



CWP-15852-2019 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-15852-2019 (O&M)
Decided on :21.03.2025**

ANOOP

. . .Petitioner

Versus

UNION OF INDIA AND ORS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. S. K. Bawa, Advocate
for the petitioner.

Mr. Munish Kapila, Advocate
for respondents No. 2 & 3
assisted by Sh. Kanwal Bir Singh, Superintendent
Gade II, Establishment, District Court, Chandigarh.

Mr. Manjeet Singh - Respondent No. 4 in person.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the challenge is to the order dated 12.04.2019 (Annexures P-4 & P-5) by which, the petitioner has been reverted back from the post of Senior Assistant/Reader Grade-III to the post of Clerk and respondent No.4 has been promoted from the post of Clerk to the post of Senior Assistant and has been posted as Library Assistant in the sessions Division, U.T. Chandigarh, which act on the part of the respondents is causing prejudice to the petitioner.

2. Learned counsel for the petitioner submits that vide order dated 28.03.2018 (Annexure P-2), the petitioner was promoted as Senior Assistant and was directed to perform the duties of Reader-Grade III and vide impugned order dated 12.04.2019 (Annexure P-4), the petitioner



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has been reverted to the post of Clerk, which act on the part of the respondents is arbitrary and illegal.

3. Learned counsel for the petitioner submits that the promotion of the petitioner to the post of Senior Assistant could not have been reconsidered by the respondents as the petitioner was granted the same after considering the claim of the juniors, hence, the reversion of the petitioner to the post of Clerk from the post of Senior Assistant is arbitrary and illegal.

Learned counsel for the petitioner further submits that the amendment of the Chandigarh Union Territory, Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, notified by Chandigarh Administration on 01.02.2000 (hereinafter referred as the 'Rules') to the effect that the condition that one post of the Assistant will be filled as a library Assistant with a candidate having certain qualifications which rule was never brought to the notice of the petitioner and such amendment to the rule can not be looked into after the promotion of the petitioner so as to pass a order causing prejudice reverting the petitioner from the post of Senior Assistant to the post of Clerk.

While issuing the notice of motion on 31.05.2019, the operation of the impugned order was stayed qua the petitioner by the Co-ordinate Bench of this Court.

5. Upon notice of motion, the respondents have appeared and has submitted that in the year 2012, it was decided to fill one post of Library Assistant with certain qualification to be possessed by such



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clerk, who could be posted as Library Assistant. In case, any of the Clerk working in the Sessions Division does not possess the said qualification required for the post of Library Assistant, then the said post of Library Assistant is to be given to a normal clerk having five years experience.

6. Learned counsel for the petitioner submits that at the time when the promotion of the petitioner was ordered in the year 2018, the condition that the post of Library Assistant was to be filled up with the employee who possess certain qualification, was not brought to the notice of the authority concerned which led to the promotion of the petitioner on his own seniority.

7. Learned counsel for the respondents submits that respondent No. 4 who possessed the requisite qualification to be posted as Library Assistant and was raising a claim, even though at one given point of time the same was rejected as no such qualification was found to be mentioned in the Rules but later on the amendment of the year 2012 was brought to the notice of the authority which established the claim of respondent no. 4 to claim the post of Library Assistant being fully eligible as per the qualification prescribed in the amendment to the rules governing the services which was done in the year 2012 hence, respondent No. 4 was granted promotion as a Library Assistant as he was eligible when promotion was granted to the petitioner as Senior Assistant and the petitioner who was the junior most Senior Assistant, was reverted back to the post of Clerk.

8. Learned counsel for respondents submits that after the reversion of the petitioner, another post of Assistant had become



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available on 05.03.2020 after the death of one Ashok Kumar, which post is to be given to the petitioner but only upon reconsideration of his claim.

9. Learned counsel appearing on behalf of the petitioner submits that the petitioner is willing to accept the post of Assistant which has become available on 06.03.2020 but apprehension is that upon the change of the date of the promotion from 28.03.2018 to 06.03.2020, the benefits such as pay already paid to him will be recovered.

10. Learned counsel for the respondents submits that no such decision has been taken so far by the Competent Authority as to whether amount given to the petitioner while he was working as Senior Assistant will be recovered or not.

11. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

12. From the pleadings, which have been noticed herein above, it is clear that out of the total posts of Assistant available in the office of Sessions Division, U. T. Chandigarh, one post of Library Assistant was to be filled up from amongst the clerks of the Sessions Division, U. T. Chandigarh, having special qualification as per the Rules amended in the year 2012. Respondent No. 4 fulfilled the said amended qualification required for the post of Library Assistant but while granting the promotion to the petitioner in the year 2018, the said amendment of the year 2012 in the Rules was not placed before the competent authority so as to take appropriate decision. Subsequently, keeping in view the advise given by the High Court that the competent authority is free to take decision on the representation of respondent No. 4 who was claiming



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promotion to the post of Library Assistant, the competent authority after considering the claim, keeping in view the recommendation of the a committee constituted for the said purpose, decided that respondent No. 4 was entitled for promotion ahead of the petitioner by treating one post of the senior Assistant as Library Assistant keeping in view his qualification. The said decision is not contrary to any rule governing the service but is rather in accordance with the rules, hence, the grievance of the petitioner that despite regular promotion as Senior Assistant in the year 2018, he has been reverted to post of Clerk to accommodate respondent No. 4 without any valid justification cannot be accepted.

14 Further, another post of Senior Assistant had become available on 05.03.2020 and keeping in view the interim order granted, the petitioner is continuing on the post of Assistant even as of now. That being so, the petitioner can be adjusted against the said vacant post which had already become available on 05.03.2020 so that, there is no reversion of the petitioner from the cadre of Senior Assistant to the cadre of clerks.

15. Further, as the petitioner was promoted to the post of senior Assistant by the respondents themselves and thereafter, he continued in service under the order of this Court, even though the promotion of the petitioner to the post of Senior Assistant will count from 05.03.2020 for all intents and purposes including further service benefits in the cadre of Senior Assistant, but, any excess pay which has already been paid to the petitioner upto 05.03.2020 will not be recovered from the petitioner.

16. Keeping in view the totality of the circumstances of the present case, it is directed that respondent No. 4, will be promoted to the

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post of Senior Assistant keeping in view the impugned order dated 12.04.2019 (Anneuxre P-4) and will be granted the service benefits according to the said order. However, the petitioner will be considered to be promoted as Senior Assistant w.e.f. 05.03.2020 for all intents and purposes and any salary paid to the petitioner in excess while working on the post of Senior Assistant upto 05.03.2020 will not be recovered.

17. The present petition disposed of in above terms.

18.. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

21.03.2025

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Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: ~~Yes~~/No