



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20304-2004

Reserved on : 11.07.2024

Pronounced on : 24.07.2024

Ramesh Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ajay Kumar Yadav, Advocate for
Mr. R.N. Lohan, Advocate for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

NAMIT KUMAR J.

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 03.11.2004 (Annexure P-5), passed by respondent No.2, whereby the petitioner has been reverted from the post of Assistant Draftsman to the post of Tracer for the period from 22.10.1996 to 30.06.2000 and has been treated as Assistant Draftsman on adhoc basis w.e.f. 01.07.2000 and his pay has also been refixed w.e.f. 01.07.2000, vide office order dated 22.11.2004 (Annexure P-6), issued by respondent No.3.

2. The undisputed facts of the case are that the petitioner was selected by the Subordinate Service Selection Board, Haryana to the post of Tracer and his name was recommended for appointment in respondent No.2-Department, vide letter dated 13.10.1986 and he joined as such in the office of respondent No.2 (Head office) on 19.06.1987.

Thereafter, he made a request for his transfer from Head office to World

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Bank Project Division, Murthal (Sonipat) vide his application dated 12.04.1989. Since the seniority in the cadre of Tracers is not provincial but unit-wise and unit comprises of two or three circles whose incharge is Superintendent Engineers and cadre of Tracers in headquarter office is different, as such, the petitioner was asked vide memo dated 04.05.1989 to submit an undertaking that he will lose his seniority and severe all connections with the head office, if he is transferred from head office. Consequently, the petitioner submitted an undertaking for his transfer from Head office (office of respondent No.2) to the office of World Bank Project Division, Murthal or any Division at Sonipat under World Bank Project and stated that he is ready to lose his seniority and severe all connection with Head office in case he is transferred from Head office.

3. In pursuance to the said undertaking, the Superintending Engineer, World Bank Project-1, Chandigarh was directed by respondent No.2, vide letter dated 24.05.1989, to appoint the petitioner as Tracer by transfer in his circle of superintendence after completing all the necessary formalities. Accordingly, the Superintending Engineer, World Bank Project-1, Chandigarh vide office order dated 02.06.1989 appointed the petitioner as Tracer by transfer and posted him in World Bank Division, Murthal. In the said order, it was specifically mentioned that the seniority of the petitioner in N.H. Circle, Faridabad Unit will be counted from the date of joining in the World Bank Division, Murthal and he will cease all connections with the head office. In compliance to the said order, the petitioner submitted his departure report in the office of respondent No.2 on 02.06.1989 (A.N.) to join the office of World

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Bank Division, Murthal. Thereafter, the petitioner was promoted as Assistant Draftsman on 22.10.1996 by respondent No.2 vide office order dated 15.10.1996. Inter-se seniority list as on 01.06.1998 in the cadre of Tracers of field as well as headquarter office was prepared which was circulated in December, 1998. The name of the petitioner was placed at Sr. No.107 in the said seniority list as on 01.06.1998. In the inter-se seniority list finalized by respondent No.2, it was found that the petitioner actually became due for promotion to the post of Assistant Draftsman on adhoc basis only after the date of his immediate senior in line i.e. Sh. Rajbir Singh, Tracer (Sr. No.105) was promoted, who was promoted w.e.f. 26.06.2000. In order to rectify the omission committed by the department, the petitioner was issued a show cause notice dated 05.06.2003 by respondent No.2 as to why he may not be reverted to the post of Tracer for the period from 22.10.1996 to 30.06.2000. The petitioner submitted his reply to the said show cause notice and after considering the said reply and granting him an opportunity of personal hearing on 24.12.2003 by respondent No.2, he was reverted as Tracer for the period from 22.10.1996 to 30.06.2000 and was treated as Assistant Draftsman on adhoc basis w.e.f. 01.07.2000, vide order dated 03.11.2004 (Annexure P-5) and his pay has been refixed by respondent No.3, vide office order dated 22.11.2004 (Annexure P-6), and the said orders have been impugned in the present petition.

4. While issuing notice of motion in the present case on 13.01.2005, the respondents were restrained from making any recovery from the petitioner considering the fact that the petitioner was wrongly promoted to the post of Assistant Draftsman vide order dated

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22.10.1996 and the said mistake was rectified by the respondents and the petitioner was treated to have been promoted w.e.f. 26.06.2000 when his immediate senior Sh. Rajbir Singh, Tracer was promoted. The petitioner has been ordered to be reverted from 22.10.1996 to 30.06.2000 and he was treated as Assistant Draftsman on adhoc basis w.e.f. 01.07.2000.

5. A detailed reply has been filed by the official respondents, wherein the reversion of the petitioner from the post of Assistant Draftsman to the Tracer has been justified by stating that the seniority in the Head office cadre and the field office cadre is separate and since the petitioner was transferred from Head office cadre to field office cadre on his own request and he has also submitted undertaking that he will lose his seniority in the head office cadre, therefore, the petitioner was inadvertently promoted to the post of Assistant Draftsman. The said mistake has been rectified and the petitioner was issued show cause notice for reversion to which he submitted his detailed reply and after considering the same, the petitioner was reverted from the post of Assistant Draftsman to Tracer w.e.f. 22.10.1996 to 30.06.2000 and he was treated to have been promoted as Assistant Draftsman w.e.f. 26.06.2000 from the date when his immediate senior Sh. Rajbir Singh, Tracer was promoted.

6. It is a well settled proposition of law that the mistake can be rectified at any point of time. Reference can be made to the judgments of Hon'ble Supreme Court in ***Union of India and another Vs. Narendra Singh : 2008(2) S.C.T. 359; Union of India Vs. S.R.***

Dhingra and others : 2008(1) S.C.T. 579; National Institute of



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Technology Vs. U. Dinakar and another : 2014(3) S.C.T. 427 and of this Court in ***Rana Balbir Singh Saini Vs. Haryana State Agricultural Marketing Board and others : 2011(4) S.C.T. 627***. The inadvertent mistake committed by the respondent-Department in promoting the petitioner to the post of Assistant Draftsman, while considering his initial date of joining in the headquarter, has been rectified and he has been made at par with his immediate junior in the field office cadre namely Sh. Rajbir Singh, therefore, no fault can be found in the action of the respondent-Department. However, in view of the law laid down by Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195***, no recovery can be effected from the petitioner and the interim order dated 13.01.2005, passed by this Court while issuing notice of motion, is made absolute.

7. In view of the above, the present petition is dismissed. The impugned orders dated 03.11.2004 and 22.11.2004 (Annexures P-5 & P-6) are upheld. However, the respondents are directed not to make any recovery of amount from the petitioner which has already been paid to him while he was promoted to the post of Assistant Draftsman on 22.10.1996 and reverted thereafter vide order dated 03.11.2004.

24.07.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No