



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(219)

CWP No. 11810 of 2019 (O&M)

Date of Decision : 30.09.2024

Ankur Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ritesh Tomar, Advocate for the petitioner.

Mr. Amarpreet Singh Bains, Asstt. Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that the petitioner had applied for the posts of Clerk, which were advertised by the Subordinate Service Selection Board, Punjab in June, 2013. While the petitioner was competing for the said post, the petitioner was selected in the Department of Transport again through the open competition through the Subordinate Services Selection Board, Punjab and he joined the Department of Transport on 29.07.2013.

2. While the petitioner was working with the Transport Department, he also got selected against the post of Clerk, which was advertised in June, 2013 i.e. prior to the joining of the Transport Department. The petitioner applied for the grant of 'No Objection' so as to join the said post but the respondents asked him to resign by submitting one month salary. Having no other option, the petitioner submitted the resignation and deposited one month



salary and joined the post of Clerk and he was posted in the Office of Deputy Commissioner, Fazilka on 30.07.2014.

3. After joining the post of Clerk in the Office of Deputy Commissioner, Fazilka, the petitioner claimed the benefit of service rendered in the Transport Department from 29.07.2013 to 30.07.2014 but no such benefit was given on the ground that the selection to the post of Clerk in the Office of Deputy Commissioner, Fazilka is a fresh selection and the petitioner had not sought 'No Objection' Certificate from the Department of Transport for being considered for the post of Clerk in the Office of Deputy Commissioner, Fazilka, hence, the resignation submitted by the petitioner will not be treated as a technical resignation so as to grant him the service benefit of the service period rendered in the Transport Department from 29.07.2013 to 30.07.2014. The petitioner has approached this Court with the prayer that the resignation submitted by him be treated as a technical resignation to join the post of Clerk in the Office of Deputy Commissioner, Fazilka and he be granted the benefit of service rendered in the Transport Department, Punjab for the period mentioned here-in-before.

4. Upon notice of motion, the respondents have filed the reply, wherein, they have stated that the petitioner never applied for the post of Clerk to be filled in the Office of Deputy Commissioner, Fazilka with the permission of the Department of Transport, hence, the period spent in the Department of Transport cannot be treated as a valid period for the grant of benefit while working in the Office of the Deputy Commissioner, Fazilka.

5. Learned counsel for the respondents submits that the petitioner participated/competed in the selection process while working in the Transport



Department, hence, the 'No Objection' from the Department of Transport was required to participate in the selection process, even if application for the post in question was submitted prior to the joining of the Transport Department, which was not taken and, therefore, no benefit of the service rendered in the Transport Department can be given to the petitioner qua the post of Clerk in the Office of Deputy Commissioner, Fazilka as the same is to be treated as a fresh appointment.

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

7. It is not disputed that the petitioner applied for the post of Clerk to be filled in the Office of Deputy Commissioner, Fazilka with the Subordinate Services Selection Board, Punjab prior to his appointment in the Transport Department. Once, the petitioner had already applied prior to the joining of the Transport Department for the post of Clerk and that too with the Subordinate Services Selection Board, Punjab, which was the common Selection Board, no permission was required as, the petitioner was not serving the Department of Transport at the relevant time i.e. the date of application for the post of Clerk. Once, the petitioner was not working at the time of filling the application for the post of Clerk in the Office of Deputy Commissioner, Fazilka with the Transport Department, upon his subsequent appointment to the Transport Department, the petitioner had full right to compete for the post in question and no permission was required for the same.

8. The petitioner got selected on his own merit as Clerk in the Office of Deputy Commissioner, Fazilka and he applied for the benefit of service rendered in the Transport Department which was declined by the respondents



only on the ground that 'No Objection' should have been taken from the Transport Department to compete for the post of Clerk in the Office of Deputy Commissioner, Fazilka. Once, the application for the post in question was given prior to the joining of the Transport Department, the question arise, how the petitioner could have taken the 'No Objection' from a Department where he was not even serving at the relevant time. Hence, the ground taken by the respondent-department to decline the petitioner the benefit of service rendered in the Transport Department, is totally arbitrary and illegal.

9. The other argument, which has been raised by the learned counsel for the respondent-State is that the petitioner competed for the post after joining the post of Clerk in the Transport Department. Once, the petitioner has already applied for the post, for mere competition for the post in question, no permission is required from the Transport Department concerned. No rules envisage that for any post, for which an employee has already applied for, permission is to be taken for competing for the same. In the absence of any Rule shown to the Court, the argument being raised by the respondent-State that the petitioner could not have competed for the post of Clerk to be appointed in the Office of the Deputy Commissioner, Fazilka cannot be accepted.

10. Further, the petitioner submitted the resignation and he was forced to deposit one month salary. The petitioner only submitted the resignation so as to join another post with the Government of Punjab. Once, the petitioner was only shifting from one Department to another Department of the Govt. of Punjab, keeping in view the rules governing the service, the Transport Department was required to give the benefit of technical resignation to the petitioner.



11. In fact, in the present case, the petitioner has been **discriminated against**. It may be noticed that there were two employees who were working in the Transport Department, one petitioner and one Pardeep Verma. Both of them have competed for the post of Clerk subsequently to their appointment in the Transport Department and Pardeep Verma was allowed the technical resignation by the Department of Transport so as to join ----- Department. Nothing has come on record as to why, the same benefit has not been given to the petitioner. This shows that there was a pick and choose Policy adopted by the respondents between the petitioner as well as Pardeep Verma. The petitioner has been discriminated against by the respondents for the reasons best known to them and still, the respondents are defending their action by filing a reply to the present writ petition so that the petitioner is not able to get the benefit which the Department itself has extended to Pardeep Verma.

12. Keeping in view the above, the present petition is allowed. Keeping in view Rule 4.4 of the Punjab Civil Services Rules, Vol.I Part-I, as the petitioner has joined a Government Department i.e. Office of the Deputy Commissioner, Fazilka after rendering service with the Department of Transport, the service rendered in the Transport Department be treated as a valid service to be given benefit to the petitioner as and where required for all intents and purposes. Let the Office of the Deputy Commissioner, Fazilka treat the petitioner's transfer to the said Department having been done on the basis of the technical resignation so as to grant the benefit admissible to the petitioner under Rule 4.4 of the Punjab Civil Services Rules, Vol.I Part-I qua the service rendered by the petitioner in Transport Department, Punjab. Let this order be complied with by the respondents.



13. Qua the pay which has been deducted while accepting the resignation of the petitioner, the Department of Transport is directed to refund the same and to treat the same as a technical resignation for all intents and purposes. Let this order be complied with by the Department of Transport within a period of four weeks of the receipt of copy of this order.

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

September 30, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes