
(2012) 04 P&H CK 0115
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16618 of 2010

Suresh Kumar

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 167 PLR 80 : (2013) 2 SLJ 405

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court with a grievance that after his transfer from District Sirsa, where he was appointed on 19.12.1984 to District Ambala, vide order dated 21.05.1986, he has not been assigned seniority as per his date of appointment. Counsel for the petitioner contends that the petitioner was appointed as Patwari in District Sirsa on 19.12.1984 on regular basis. He was, vide order dated 21.05.1986 (Annexure P-1), transferred on administrative grounds from District Sirsa to District Ambala. This transfer was not on the request of the petitioner but the respondents have proceeded to transfer him on their own. After his transfer, petitioner was not assigned the seniority in District Ambala by counting his previous service in District Sirsa and he has been put at the tail-end of the seniority list in District Ambala when the same was prepared taking his date of appointment as 21.05.1986 the date of his transfer. This, the counsel for the petitioner contends, is not sustainable in the light of the fact that the petitioner stood transferred by the respondents on administrative basis. Although the statutory Rules provide that the seniority is to be maintained at the district level as the cadre is a district cadre but when without the consent of the petitioner, he has been transferred out of the District of his appointment, his claim of seniority from the initial date of

appointment cannot be taken away for an act of transfer over which the petitioner has no control. He, accordingly, prays for direction to the respondents to fix his seniority in District Ambala and thereafter, in Yamuna Nagar District where the petitioner is presently posted after the bifurcation of the District Ambala into Districts Ambala and Yamuna Nagar.

2. On the other hand, counsel for the respondents submits that the seniority against post of Patwari is maintained at the district level as the appointing authority is the Collector. He contends that since the cadre is a district cadre, petitioner cannot, on his change of cadre from District Sirsa to Ambala, be granted seniority from the initial date of his appointment as he is posted in the cadre in Ambala District on 21.05.1986 when he joined there on his transfer. The seniority, which has been granted to the petitioner from the said date in District Ambala, is in consonance with the statutory Rules and, therefore, the writ petition deserves to be dismissed.

3. I have considered the submissions made by the counsel for the parties and have gone through the records of the case.

4. Petitioner, admittedly, was appointed in District Sirsa as Patwari on 19.12.1984 on regular basis. He continued to work there as a Patwari when vide order dated 21.05.1986 (Annexure P-1), he and some other persons were transferred to different districts on administrative basis. Petitioner, who was working in District Sirsa, was transferred to District Ambala vide this order. He, in compliance with the said order, joined as Patwari in District Ambala. The seniority, when framed in District Ambala, he found his name at the tail-end of the seniority list and he had lost his earlier service which he has rendered in Sirsa for the purpose of seniority. It would not be out of way to mention here that the transfer order dated 21.05.1986 was issued by the respondents on their own and it was neither on the request of the petitioner nor with his consent. If that be the situation, the stand of the respondents that the seniority and the cadre of Patwari is a district cadre and, therefore, with the change of district, the cadre would change which would result in losing the seniority, would be correct only in a situation where an employee opts for or makes a request for a transfer from one district to the other. Present case is not of such a nature. The transfer of the petitioner was ordered by the respondents on administrative grounds. Petitioner was not given an option neither was his consent obtained nor was he given an opportunity to agitate against the transfer orders. He, as a servant, followed the dictates of the powerful Government with no options available to him. He joined in District Ambala from Sirsa. Under those circumstances, petitioner cannot be deprived of his seniority from the date of his initial appointment. His cadre has been changed not on his volition but at the dictates and direction of the respondents. Accordingly, the claim of the petitioner for taking his date of appointment into consideration for fixing his seniority in the district cadre at Ambala and thereafter in Yamuna Nagar where presently he is posted after the bifurcation of the District Ambala into Districts Ambala and

Yamuna Nagar, is fully justified. His right of claim of seniority cannot be obliterated by an act, over which he had no control and he had no option but to comply with the dictates of the mighty State. In these circumstances, the present writ petition is allowed. A direction is issued to the respondents to fix the seniority of the petitioner in District Yamuna Nagar taking his initial date of appointment to be his date of joining the cadre in Yamuna Nagar i.e. 19.12.1984. Petitioner shall also be entitled to all consequential benefits, which may flow from granting him the correct seniority as per the directions issued by this Court. The consequential benefits, if any, for which the petitioner is held entitled to now, be granted to him within a period of three months from the date of receipt of certified copy of this order.