
(2009) 08 P&H CK 0202
In the Punjab And Haryana At Chandigarh

Som Nath and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Citation : (2009) 156 PLR 441

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—The petitioner filed this writ petition, seeking a writ of mandamus as well as certiorari for quashing the seniority list, Annexure P-4, and further direction to the respondents to promote them to the posts of Clerk.

2. Petitioner No. 1 joined as Peon on 9.8.1976 with Matric as a qualification in the office of Deputy Excise and Taxation Commissioner, Kurukshetra. He subsequently improved his qualification and passed inter in the year 1978. Petitioner No. 2 joined the Department as a Peon with Matric as a qualification on 9.1.1975. The petitioners claimed that they have good service record. In the year 1982, a seniority list of Peons was prepared for the purpose of promotion to the post of Clerk. In this seniority list, petitioner No. 1 was placed at Sr. No. 50 whereas petitioner No. 2 was placed at Sr. No. 16 of the seniority list. Respondent Nos. 3 to 30 were not shown in the seniority list. It is pleaded that respondent Nos. 3 to 20 were not Matriculate and, therefore, their names were not shown in the said seniority list issued in the year 1982.

3. Reference is made to Rule 9(1)(e) of the Haryana Excise and Taxation Department Subordinate Offices Ministerial (Group C) Service Rules, 1981, which regulates the recruitment to the posts of Clerks to the service. This Rule provides that the Clerks and Camp Clerks are to be appointed by direct recruitment or by promotion from amongst Group D employees and Group C employees whose scale of pay is less than that of a Clerk; provided that not more than twenty percent of the posts shall be filled in by this method. Third method of appointment of Clerks was by transfer or deputation of an official already in the

service of any State Government of India. It is urged that 20% of the posts are to be filled from amongst the Peons, who are working in the Department. On the basis of this. Rule, the persons shown at Sr. Nos. 2, 3, 5, 7, 9, 21 and 22 in the seniority list issued in the year 1982 were promoted to the post of Clerks. Shri Raunki Ram and Raj Pal were given the benefit of Backward Class quota but later on these officials were reverted after four months. They challenged their reversion orders by filing Civil Writ Petition No. 3918 of 1986, which was admitted and the same was statedly pending, when this writ petition was filed. The writ petition was admitted on 26.11.1988. No reply, in the meantime, has been filed. However, there is no need to wait for the reply in view of the limited relief claimed in the writ petition."

4. The petitioners makes a grievance that suddenly in the year 1987, without issuance of any notice to them, the seniority list issued in the year 1982 was completely changed and the seniority places of the petitioners also underwent a change to their detriment. Petitioner No. 2, who was earlier shown at Sr. No. 16 in the seniority list, now is shown at Sr. No. 31 whereas the name of petitioner No. 1 has been deleted from the seniority list. Despite best efforts, the petitioners have not been able to procure the complete seniority list, indicating the place where petitioner No. 1 has now been shown in the said seniority list. It is in this background, the petitioners have challenged the seniority list issued in the year 1987 with a prayer that the same be quashed. Further direction sought in the writ petition by the petitioners is that they be promoted to the posts of Clerk under the 20% quota in accordance with Rules.

5. The main grievance of the petitioners is that the seniority list, which was drawn in the year 1982 was changed in the year 1987 without issuance of any notice to them. The petitioners certainly have acquired certain rights as per the seniority assigned to them in seniority list issued in the year 1982. If this seniority was to be changed to their detriment, the respondents were required to adhere to the principle of natural justice. The respondents could be expected to disclose the reasons to the petitioners, which had called for this change of seniority. Without giving an opportunity of hearing to the petitioners, the order to their disadvantage could not have been made.

6. Clearly, the seniority list as was issued in the year 1982, has been changed in the year 1987 without giving any opportunity of hearing to the petitioners. This change of seniority list, thus, apparently is in violation of the principle of natural justice and may not be sustainable. However, the second prayer of the petitioners that they be promoted to the posts of Clerk can not be considered and granted as prayed. Firstly, the seniority of petitioner No. 2, even in the original list, was at No. 16 and that of petitioner No. 1 at 50. There were large number of other Peons, who were senior to hem. It is also not clear whether petitioner No. 2 was also due for promotion as per the original seniority list. The reasons for changing the seniority list are also not disclosed. Since this seniority has been changed without following the principle of natural justice, it will be fair

to direct the respondents to hear the petitioners and then pass an order afresh, fixing their seniority in accordance with law.

7. The writ petition is accordingly disposed of with a direction to the respondents to serve a show cause notice to the petitioners disclosing the reasons for which the seniority list is/was required to be changed. The respondents would, however, be at liberty to pass a fresh order in accordance with law after affording appropriate opportunity of hearing to the effected persons.