



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(239)

CWP No. 9663 of 2021 (O&M)

Date of Decision : 14.05.2024

Subhash Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Mr. Yash Yadav, Advocate for respondents No. 7, 8 and 9.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the claim of the petitioner is that he should be granted promotion to the post of Assistant with effect from the date the private respondents No. 5 to 9 have been promoted on the said post as he is senior to them in the Cadre of Clerk.

2. Learned counsel for the petitioner submits that the petitioner join as a Clerk by way of transfer in the Office of the Deputy Commissioner, Faridabad on 05.09.1997, whereas respondent No. 5 Smt. Anita Kumari join as a Clerk by way of transfer on 09.09.1997 and the seniority is to be maintained keeping in view the date the employee join



on transfer as the earlier service stands washed off. Learned counsel for the petitioner further submits that the other respondents were appointed as a Clerk much after the joining of the petitioner.

3. In the year 2015, the petitioner was facing certain departmental proceedings, due to which, he could not be promoted to the post of Assistant and respondent No. 5 was promoted as Assistant on 25.05.2015. Similar is the case of the other respondents, who also got promotion as Assistant in preference to the petitioner. Thereafter, the petitioner was exonerated in the departmental proceedings as a result, petitioner was ultimately promoted as Assistant on 28.09.2016. Thereafter, the petitioner claim the benefit of promotion from the date the private respondents were promoted. As the said benefit has not been given to him, the petitioner has approached this Court.

4. Learned State counsel submits that though, it is clear that the petitioner was senior to the private respondents and could not get promotion to the post of Assistant due to the pendency of the disciplinary proceedings but after the said disciplinary proceedings were culminated and the charges were dropped, the petitioner was promoted to the said post and thereafter, all the petitioners as well as the private respondents have been transferred from Gurugram to the newly created District of Faridabad, hence, petitioner should have raised the claim of seniority in Gurugram rather than claiming the same in Faridabad.



5. Learned counsel for the private respondents submits that once, the private respondents have been promoted as Assistant prior to the petitioner, the petitioner has no right to claim the benefit of promotion with effect from the date private respondents have been promoted.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It is a conceded position that as per the rules governing the service, the employee is to be promoted to the next higher rank on the basis of the seniority. The petitioner concededly has been appointed as a Clerk in District Gurugram prior to the private respondents. That being so, the petitioner cannot be declared junior to the private respondents. It is also a conceded position that when the private respondents were promoted as Assistant in the year 2015, the petitioner was facing departmental proceedings in which departmental proceedings, he was ultimately exonerated and was further promoted as Assistant w.e.f. 28.09.2016.

8. Once, the petitioner has been found entitled for promotion, the claim of the petitioner is to be considered with effect from the date the employees junior to him were promoted. Once, the private respondents were promoted to the post of Assistant from 25.05.2015, the petitioner is also entitled for the grant of said benefit being senior to them and having a preferential right of promotion. Merely that after the promotion, a new District Faridabad has been carved out from the Gurugram District and



the petitioner and respondents are working in Faridabad District cannot be a ground to deny the said benefit which the petitioner was entitled for while working in District Gurugram.

9. Keeping in view the above, the present petition is allowed. The respondents are directed to grant the petitioner the benefit of promotion to the post of Assistant with effect from the date respondent No. 5 was promoted with all consequential benefits such as seniority and pay. Let the order be complied with within a period of eight weeks from the date of receipt of copy of this order.

Pending miscellaneous application, if any, also stands disposed of.

May 14, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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