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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14383 of 2020 (O&M)

Date of decision : April 9, 2024

Sahdev Malik

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present :-Mr. Sunil K. Nehra, Advocate
for the petitioners.

Mr. Kapil Bansal, DAG., Haryana.

Mr. Rajesh Gaur, Advocate
for respondent No.3.

JASGURPREET SINGH PURI, J (Oral)

1. The present petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *Mandamus* directing the respondents to promote the petitioner on the post of Leading Fireman and Assistant Fire Station Officer/Sub Fire Officer under the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 1982.

2. Learned counsel for the petitioner and learned State counsel have stated that competent Department in the present case is Fire and Emergency Services being a newly created department.

3. Learned counsel for the petitioner submitted that on his oral request the aforesaid department be impleaded as respondent No.5.

Learned counsel for respondent No.3 and learned State counsel have stated that they have no objection with regard to same. In view of the above, the

Director Fire and Emergency Services department is impleaded as respondent No.5. The Registry is directed to carry out the necessary corrections in the Memo of Parties.

4. The short point involved in the present case is that the petitioner was appointed as a Fireman by respondent No.3- Municipal Corporation, Gurugram and thereafter his services were regularized by the office of the Municipal Corporation, Gurugram vide order dated 18.01.1994 (Annexure R-1). Thereafter vide order dated 23.06.1995 (Annexure P-4) he was transferred to Municipal Corporation, Sonapat by an order passed by Director Local Bodies, Haryana. Thereafter, he continued to serve the aforesaid Municipal Corporation, Sonapat. However, Municipal Corporation, Gurugram started promoting the other Firemen who, according to learned counsel for the petitioner, were junior to him and the petitioner was not put in the seniority list since he was earlier transferred vide order dated 23.06.1995 (Annexure P-4) to Municipal Corporation, Sonapat.

5. Learned counsel appearing on behalf of the petitioner submitted that the aforesaid transfer order dated 23.06.1995 (Annexure P-4) was not at the instance of the petitioner but it was by way of an order of transfer passed by the Director Local Bodies and as a consequence of the same he was working in the aforesaid office of the Municipal Corporation, Sonapat but his lien still remained at Municipal Corporation, Gurugram since the same was never extinguished and when the juniors or any other equivalent staff members were to be considered for promotion then the right of the petitioner for getting promotion was also subsisting and he could not have been ignored in this regard.

6. He submitted that he has not even been promoted in the existing Municipal Corporation, Sonapat. He further submitted that thereafter the Government of Haryana notified The Haryana Fire Service (Group-C) Rules, 2016 and as per respondents now State level seniority list is to be maintained but he does not appear anywhere. In this way prejudice has been caused to the service of the petitioner where his right for being considered for promotion has been prejudiced. He referred to the Full Bench judgment of this Court in **Niranjan Singh Vs. State of Punjab 1999 (3) SLR 749** to contend that the lien of a government servant who is subsequently appointed to a post in cadre cannot be terminated unilaterally by an act of transfer to another cadre. He submitted that the right of the petitioner for being considered for being promoted cannot be jeopardised only because of an action of transfer which was affected by the Director, Local Bodies.

7. On the other hand, Mr. Rajesh Gaur, Advocate appearing on behalf of the Municipal Corporation, Gurugram submitted that once the petitioner stood transferred to Sonapat the promotions were required to be effected only on those officers and those Firemen who were on duty at Gurugram, and therefore, the Municipal Corporation, Gurugram has not committed any illegality.

8. After hearing learned counsel for the parties, this Court is of the considered view that present petition can be disposed of with a direction to the Director, Fire and Emergency Services-newly added respondent No.5. He is directed to look into this matter himself and considering the right of the petitioner for being considered for promotion to a higher post when the other equivalent or junior Firemen are stated to have been promoted in the

Corporation where he had a lien by passing a speaking order and also in the light of the settled principle of law including the aforesaid Full Bench Judgment of this Court in **Niranjan Singh’s case (supra)** of this Court.

9. Needless to say that the petitioner or his counsel shall be afforded an opportunity of hearing before passing an order. The entire exercise shall be completed within a period of four months from today.

10. In case, the petitioner is aggrieved by any adverse order passed by the respondents he shall be at liberty to challenge the same in accordance with law.

April 9, 2024	(JASGURPREET SINGH PURI)
archana	JUDGE
Whether speaking/reasoned	Yes
Whether Reportable :	No