
(2013) 07 P&H CK 0921
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 20151 of 2010

Satyavir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2014) 1 SCT 132

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : R.K. Malik, with Mr. Vijay Dahiya, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Judgement

Rajiv Narain Raina, J.—Heard. The petitioner was a part of the recruitment process initiated by the Haryana Staff Selection Commission for filling up 662 posts of Clerks. The petitioner remained successful in the selection made on 15.10.1989. Since there were large number of posts of Clerks to fill up the vacancies existing in various departments, the name of the petitioner was recommended in the Social Welfare Department, Haryana. However, it was a fortuitous circumstance that there was no post available in the department recommended. Since there were other candidates left in the same quandary, the matter was litigated and finally the issue went up to the Supreme Court which was resolved on 18.8.1998 with a direction to recommend the names of the candidates where the posts were found lying vacant. This is how the petitioner's name was recommended to the Treasury and Accounts Department, Haryana where he joined on 22.1.2000.

2. Rule 12 of the Haryana Finance Department Treasury (Group-C) Service Rules, 1980 lays down that the seniority of Clerks has to be determined in order of merit determined in the same selection. The seniority according to merit was denied to the petitioner. Aggrieved, he filed CWP No. 7061 of 2009 which was decided on 24.9.2009. This Court directed as follows:--

The facts in the present case are identical. Adopting the same course as a matter of following the precedents, the writ petition is allowed. Directions are issued to the respondents to re-fix the seniority of the petitioner in terms of Rule 12 of the Rules as has been laid down in the Division Bench judgment of this Court within a period of six months. Consequential benefits, if any, of course would follow.

3. The respondents were directed to follow Rule 12 and to re-fix the seniority within 6 months. After considerable and contemptuous delay, the respondents passed an order dated 21.4.2010 assigning the correct seniority position to the petitioner according to his original merit determined in the selection process. A consequential order was passed granting promotion to the petitioner from the date his junior was promoted with retrospective effect from 1.3.2008 as Assistant but his seniority was fixed notionally and so also his pay with effect from 1.3.2008.

4. The only issue pressed by Mr. Malik, learned senior counsel appearing for the petitioner is that the petitioner not being at fault to secure the appointment later than others of his batch because of lack of vacancy in the Department in which his name was recommended by the respondents, he could not be deprived of monetary benefits resulting from re-fixation of seniority by applying the principle of "no work no pay" against him. Where the Government rectifies a mistake or its omission to act in accordance with law, then the monetary benefits would automatically follow. It is not a case where the seniority list has remained in the melting pot or is mired in litigation which is finally resolved that the seniority can be fixed notionally depriving Government servants of arrears of difference of salary. Mr. Malik relies on the judgments in the case of *Mewa Ram v. State of Haryana*, AIR 1995 (5) 248, *Avtar Singh v. State of Haryana and another*, 1998 (1) RSJ 317, *Sukhvarsha v. State of Punjab* 1997 (1) SCT 404, *Krishan Kumar v. Haryana State Fed. of Consumer's Coop. Wholesale Stores Ltd.* 1997 (3) SLR 803, to contend that where a person is promoted from the date his junior was promoted, there is no justification in denying the benefit of promotion and if there is no justification to deny the benefit of promotion and promotion is so granted, then there is no further justification to deny the benefit of back wages. It would fall in place a priori.

5. Apart from case law, Mr. Malik emphatically points out to the last line of the judgment of the learned Single Judge of this Court while allowing the petitioner's writ petition that there was a clear direction which reads "Consequential benefits, if any, of course would follow". He submits that this Court when it passes an order it means what it says and says what it means. The consequential benefits in service jurisprudence would without much debate, in a seniority matter, mean monetary benefits including arrears of difference of salary, promotions, if any, which have become due meanwhile given that juniors have been promoted.

6. In fact, the State cannot today contend that it would not be liable to pay arrears of salary not having challenged either the judgment or apart of the judgment or last line of the judgment in appeal. When finality attaches to the

order, this Court has to direct the State to make monetary amends and direct payment of benefits and pay to the petitioner, the arrears of difference of salary etc.

7. Mr. Harish Rathee, learned Sr. Deputy Advocate General, Haryana has been at pains to make this Court appreciate and understand what was meant when it penned the last sentence in the judgment in CWP No. 7061 of 2009. I have no doubt that in the facts of this case, the principle of equal pay for equal work is wholly inapplicable. Consequently, the writ petition is allowed, the impugned order dated 16.9.2010 (Annexure P-4) rejecting the representation of the petitioner stands quashed. The arrears of difference of salary etc. be calculated and paid to the petitioner within 60 days of receipt of a certified copy of this order, failing which, interest will carry @ 12% per annum till payment. The parties are left to bear their own costs.