

**CWP-6270-1998 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****218****CWP-6270-1998 (O&M)
Date of Decision :19.03.2025****Malkiat Singh****...Petitioner****Versus****Punjab State Electronics Development
and Production Corporation Ltd. & others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Ritesh Tomar, Advocate with
Mr. Harnek Singh, Advocate for the petitioner.

Mr. Chanderdeep Singh, Advocate for respondents No.1 & 2.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the impugned award dated 22.07.1997 (Annexure P/11) passed by the Presiding Officer, Labour Court, Patiala by which, the claim being raised by the petitioner-Workman that his retrenchment from service by the respondent-Corporation as ordered vide order dated 31.01.1992 (Annexure P/8) is arbitrary and illegal.
2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.
3. The petitioner-employee was appointed as Messenger with the respondent-Corporation in the year 1981 and services of the petitioner-employee was regularized on the said post on 08.07.1983. While working as such, the petitioner-employee came to be promoted as Clerk vide order

**CWP-6270-1998 (O&M)****-2-**

dated 07.10.1985 (Annexure P/1). Thereafter, the services of the petitioner-employee were regularized on said post vide order dated 24.10.1986 (Annexure P/2) and thereafter, the petitioner-employee was granted promotion to the post of Senior Clerk in the year 1990.

4. In the year 1991, a Notified Area Committee, Mohali was constituted and certain staff of the respondent-Corporation engaged on maintenance work was to be transferred to the said Notified Area Committee, Mohali. The staff was to be transferred keeping in view the staff working in a particular cadre at that relevant time. The petitioner-Workman was working in the cadre of Senior Clerk at that relevant time and he along with 21 other officials were transferred to the Notified Area Committee, Mohali vide order dated 31.10.1991(Annexure P/6) as Senior Clerk. The petitioner-employee did not join the said place of posting i.e. Notified Area Committee, Mohali and raised a grievance along with other three staff members that they do not want to get themselves transferred and keeping in view the said fact in CWP-16939-1991, an order was passed by the respondent-Corporation dated 27.01.1992 (Annexure P/7) cancelling the order dated 31.10.1991 (Annexure P/6) by which, the transfer of the petitioner-Workman along with other three staff members, who had refused to join their duty at Notified Area Committee, Mohali. As one post of Senior Clerk out of two already stood transferred to the Notified Area Committee, Mohali and there was only one post left in the cadre of Senior Clerk in the Corporation against which post, two senior employees were already working, the petitioner-Workman being a junior most Senior Clerk, his services were retrenched by the respondent-Corporation vide impugned



CWP-6270-1998 (O&M)

-3-

order dated 31.01.1992 (Annexure P/8) by giving him benefit of compensation under Section 25-F of the Industrial Dispute Act, 1947 (hereinafter referred to as '1947 Act').

5. The petitioner-workman challenged the aforementioned order dated 31.01.1992 (Annexure P/8) before the Labour Court and vide impugned award dated 22.07.1997 (Annexure P/11), the Labour Court rejected the claim of the petitioner-Workman holding that as no junior of the petitioner-Workman has been retained in the cadre of Senior Clerk, hence, the grievance being raised by the petitioner-Workman that the junior employee has been retained by the respondent-Corporation whereas, the senior employee has been transferred to the Notified Area Committee, is incorrect and after complying with the provisions of the 1947 Act, service of the petitioner-Workman has rightly been retrenched by the respondent-Corporation. The aforementioned order is under challenged in the present petition.

6. Learned counsel for the petitioner-employee has raised two arguments. Firstly, the junior employees were retained by the respondent-Corporation whereas, the services of the petitioner-employee, who was senior, have been retrenched, which action on the part of respondent-Corporation is against the provisions of the 1947 Act. The name of one Jagmohan, who was appointed as a Clerk in the year 1987 as compared to the petitioner-employee, who was appointed in the year 1983 was stated to be retained whereas, the service of the petitioner-employee was retrenched.

7. The second argument which has been raised by the learned counsel for the petitioner-employee is that even under any circumstances,

**CWP-6270-1998 (O&M)****-4-**

the cadre of Clerk and the Senior clerk was same and hence, in case, anyone was to be retrenched, the clerk should have been retrenched instead of Senior Clerk and hence, the petitioner-employee should have been retained in service.

8. Upon notice of motion, the respondents have filed reply wherein, it has been stated that all the arguments raised by the petitioner-Workman have already been dealt by the Labour Court while passing the impugned award dated 22.07.1997 (Annexure P/11).

9. Learned counsel for the respondent-Corporation argues that it has been noticed by the Labour Court that Jagmohan Singh though, was appointed as a Clerk after the petitioner-workman but he was still working as Clerk in the year 1992 when the services of the petitioner-Workman was transferred to Notified Area Committee Mohali and later retrenched and at that time, the petitioner-employee was working as Senior Clerk along with one another employee who was senior to the petitioner-employee and hence, no junior of the petitioner-Workman in the cadre of Clerk was ever retained. Learned counsel for the respondent-Corporation further submits that even as per the notification which has been attached by the petitioner-employee, the Clerk and Senior Clerk are two different cadres having different pay scales and hence, the argument being raised by the learned counsel for the petitioner-Workman that the cadre of Clerk and Senior Clerk is same, is not correct as the post of Senior Clerk is a promotional post.

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

**CWP-6270-1998 (O&M)****-5-**

11. Once, on the date i.e. 31.10.1991 (Annexure P/6) when the petitioner-employee was transferred to the Notified Area Committee, Mohali keeping in view the fact that 22 employees were to be transferred to the Notified Area Committee, Mohali, the petitioner-employee, who was junior most Senior Clerk, was also transferred keeping in view the transfer of one post of Senior Clerk from the respondent-Corporation to the Notified Area Committee. The petitioner-employee along with three others resisted the transfer and did not join the said place of posting and as the petitioner-employee did not join the Notified Area Committee, Mohali, the transfer of the petitioner-employee was cancelled vide order dated 27.01.1992 and as there was no post of Senior Clerk was available with the respondent-Corporation to accommodate the petitioner-employee, services of the petitioner-employee was retrenched by the respondent-Corporation by giving him due compensation, which is clear from order dated 31.01.1992 (Annexure P/8). Once, no junior in the cadre of Senior Clerk was retained by the respondent-Corporation, no grievance can be raised by the petitioner-Workman that the junior has been retained by the respondent-Corporation whereas, the petitioner-employee, who was senior, has been retrenched.

12. Further, in the statement given before the Labour Court, the petitioner-Workman conceded the said fact that there were only two Senior Clerks were working i.e. the petitioner-workman and one Smt. Shashi and the said Smt. Shashi was senior to the petitioner-Workman. That being so, the petitioner-Workman could not have been adjusted as the post against which the petitioner-Workman was working has already been transferred to the Notified Area Committee, Mohali.

**CWP-6270-1998 (O&M)****-6-**

13. Qua the argument of the learned counsel for the petitioner-Workman that Jagmohan Singh and Naib Singh are juniors to the petitioner-employee, it may be noticed that the same has also been considered by the Labour Court. At the time when the services of the petitioner-Workman were retrenched, the petitioner-Workman was working as a Senior Clerk whereas, Jagmohan Singh and Naib Singh were working as a Clerk. Once, the said Jagmohan Singh and Naib Singh were working in a different cadre, the petitioner cannot claim parity with the said employees.

14. Qua the argument that Jagmohan Singh and Naib Singh were later on promoted as Senior Clerk, it may be noticed that the same was done after a period of 04 years of the retrenchment of the services of the petitioner-employee hence, the said promotion is of now consequence qua the retrenchment of the petitioner-Workman.

15. It may be noticed that the retrenchment which was done was due to the act on the part of the petitioner-Workman as he resisted and failed to join as a Senior Clerk with the Notified Area Committee, Mohali . Once, one post out of the two posts in the cadre of Senior Clerk had already been transferred to the Notified Area Committee Mohali, the petitioner-employee being the junior most in the said cadre, was liable to be transferred, which was done but as the petitioner failed to join the post at Notified Area Committee Mohali, he was brought back in the respondent-Corporation but as there was no other post of Senior Clerk was available with the respondent-Corporation to adjust the petitioner-Workman, the services of the petitioner-Workman had rightly been retrenched by the respondent-Corporation.

**CWP-6270-1998 (O&M)****-7-**

16. Keeping in view the facts and circumstances recorded hereinbefore, no ground for interference by this Court is made out and the writ petition is accordingly dismissed.

17. Civil miscellaneous application pending if any is also disposed of.

March 19, 2025
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No