
(2011) 03 P&H CK 0491

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15365 of 1991

Rampal Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 03 P&H CK 0491

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—Succinctly, the relevant facts, which require to be noticed for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, are that Petitioner was appointed as Conductor purely on temporary basis in the pay scale of? 400-600, by virtue of appointment letter dated 31.8.1984 (Annexure P1). The Petitioner claimed that since from the very beginning of his appointment, he is performing his duties as Clerk attached with the Legal Advisor, so, he is entitled to be absorbed permanently as such. The representations filed by him in this behalf were stated to have been wrongly rejected by the competent authority, although he was recommended to be absorbed in the cadre of Clerk by his Field Officer. The Petitioner has also pressed into service the plea of discrimination as according to him, the Respondents have absorbed Dharam Pal Conductor and Sant Sarup Fitter in the cadre of Clerks under the similar circumstances.

2. Levelling a variety of allegations and narrating the sequence of events, in all, the Petitioner claimed that from the very beginning of his entering into the service as he was working as Clerk till today, therefore, he is entitled to be absorbed in the cadre of Clerk permanently. On the basis of aforesaid allegations, accordingly, the Petitioner preferred the instant writ petition for issuance of directions in this relevant connection, invoking the provisions of Articles 226 and 227 of the Constitution of India, in the manner indicated hereinabove.

3. The Respondents have contested the claim of the Petitioner and filed their joint written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petition, cause of action and locus standi of the Petitioner. According to the Respondents that since the Petitioner was never appointed as Clerk, so, he has no legal right to be absorbed in the regular cadre of Clerk permanently. It will not be out of place to mention here that the Respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

4. After hearing the learned Counsel for the parties, going through the record with their valuable assistance and after considering the entire matter deeply, to my mind, the instant writ petition deserves to be partly accepted in this context.

5. As is evident from the record, that the present writ petition came up for hearing before a Division Bench of this Court and the following order was passed on 7.10.1991:

Contents that the Petitioner has been working as a Clerk although appointed as Conductor since the year 1984 and that the other similarly placed persons mentioned in Annexure P9 have been absorbed as Clerks but the Petitioner has not been so absorbed despite filing the representations and recommendation of the competent authority. Notice of motion for 18th of November, 1991.

In the meanwhile, the Respondents are at liberty to dispose of the representations of the Petitioner by taking into consideration the recommendation of the concerned authority.

6. In pursuance thereof, the Transport Commissioner, Haryana (Respondent No. 2) (competent authority) decided the representation of the Petitioner, by way of impugned order dated 25.11.1991 (Annexure P11).

7. What is not disputed here is that Petitioner has pressed into service the plea of discrimination and specifically pleaded that one Dharam Pal Conductor and Sant Sarup Fitter, who were working as Clerks, were absorbed by the Respondents under the similar set of circumstances. The learned State counsel has fairly conceded that Dharam Pal Conductor was absorbed as Clerk by Respondent No. 2, vide office endorsement Nos. 1322-25 EA5/E-1 dated 29.1.1993. This aspect of the matter was not considered and completely ignored with impunity by Respondent No. 2. Assuming for the sake of argument (though not admitted), if the above named persons were absorbed under the similar circumstances, then why the plea of the Petitioner was negatived, was the moot point to be decided by Respondent No. 2, who has omitted to do so in this relevant direction, particularly when his (Petitioner) case was recommended by the Field Officer. Therefore, the impugned order (Annexure P11) cannot legally be maintained in the obtaining circumstances of the case.

8. In the light of the aforesaid reasons, the instant writ petition is accepted. Consequently, the impugned order (Annexure P11) is hereby set aside. The

Respondent No. 2 is directed to re-decide the matter/representation of absorption of the Petitioner as a Clerk at par with other similarly situated persons, in view of the aforesaid observations and in accordance with law, within a period of three months from the date of receipt of certified copy of this order.