

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-19155-2019 (O&M)
Date of Decision:23.4.2024

Phool Kumar

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Pankaj Sharma, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Himanshu Arora, Advocate for respondents No.2 and 3.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 27.02.2019 (Annexure P-6) passed by respondent No.2.

2. Learned counsel for the petitioner submitted that when the petitioner was working as Accounts Clerk in the office of respondents- Corporation then in the year 2015 some of the Accounts Clerks were promoted to the post of Accounts Assistant vide Annexure P-2. It is submitted that out of total 24 persons promoted last two persons namely Dharambir Singh and Ghanshyam Verma regarding them a condition was put at Note No.2 in which it is mentioned that the aforesaid two persons have been promoted against the reservation points meant for SC due to non-availability of candidates of SC category and as such they will have to vacate the posts as

and when Accounts Clerks belonging to SC category become eligible for

promotion to the post of Accounts Assistant. He further submitted that the petitioner at the time of aforesaid promotion, was not eligible for the post of Accounts Assistant because he did not fulfill the eligibility condition of five years. However, he completed the eligibility condition of five years experience and became eligible for being promoted to the aforesaid post on 19.07.2018. He further asserted that in pursuance of the aforesaid note the petitioner ought to have been promoted from the date when he attained the eligibility on 19.07.2018. However, the respondents-Corporation promoted the petitioner on 29.09.2020 vide Annexure R-2/2 and his grievance in the present case is that in view of the aforesaid note No.2, his date of promotion should be from 19.07.2018 instead of 28.09.2020.

3. On the other hand, Mr. Himanshu Arora, learned counsel for respondents No.2 and 3/Corporation, submitted that although there was a note put in the order at Annexure P-2 but the same was not enforceable qua the petitioner for the purpose of seeking promotion from that date and was only meant for being considered for promotion after he became eligible. He further submitted that the petitioner cannot claim any right of promotion on the date when he gets eligibility but he can only seek the right of consideration for being promoted in case he is not promoted but in the present petition, the petitioner already stood promoted on 28.09.2020 and therefore the claim of the petitioner is misconceived.

4. He further submitted that even otherwise also as per the reply filed by the respondents-Corporation, there are 42 sanctioned posts of Accounts Assistants and out of these 42 posts, 28 posts are meant for promotion quota and 14 posts are meant for direct quota and against the 28 posts for promotion quota there are 26 Account Assistants occupying the post

category. He further submitted that 06 posts of Accounts Assistants are occupied by the officials belonging to SC Category and in this way 20% of the posts belonging to the SC category as per instructions dated 04.05.2018 are already occupied by the officials belonging to the SC Category. He referred to the instructions issued by the Government dated 04.05.2018 (Annexure R-2/1) to contend that it was specifically directed by State of Haryana that while implementing the instructions with regard to reservation it may be ensured that representation of the scheduled caste employees should not exceed of 20% of the posts in the cadre at any point of time. He further submitted that the aforesaid 20% already stood exhausted and, therefore, whenever the posts against the reserved category became available, the petitioner was immediately promoted.

5. I have heard learned counsel for the parties.

6. The only claim of the petitioner in the present case is that when he became eligible on 19.07.2018 he ought to have been promoted on that date whereas he was promoted vide order dated 28.09.2020. Learned counsel for the petitioner has laid emphasis on Note No.2 of the order dated 15.04.2015 (Annexure P-2). A perusal of the aforesaid order at Annexure P-2 would show that when 24 persons were promoted, admittedly the petitioner was not eligible at that point of time because he was not having the eligibility qualification of 5 years experience. Although a note was appended in the aforesaid order to state that the aforesaid two persons at Sr. No.23 and 24 were promoted against the reservation points meant for SC category due to non-availability of candidates of SC Category as such they will have to vacate the posts as and when Accounts Clerks belonging to SC Category becomes eligible for promotion. However, the aforesaid note cannot be meant to be

SC Category including the petitioner became eligible, he ought to have been promoted and deemed to have been promoted on the same day when he became eligible. At the most the aforesaid note could be interpreted to the extent that when any SC category candidate including the petitioner became eligible then the respondent was under an obligation to consider him for promotion and proper procedure has to be followed which may include DPC etc. and there cannot be any automatic promotion. In other words, the meaning of the aforesaid note No.2 would be only right of consideration for being promoted but there cannot be any straight jacket formula that on the date when the SC Candidate becomes eligible, he ought to have been promoted. The petitioner got promoted on 28.09.2020 and his claim that he should be given promotion from the retrospective date on 19.07.2018 on the date on which he became eligible is misconceived and unsustainable.

7. Consequently, finding no merit in the present case, the same is hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

23.04.2024

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