salary from 28.08.1987 to 15.04.1988.

2. The brief facts, as have been pleaded in the writ petition, are that the petitioner was appointed as 'Auction Recorder' on *ad hoc* basis vide resolution dated 30.09.1982 and his services were regularized by the Market Committee, Kapurthala, vide resolution dated 29.03.1983. The next promotion from the post of 'Auction Recorder' is to the post of 'Mandi Supervisor – cum – Fee Collector' and the said post fell vacant in the year 1986 and the petitioner was promoted to the said post on 31.05.1986 and the same was approved by the Board. Thereafter, on 25.06.1987, the petitioner was transferred from the Market Committee, Kapurthala to Market Committee, Jalandhar. The said transfer was cancelled on 21.07.1987 and on coming back to Kapurthala, it was found that no post of 'Mandi Supervisor – cum – Fee Collector' was available, as in the meanwhile, Respondent No.2 – Market Committee, Kapurthala, had reinstated Sh. Sohan Singh, 'Mandi Supervisor – cum – Fee Collector', in July, 1986, whose services were earlier terminated vide resolution dated 29.11.1979 on account of 'absence from duty' since 14.04.1978. Consequently, the petitioner was reverted, vide order dated 15.04.1988, and his salary for the period from 28.08.1987 to 15.04.1988 has not been released, for which the petitioner has submitted various representations seeking salary for the abovesaid period and promotion to the post of 'Mandi Supervisor – cum – Fee Collector', however, no action was taken by the respondents.

3. On issuance of notice of motion, separate written statements have been filed on behalf of Respondent Nos.1 and 2 as well as Respondent No.3 and in the written statement filed on behalf of Respondent Nos.1 and 2, it has been stated that Respondent No.3 – Ashwani Kumar, whose promotion has been challenged by the petitioner in the present writ petition, was appointed as 'Auction Recorder' on 18.03.1977 and his services were terminated on 13.10.1979.

Thereafter, he approached Labour Court, Jalandhar and the Presiding Officer, Labour Court, Jalandhar, vide award dated 04.04.1983, set aside the termination of Respondent No.3 and he was ordered to be reinstated in service alongwith admissible wages. The abovesaid award was challenged by the Management by filing a writ petition i.e. CWP No.4331 of 1985, which was dismissed by the Division Bench of this Court, vide order dated 10.07.1986. It has further been stated that the petitioner has concealed the material facts in the writ petition, as he had earlier filed civil suit challenging 'Reversion Order' dated 12.06.1987 and the same was dismissed by learned Sub Judge, Ist Class, Chandigarh, vide judgement and decree dated 23.07.1992. It has further been stated that Respondent No.3 was senior to the petitioner, as the petitioner was appointed as 'Auction Recorder' on 30.09.1982 and his services were regularised, as such, on 29.03.1983 whereas Respondent No.3 was appointed as 'Auction Recorder' on 13.10.1979, therefore, he has rightly been promoted to the post of 'Mandi Supervisor – cum – Fee Collector', vide impugned order dated 14.07.1998 (Annexure P-6). It has further been submitted that salary of Rs.16,991/- has already been paid to the petitioner on 16.03.1999 by cheque dated 12.03.1999 for the period 28.08.1987 to 15.04.1988.

Respondent No.3 has also filed written statement contesting the claim of the petitioner by stating the since he is senior to the petitioner, therefore, he has rightly been promoted to the post of 'Mandi Supervisor – cum – Fee Collector'.

4. Learned counsel for the petitioner submits that the petitioner was entitled to be promoted as 'Mandi Supervisor – cum – Fee Collector' and the action of the respondents in promoting Respondent No.3 is illegal and arbitrary.

5. On the other hand, learned counsel for the respondents submits that the claim of the petitioner is liable to be rejected on account of concealment of

material facts. He further submits that since Respondent No.3 is senior to the petitioner, therefore, he has rightly been promoted as 'Mandi Supervisor – cum – Fee Collector'.

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

7. The admitted facts of the case are that the petitioner was initially appointed as 'Auction Recorder' on 30.09.1982 on *ad hoc* basis and was regularized, as such, on 29.03.1983. He was promoted as 'Mandi Supervisor – cum – Fee Collector' on 31.05.1986 and was reverted vide order dated 15.04.1988. The said order of reversion was challenged by the petitioner before the Civil Courts at Chandigarh, by way of filing civil suit, which was dismissed by the Court of learned Sub Judge, Ist Class, Chandigarh, vide judgement and decree dated 23.07.1992. No appeal was filed against the said judgement and the same has become final.

Respondent No.3 – Ashwani Kumar, has been considered to be holding the post of 'Auction Recorder' on regular basis w.e.f. 13.10.1979 and has been promoted as 'Mandi Supervisor – cum – Fee Collector' vide impugned order dated 14.07.1988 (Annexure P-6). The seniority list of the 'Auction Recorder' has been placed by Respondent No.3 as Annexure R-2/2, wherein Respondent No.3 has been placed at Serial No.11 and the petitioner has been placed at Serial No.14. The seniority list is not under challenged.

8. 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 the 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.

9. Admittedly, Respondent No.3 – Ashwani Kumar is senior to the petitioner and, therefore, he has rightly been promoted vide impugned order dated 14.07.1998 (Annexure P-6) and no fault can be found in the said promotion and salary amounting to Rs.16,991/- for the period in question i.e. 28.08.1987 to 15.04.1988 has already been paid to the petitioner on 16.03.1999.

10. In this view of the matter, no case is made out to interfere in the impugned order dated 14.07.1998 (Annexure P-6), while invoking jurisdiction under Article 226 of the Constitution of India and consequently, the present petition is hereby dismissed, being devoid of any merits, with no orders as to costs.

11. Pending application(s), if any, shall also stand disposed of.

September10, 2024
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(NAMIT KUMAR)
JUDGE

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