

(2013) 08 P&H CK 0645

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14537 of 1991 (O and M)

K.L. Nijhawan

APPELLANT

Vs

Haryana State Electricity Board

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2014) 1 PLR 79 : (2014) 2 SCT 392

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : N.C. Kinra and Mr. Harsh Kinra, in RSA No. 3020 of 2001, Mr. G.S. Gandhi in CWP No. 14537 of 1991, for the Appellant;

Final Decision : Dismissed

Judgement

K. Kannan, J.—The petitioner, who was in the Revenue Department of Haryana State Electricity Board, seeks to challenge the promotion orders issued to respondents 5 to 10 on the ground that they were juniors to him in the clerical cadre and that he should be promoted to the higher post in the clerical cadre. The writ petition had been filed after the institution of a civil suit in which the petitioner had sought for a direction to promote him as Head Clerk in clerical cadre or in the alternative to give to him the benefit under the Assured Career Progression Scheme in the accounts cadre. The suit had been dismissed making reference to the fact that he had earlier sought for repatriation to the clerical cadre which was denied and when he filed earlier writ petition, he was given a liberty to make a representation. That representation had been given and when a reasoned order had also been passed the writ petition has been filed challenging the said order. When the appeal was filed, the appellate Court adverted to the fact that the plaintiff had actually filed the instant writ petition in CWP No. 14537 of 1991 and, therefore, no relief need be given to him and his right will abide by the decision of this Court in this writ petition. The plaintiff has appealed to this Court through RSA No. 3020 of 2001, in which, I have formulated the following substantial questions of law:-

i) Whether the plaintiff, who had already been confirmed in the cadre of UDC to be deemed to be continue as such, although he had moved over to the commercial cadre as Divisional Accountant to which post he was not allegedly confirmed?

ii) Whether the plaintiff continued to retain his lien on the post in the clerical cadre in which he was confirmed as UDC, while he was holding another post in the commercial cadre and hence, entitled to seek for repatriation by exercising his right to lien under Rule 3.13, Part-I, Punjab Civil Services Rules Vol. I.?

Both the cases address the same issue regarding his entitlement to be repatriated to the clerical cadre and to give the benefit of promotion from the date when his juniors in the clerical cadre were promoted.

2. It is brought out on record which was admitted by both parties that in the establishment of the Board, the plaintiff/petitioner could be considered in two distinct streams of employment. The clerical cadre that allowed for an upward mobility from LDC to UDC, Commercial Assistant, Assistant, Head Clerk and Superintendent. In the commercial cadre, the hierarchy was Divisional Accountant, SAS Accountant, Accounts Officer, Senior Accounts Officer and Head of the Department. The petitioner's contention was that he was appointed as LDC on 20.07.1963, earned promotion as UDC and confirmed on 28.07.1968, but he took the accounts examination and moved over from the clerical cadre to commercial cadre and appointed as Divisional Accountant. He wanted to go back to the clerical cadre when he could not improve his promotion prospects which required him to pass a departmental examination in accounts. When he sought for repatriation to the clerical cadre by pointing out to some of his juniors, who had been promoted to still higher posts, he was asking for consideration of promotion in the clerical cadre. This was denied to him by a reasoning that he had voluntarily opted to move over to the commercial cadre and having exercised the option and earned also a higher scale of pay and promotion, he could not ask for a repatriation. The argument was that the petitioner had been in service from the year 1963 and knew fully well, two streams of cadre were in place in the Electricity Board and having opted for a shift in the year 1979, cannot exercise as option to be repatriated to clerical cadre.

3. The learned counsel for the petitioner would argue that the post where he was confirmed was the substantive post and although he was appointed as Divisional Accountant, he had not been confirmed in that post and he had a right of lien to his substantive post in the clerical cadre. The counsel would refer me to Rule 3.13 of Punjab Civil Services Rules, Volume-I, as applicable to Haryana, in support to his contention that he has right of lien and he was entitled to be repatriated to his substantive post for consideration for further promotion in his parent cadre. The counsel also refers to me two decisions of this Court in Dalbir Singh Versus State of Punjab and others-2005 (3) RSJ 83 and S. Aryan Versus Md. Ahmedulla Khan and others-2006 (4) RSJ 677.

4. There is no difficulty in accepting the fact that the petitioner was senior to the private respondents in the clerical cadre. If he had persisted in the same line and if anyone of his juniors had been promoted, the issue of being considered for promotion from the date when his juniors were promoted would arise. In this case, however, it is an admitted fact that there are two different cadres in the establishment, namely, accounts and clerical cadres. When he was appointed in the year 1979 as Divisional Accountant, he was getting absorbed in another line and it ought not to be taken merely as temporary officiation. He earned a new qualification by participating in departmental examination and had joined as Divisional Accountant. Cases of exercise of lien when a person is appointed on deputation or in an employment in an ex-cadre post or a situation where a person holds an ad hoc promotion are wholly different from a case such as what obtains in this case, such as it obtains to a person opting for a different stream in the same establishment after acquiring additional qualification and seeks for return to his original cadre. Such a return will be impermissible unless rules themselves allow for such a course. The reliance in the judgment of this Court in Dalbir Singh's case (supra) is misplaced because this Court was considering the case of a person, who was on deputation with the local government department as Law Officer and he held a lien to the post of Superintendent Grade-II. An appointment to a higher post as Under Secretary was denied to him although the channel of promotion was through a substantive post which he was entitled to hold from his parent cadre. S. Aryan's case (supra), the Supreme Court was explaining that there was nothing like lien on a post unless a person was made permanent in a post. It sought to explain the difference between the fact that person is regularized was not same thing as confirmation of service. I do not know as to how this judgment could help the petitioner in any way, for unless the post to which the petitioner was appointed in the accounts cadre was a post on deputation or an ad hoc appointment, it could not be stated that the petitioner had a lien to the clerical cadre. When he had opted consciously to the accounts cadre, he had to only look for future prospects in the same stream and cannot seek for return to his original post. This can result in very serious turnover in any establishment, if the career-switch to and fro were to be entertained at the instance of the employee at his whims. The relief claimed in the plaint and the writ petition was, therefore, not possible at all.

5. The reference to Rule 3.13 of the Punjab Civil Services Rules is also without any substance, since it deals with five different situations: (i) when he performing duties of the same post; (ii) while he is in foreign service or holding a temporary post or officiating in another post; (iii) during joining time on transfer to another post unless he is transferred substantially to a lower post, in which case, his lien is transferred to the new post from the day when he is relieved of his duties without post; the lien at the place here will obtain only during the joining time of transfer; (iv) when a person who was on leave other than refused leave granted after the date of compulsory retirement; (v) a person is under suspension and suspension is revoked. None of the five circumstances delineated

under the relevant rules is applicable to the petitioner. He cannot take an appointment to the accounts cadre after acquiring of a new qualification as though it was an appointment in an ad hoc post. It was cadre post and a regular appointment. There was no question of the petitioner seeking for repatriation to the clerical cadre.

6. In the suit, there has been a prayer for grant of at least the ACP scales. It has been rejected on a mere contention that the petitioner had earlier 3 promotions and ACP will be available only in case of stagnation. The counsel argued before me that the petitioner continued to be in the Accounts Department in the same post in which he continued till his retirement without earning any promotion. He did not cite before me any relevant rules relating to ACP scheme to secure the relief. It is, therefore, not possible for me to make any specific direction therefor. No reliefs are possible and both the cases i.e. Civil Writ Petition No. 14537 of 1991 and Regular Second Appeal No. 3020 of 2001 are of no merit and they are bound to be dismissed and accordingly, dismissed.