

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.29434 of 2023 (O&M)
Date of decision: 04.01.2024

Parveen Kumar Garg
.....Petitioner
Versus
State of Punjab and Others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Kshitij Sharma, Advocate
for the petitioner.

NAMIT KUMAR J. (Oral)

1. The petitioner has approached this Court by way of filing the present petition under Article 226 of the Constitution of India, seeking a writ of mandamus or any other order/direction, for quashing of order dated 15.09.2023 (wrongly mentioned as 18.09.2023) (Annexure P-6), whereby his claim for deemed promotion to the post of 'Personal Assistant' w.e.f. 23.12.2018, has been rejected.
2. Brief facts as pleaded in the petition are that the petitioner was appointed as Accounts Clerk in the year 1990. Thereafter, in the year 1997, he was appointed as Steno-Typist and in the year 2010, he was further promoted as Junior Scale Stenographer and still further, he was promoted as Senior Scale Stenographer on 06.10.2017. Thereafter, vide order dated 15.06.2018, the petitioner was granted deemed date of promotion as Senior Scale Stenographer w.e.f. 23.12.2015 (Annexure P-2). Thereafter, in the year 2020, the petitioner was further promoted to

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the post of Personal Assistant, however, he filed two representations dated 20.11.2020 and 22.06.2022, claiming deemed date of promotion as 'Personal Assistant' w.e.f. 23.12.2018. Thereafter, he filed a petition i.e. CWP No.11411 of 2023, claiming the relief of deemed date of promotion as 'Personal Assistant' w.e.f. 23.12.2018. The said writ petition was disposed of by this Court vide order dated 19.07.2023, with a direction to respondent No.2 to decide the representations dated 20.11.2020 and 22.06.2022, within a period of 08 weeks from the date of receipt of certified copy of the order.

3. In pursuance of the directions issued by this Court vide order dated 19.07.2023, passed in CWP No.11411 of 2023, the claim of the petitioner has been rejected vide order dated 15.09.2023 (Annexure P-6), by giving the following reasons:-

- (i) *No vacancy in General Category was available on 23.12.2018.*
- (ii) *The petitioner was not fulfilling the working experience of 03 years as mandated in the Punjab State Warehousing Corporation Staff (Conditions of Service) Rules, 2002 (in short 'the Rules of 2002').*
- (iii) *The employee has no right to claim promotion from a particular date or to seek a direction to the employer that the vacancy in promotional post should be filled up.*
- (iv) *No junior to the petitioner has been promoted as Personal Assistant.*

4. Learned counsel for the petitioner submits that since the petitioner has been given deemed date of promotion as Senior Scale Stenographer w.e.f. 23.12.2015, vide order dated 15.06.2018, therefore,

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he is entitled for the grant of deemed date of promotion as 'Personal Assistant' also w.e.f. 23.12.2018, when he became eligible for promotion to the said post as 03 years experience is required as per the Rules of 2002, for promotion to the post of 'Personal Assistant' and the action of the respondents in rejecting the claim of the petitioner is totally illegal and arbitrary as he is entitled for the deemed date of promotion to the post of 'Personal Assistant' w.e.f. 23.12.2018. In support of his contention, the petitioner has relied upon the judgment of the Hon'ble Supreme Court in "***Union of India and others vs K.B. Rajoria***", (2000) 3 SCC 562.

5. I have heard learned counsel for the petitioner and perused the record.

6. The facts are not in dispute that the petitioner was promoted as Senior Scale Stenographer on 06.10.2017 and was given deemed date of promotion as Senior Scale Stenographer w.e.f. 23.12.2015 vide order dated 15.06.2018 (Annexure P-2) and thereafter, he was promoted to the post of 'Personal Assistant' in the year 2020 and thereafter, he claimed deemed date of promotion as 'Personal Assistant' w.e.f. 23.12.2018, when he deemed to have completed 03 years of service as Senior Scale Stenographer.

7. Before proceeding further, it is apt to give reference to the relevant provisions of the Rules governing the post of Personal Assistant. The post of Personal Assistant is governed by the Rules known as Punjab State Warehousing Corporation Staff (Conditions of Service) Group A and Group B Service Regulations, 2002 and is filled

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up from amongst the Senior Scale Stenographers, who have an experience of working as such for a minimum period of 03 years on a seniority-cum-merit basis. The relevant portion from the said Rules, reads as under:-

Sr. No.	Designation of Post	Appointing Authority	Percentage of appointment by		Qualification and experience for appointment by	
			Direct Recruitment	Promotion	Direct appointment	Promotion
2.	Personal Assistant	Managing Director	-	100%	-	From amongst the Senior Scale Stenographers who have an <u>experience of working</u> as such for a minimum period of <u>three years</u> on a seniority-cum-merit basis.

8. As per the stand taken by the respondents in the impugned order dated 15.09.2023 (Annexure P-6), whereby his claim for grant of deemed date of promotion as ‘Personal Assistant’ has been rejected, it has been stated that there was no vacancy available in the General Category to which the petitioner belongs in the cadre of Personal Assistant on 23.12.2018 and it is the prerogative of the appointing authority to fill the vacant post reserved for Scheduled Caste Category from General Category, by way of de-reserving the same and the petitioner cannot claim a right to first de-reserve the Scheduled Caste Category Post to General Category. Further, the petitioner was not having working experience of 03 years as mandated in the Rules of 2002.

9. It has been held by the Division Bench of this Court in

“Sukhdev Kumar Sharma vs Union of India and others”, 2016(1)

SCT 125, that the employee cannot claim promotion as a matter of right and it is the employer to decide as to whether the promotions are required to be made keeping in view the requirements. The employee has no right to claim promotion from a particular date or to seek a direction to the employer that the vacancy in the promotional post should be filled up. The action or inaction of the employer can only be subjected to judicial review if the same is actuated by some extraneous considerations or mala fide considerations other than the administrative.

The relevant portion of the said judgment, reads as follows:-

*9. Even if the plea raised by the learned counsel for the petitioner is accepted that the vacancies were available, the petitioner cannot claim promotion as a matter of right. It is for the employer to decide as to whether the promotions are required to be made keeping in view the requirements. The employee has no right to claim promotion from a particular date or to seek a direction to the employer that the vacancy in the promotional post should be filled up. The action or inaction of the employer can only be subjected to the judicial review if the same is actuated by some extraneous considerations or mala fide considerations other than the administrative. To support this view, reference can be made to case **Union Territory, Chandigarh Administration and others versus Tarlochan Singh and others 2014 (3) SCT 330 (DB)**. In the instant case, there is no material on file to establish that in action on the part of the respondents was due to any mala fide or extraneous reasons. It has been fairly conceded at Bar by the learned counsel for the petitioner that no junior to the petitioner was promoted to the post of Assistant*

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Commissioner during his service tenure.

10. To the same effect is the Division Bench judgment of this Court in “**Union Territory, Chandigarh Administration and others vs Tarlochan Singh and others**”, 2014(3) SCT 330 as well as the judgment in “**Virender Kumar vs State of Haryana and others**”, 2022(4) SCT 416.

11. Further the Hon’ble Supreme Court in “**Girish Kumar vs State of Maharashtra and others**”, 2019(3) SCT 53, has interpreted similar rule which required that no person shall be eligible for promotion unless he has completed service for continuous period of not less than 03 years, which has been interpreted to mean that he has to render service for continuous period of uninterrupted 03 years service. The relevant portion from the said judgment, reads as under:-

“9. In the present case, the High Court has considered Rule 5 of the Seniority Rules, 1982 and has not at all considered the Recruitment Rules, 1967. Respondent no.3 might have been granted the deemed date of promotion to the post of Office Superintendent with effect from 07.10.2005. However, he was actually promoted as Office Superintendent on 22.10.2007. Therefore, in fact, he has rendered service as Office Superintendent only from 22.10.2007. As per Appendix IX to the Recruitment rules, 1967, the eligibility for appointment to the promotional post of Section Officer requires three years continuous service. The language used in Appendix IX is unambiguous, simple and plain. Therefore, on a fair reading of Appendix IX of the Recruitment Rules, 1967, to become eligible for the promotional post of Section Officer, a person ought to have rendered continuous service of not

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less than three years. “Continuous service” might have been defined under the Seniority Rules, 1982. However, the same shall be for the purpose of seniority and the Seniority Rules only. Therefore, if any employee is granted the deemed date of promotion, his seniority shall be considered accordingly from the deemed date of promotion. However, that shall be only for the purpose of inter se seniority only and the same shall not be applicable while considering the eligibility criteria under the Recruitment Rules. In the Recruitment Rules, “continuous service” is not defined. Therefore, one has to consider the ordinary dictionary meaning of “continuous” which means “uninterrupted or unbroken”. The High Court has added the word “actual” which as such is not there in Appendix IX. While considering the relevant provisions and as per the rule of interpretation, when the language used is unambiguous, plain and simple, the provision is required to be read as it is and nothing is to be added. Therefore, when in Appendix IX, the eligibility criteria is that no person shall be eligible for promotion unless he has completed service for a continuous service of not less than three years means he has to render/complete service for a continuous period of uninterrupted/unbroken three years service. Therefore, when respondent no.3 has not completed three years of service for a continuous period of not less than three years in the feeder cadre in District Service (Class III) (Ministerial) Grade II, he was not eligible for promotion to the post of Section Officer. The High Court has committed a grave error in holding otherwise. Therefore, the Additional Divisional Commissioner, Aurangabad rightly allowed the appeal and rightly set aside the order of promotion of respondent no.3 dated 1.2.2008 to the post of Section Officer.”

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12. Even the Hon'ble Supreme Court in "***Nirmal Chandra Sinha vs Union of India and others***", 2008(2) SCT 675, has held that the employee cannot claim promotion w.e.f. date of occurrence of vacancy in the promotional quota.

13. Further, the Hon'ble Supreme Court in "***Union of India and others vs S.K. Saigal and others***", 2007(1) SCT 286, has held that no mandamus can be issued contrary to the provisions of the Act and Rules. Para 11 of the said judgment, reads as follows:-

*"11. It was, therefore, clearly an admitted case of the respondents by themselves that they had not worked for 5 years as Scientists 'B', which is the mandate of the Rules and, therefore, the Tribunal transgressed its jurisdiction granting the relief to the respondents dehors the mandate of the Rules. It is now settled principle of law that no mandamus can be issued which would be contrary to the Act and the Rules. See **State of U.P. v. Harish Chandra (1996) 9 SCC 309; Union of India v. Association for Democratic Reforms and Anr. (2002) 5 SCC 294.**"*

To the same effect is the judgment of the Hon'ble Supreme Court in "***State of Haryana and others vs Sumitra Devi and others***", 2004(1) SCT 309.

14. The judgment cited by learned counsel for the petitioner in ***K.B. Rajoria's case (supra)***, is not applicable to the facts and circumstances of the present case as in the said judgment, the requirement was of regular service and not of actual working on the post, as mandated in 2002 Rules, in the present case.

15. Keeping in view the above facts and circumstances, since

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there was no vacancy of Personal Assistant in the General Category available on 23.12.2018 and further the petitioner was not eligible on that day as he was not having a working experience of 03 years as Senior Scale Stenographer as mandated under the Rules of 2002 and that the petitioner cannot claim promotion as a matter of right from the date of occurrence of vacancy and that too by de-reserving the post of Scheduled Caste Category into General Category and no person junior to the petitioner has been promoted, I find no merit in the present petition and the same is hereby dismissed with no order as to costs.

(NAMIT KUMAR)
JUDGE

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