



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

114

CWP No. 11320 of 2021
Date of Decision: 06.08.2024

Bharat SinghPetitioner

Versus

Punjab and Haryana High Court, Chandigarh and othersRespondents

CWP No. 17501 of 2021

Rinku KumarPetitioner

Versus

Punjab and Haryana High Court, Chandigarh and othersRespondents

CWP No. 1207 of 2023

Sandeep Kumar and othersPetitioners

Versus

Punjab and Haryana High Court, Chandigarh and othersRespondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Satyavir Singh Yadav, Advocate
for the petitioners in CWP-11320-2021 and
CWP-1207-2023.

Mr. R.K.Arora, Advocate
for the petitioner in CWP-17501-2021.

Mr. Ajaivir Singh, Advocate
for respondents No. 1 and 2 in CWP-11320-2021 and
None for respondents No. 3 to 10 in CWP-11320-2021.

Mr. Shreenath A. Khemka, Advocate
for respondents No. 1 and 2 in CWP-17501-2021 and
None for respondents No. 3 and 4 in CWP-17501-2021.

Mr. B.S.Khehar, Advocate for
respondents No. 1 and 2 in CWP-1207-2023 and
None for respondents No. 3 to 9 in CWP-1207-2023.

**MAHABIR SINGH SINDHU, J.**

This judgment shall dispose off aforementioned three writ petitions as common questions of facts and law are involved therein.

2. Following prayer(s) have been made in the above writ petitions.
- a)** CWP-11320-2021 has been filed under Article 226 of the Constitution, *inter alia*, for issuance of a writ in the nature of Certiorari for quashing the impugned order dated 09.02.2021 (P-5), passed by respondent No. 2, whereby representation of the petitioner for posting him on post of Process Server or Daftri was rejected; as well as order dated 07.12.2020 (P-3), whereby juniors to the petitioner were promoted to the post of Process Server, without considering the name of petitioner.
- b)** CWP No. 17501 of 2021 has been filed under Article 226 of the Constitution *inter alia* for issuance of a writ in the nature of Certiorari for quashing the impugned order dated 02.09.2021 (P-4), whereby petitioner was posted as Usher from the post of Record Lifter on which post he was promoted vide order dated 07.12.2020 (P-3) and now he has made ineligible for promotion in the clerical cadre because his right of consideration for promotion as per rule 7(vii)(e) of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 has been taken away due to his posting on the post of Usher.
- c)** CWP No. 1207 of 2023 has been filed under Article 226 of the Constitution, *inter alia*, for issuance of a writ in the nature of Certiorari for quashing the impugned Office Note dated 12.12.2022 (P-1) approved by respondent No. 2 as well as



impugned order dated 13.12.2022 (P-2) passed by respondent No. 2, whereby names of the petitioners could not be considered for promotion to the post of Process Servers while promoting their juniors on the ground that they have already taken promotion on the post of Usher/Daftri/Record Lifter.

For brevity, the facts are taken from CWP No. 11320 of 2021.

3. Petitioner was appointed as Peon vide order dated 16.01.2009. In pursuance to his appointment, he joined his duties on 17.01.2009 in the office of District and Sessions Judge, Karnal. The seniority list of Daftri/Record Lifters/Peons/Chowidars & Sweepers was finalised and the petitioner stood at serial No. 14 in the said list. Petitioner was promoted to the post of Usher vide order dated 24.10.2019 and since then he is working as such. It is further pleaded that petitioner had passed matriculation examination from Government Inter College, Mahakaleshwar, Almora in the year 2005 and Intermediate Examination from Govt. I.C Kheera, Almora in the year 2007. He has rendered service on Class IV post for more than 10 years, but despite that, his claim for consideration against the post of Process-Server or Daftri has been rejected vide impugned order dated 09.02.2021 (P-5). Petitioner represented to the department on 07.12.2020, but in vain; hence present writ petition.

4. While referring to Rule 7(x) of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (for short 'Rules'), it has been contended that 50% post of Process-Servers are to be filled by direct recruitment and the remaining 50% from amongst class IV employees having 3 years experience.

4.1 Further contended that the right of petitioner for promotion to the post of Process Server/Daftri has been rejected by the respondents



despite the fact that he is senior to the persons who have been promoted to the aforesaid posts. The petitioner stands at serial No. 14 in the seniority list dated 10.12.2019. He is a matriculate and having experience of more than 3 years, but *dehors* that, his claim has been wrongly rejected by the respondents.

4.2 Also contended that non consideration of name of the petitioner to the post of Process Server/Daftri will result into marring his future prospects for becoming Bailiff and Clerk. Not only that, the petitioner will be denied of the ancillary benefits attached to the post(s) of Bailiff and Clerk; thus, the order impugned is liable to be set aside.

4.3 Learned counsel for petitioner in CWP-17501-2021 further referred to Para 6 of the written statement dated 04.10.2021 wherein respondents have taken a specific stand that petitioner-Rinku Kumar would be considered for further promotion to the posts of Process Server, Bailiff and Clerk on the basis of seniority-cum-merit, if found eligible at that time. He further contended that in such a scenario, it can be safely presumed that respondents are not averse to promote petitioner-Rinku Kumar to the posts of Process Server, Bailiff and Clerk as and when he becomes eligible.

5. *Per contra*, it is contended by learned counsel for respondents No. 1 and 2 that the petitioners have not availed the right of statutory appeal in terms of Rule 14B(ii) of the Rules.

6. Heard learned counsel for the parties and perused the paper book.

7. Before proceeding further, Rule 14 of the Rules (*ibid*), being relevant, is reproduced as under:

14. APPEAL:

Appellate Authority:

(1) An appeal shall lie to the High Court against order of a



District and Sessions Judge imposing any penalty and such appeal may be disposed of by the Chief Justice or a Judge nominated by him in this behalf.

(2) An appeal shall lie to a Division Bench of the High court against an order of the Chief Justice or of a Judge imposing any of the penalties on members of Class II service.

A. Orders against which no appeal lies:

Notwithstanding anything contained in these rules, no appeal shall lie against:-

(i) Any order of inter-locutory nature to step-in-aid of the final disposal of a disciplinary proceedings.

(ii) any order passed by an inquiring authority in the course of an inquiry held under Punjab Civil Services (Punishment and Appeal) Rules, 1970.

B. Subject to the provisions of Rule 14A, a member of service may prefer an appeal against all or any of the following orders, namely:-

(i) an order of punishment passed by the District and Sessions Judge inflicting penalties mentioned in Rule 12(2)IV A to IX.

(ii) an order of substantive appointment by promotion or otherwise to a permanent and pensionable post.

(iii) an order of temporary appointment which is to last more than 3 months or has in fact lasted more than 3 months.

A perusal of the aforesaid Rule clearly reveals that against the impugned order(s) passed by the respondents in all the petitions, statutory appeal is maintainable before the High Court on administrative side. In the present cases, the petitioners without availing the remedy of statutory appeal, have rushed to this Court straightaway. It is settled law that when an alternative and equally efficacious remedy is available, writ petition would ordinarily be not maintainable, unless the circumstances so warrant.

8. In the opinion of this Court, as the petitioner(s) are having statutory remedy of appeal for redressal of their grievance; there is no exceptional circumstance made out to ignore that aspect of the matter and to entertain the writ petition(s) without exhausting the alternative remedy; consequently, present petitions are held to be not maintainable and the petitioner(s) are relegated to take recourse to the remedy of statutory appeal on administrative side.



9. Although during the course of hearing, learned counsel for the petitioner raised the plea that in reply filed in CWP-17501-2021, respondents have acknowledged that case of the petitioner would be considered for the posts of Bailiff, Prcoess Server and Record Lifter, if otherwise found suitable. If that be so and respondents are still willing to consider the case of petitioner, this order be not treated as a bar in this regard.

10. In view of the above, all the writ petitions are disposed off being not maintainable with liberty aforesaid.

11. Needless to say that observations made hereinabove shall not be construed as an expression of opinion on the merits of case, in any manner.

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

Photocopy of this order be placed on the files of the connected cases.

06.08.2024

Rajeev (rvs)

(MAHABIR SINGH SINDHU)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No