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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24510-2018 (O&M)
Date of Decision: 28.08.2024

Harbans Lal Gaba

....Petitioner(s)

Versus

Dakshin Haryana Bijli Vitran Nigam and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Suman Chaudhary, Advocate, for the petitioner.

Mr. Prateek Mahajan, Advocate, for respondents No.1 to 4.

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 impugned order dated 10.04.2018 (Annexure P-3).

2. While giving the brief facts of the case, the learned counsel appearing on behalf of the petitioner submitted that the petitioner joined as W/CT/Mate in the respondent-Nigam on 18.05.1976 and thereafter, he was appointed on the post of ALM on regular basis on 30.09.1981. Thereafter, the cadre of the petitioner was changed to that of Shift Attendant (SA) in the year 1984 but when the ACPs were granted to the petitioner, then the first ACP has been granted in the year 1996 on the basis of the period of service as SA from



the year 1984 but the benefit of counting of the service for the period from 1981 has not been given to the petitioner by the respondent-Nigam and the ACPs should have been granted to the petitioner by counting the period from the year 1981 which has been wrongly given to the petitioner by counting the period from the year 1984 when he was shifted to the cadre of SA. She submitted that the petitioner was a regular employee of the respondent-Nigam who was appointed as ALM and therefore, the petitioner ought to have been given the benefit of the period from 1981 to 1984 and calculation for grant of ACP ought to have been made starting from the year 1981 and not from the year 1984. She submitted that the impugned order dated 10.04.2018 (Annexure P-3) is therefore liable to be set aside.

3. On the other hand, learned counsel appearing on behalf of the respondent-Nigam submitted that it is a case where the petitioner was initially appointed to the post of ALM on 30.09.1981 but thereafter he himself made a request for the change of his cadre because of medical reasons and the respondent-Nigam accepted his request and changed his cadre from ALM to that of SA. He referred to Annexure R-4 in this regard whereby the request of the petitioner was accepted and approved wherein it was so directed that he will be appointed afresh and he will not be entitled for the seniority of ALM as per his request. He further referred to Annexure R-6 which is the letter of appointment as SA of the petitioner from where it is clear that the aforesaid was an offer of appointment and he has been appointed afresh as SA and even in clause (vi) and (vii) of the aforesaid offer of appointment it has been so stated that it shall be clearly understood that the petitioner will rank amongst others in the order of seniority which may be assigned to him by the selection



committee and the fact of his earlier appointment will not confer any right of seniority upon him and he will retain his original seniority *inter se* as work charge T-mate irrespective of his date of joining as ALM and shall not claim any seniority over those who may otherwise be senior to him. He submitted that in this way, the petitioner was appointed afresh as SA by virtue of the aforesaid letter of appointment dated 21.11.1984 vide Annexure P-6 and while referring to the reply, he submitted that his ACP ought to have been counted from the year 1984 and he has already been granted all the three ACPs in this regard and therefore, the prayer of the petitioner for counting the period from the year 1981 for the purpose of determining the ACP is not sustainable.

4. I have heard the learned counsels for the parties.

5. The issue involved in the present case is as to whether the petitioner's period of service for the grant of ACP should be counted from the year 1981 i.e. when he was appointed as ALM or from the year 1984 i.e when he was again appointed as SA. Admittedly, the respondents have already granted all the three ACPs to the petitioner by counting his service from the 1984 in pursuance of the appointment letter Annexure P-6. The grievance of the petitioner is that while calculating the period for the purpose of grant of ACP it ought to have been started from the year 1981 i.e. when he was appointed on regular basis as ALM.

6. A perusal of the letter Annexure R-4 and R-6 would show that the petitioner himself had made a request for the change of his cadre because of medical reasons and his request was accepted and vide Annexure R-4, it was so provided that he ought to be appointed afresh. Further a perusal of Annexure R-6 would show that it was an offer of appointment and in this way,



the petitioner was appointed afresh as SA. Therefore, the grievance of the petitioner that his earlier period would also be counted for calculating the period of ACP would not be sustainable because his ACP period has to be counted from the time when he was freshly appointed to the fresh cadre of SA.

7. Learned counsel for the petitioner during the course of arguments has referred to a judgment of a Division Bench of this Court in *Jugal Kishore Versus State of Haryana and others, 2009(3) SCT 433* to contend that if a benefit has to be granted to other employees, then the employer should grant similar benefit to the person who has not approached the Court. In this regard, she referred to the replication which has been filed by the petitioner and while referring to para No.6, she submitted that two more persons were also granted the same benefit. However, a perusal of the aforesaid paragraph would show that there is nothing in the aforesaid paragraph to show that the aforesaid two persons were similarly situated because there is nothing in the aforesaid paragraph to suggest that the aforesaid two persons were also appointed afresh on a different post. Therefore, it cannot be inferred from the aforesaid replication that the aforesaid persons which have been so referred to in the replication were similarly situated and therefore, the aforesaid judgment referred by the learned counsel for the petitioner would not be applicable in the present application and is distinguishable on facts.

8. Consequently, the present petition is dismissed.

28.08.2024

(JASGURPREET SINGH PURI)

rakesh

JUDGE

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