
(2013) 09 P&H CK 0423
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15173 of 2003

Tejwinder Singh

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2013) 09 P&H CK 0423

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : D.S. Patwalia, for the Appellant; H.S. Brar, Addl. A.G., Punjab, for Respondent No. 1, Mr. Arun Jain, with Ms. Deepali Puri, Advocate and Mr. Sumeet Mahajan, with Mr. Amit Kohar, Advocate, for Respondent Nos. 4, 5, 6, 12 and 13, for the Respondent

Final Decision : Disposed Off

Judgement

Hemant Gupta, J.—Present writ petition has been preferred by the petitioner claiming promotion to the post of Additional District & Sessions Judge from 30.05.2001 and as Civil Judge (Senior Division) from May, 1996, the date from which persons junior to him were promoted. The petitioner appeared in the Punjab Civil Services (Judicial Branch) Examination held in the year 1989, the result of which was declared on 03.07.1990. In the result published in Government Gazette on 14.09.1990, the petitioner was placed at merit position No. 17. On 08.02.1991, the petitioner was appointed and assigned seniority in order of merit determined by the Commission. In pursuance of such order, the petitioner joined on 15.02.1991 at Ludhiana.

2. Though, as per the result, the petitioner was awarded "0" marks in Criminal Law Paper-III, but the petitioner continued to discharge his duties on the basis of merit declared by the Commission and on the basis of which appointment letters were issued to all the candidates. On 30.08.1997 i.e. approximately after more than 7 years of Gazette Notification, the petitioner sent a letter to the Registrar of the High Court intending to submit a representation to the Principal Secretary,

Home and Administration of Justice Department, Punjab in respect of revising of merit in the Punjab Civil Services (Judicial Branch) examination result. In pursuance of such representation, the Punjab Public Service Commission in the revised result awarded the petitioner 101 marks out of 200 marks instead of "0" marks in the Criminal Law paper. Accordingly, the petitioner was placed below Shri Bal Krishan Mehta and above Shri Harjinder Pal Singh. The claim of the petitioner in the present writ petition is based upon the revised seniority and the fact that the down grading of Annual Confidential Report for the year 1995-96 is illegal and against the judgment of this court in A.D. Gour Vs. Punjab and Haryana High Court At Chandigarh,

3. The petitioner was graded "B-Satisfactory" in the Annual Confidential Report (for short "the ACR") for the year 1994-95. However, in the year 1995-96, the learned Inspecting Judge graded the petitioner "B Plus (Good)", but such remarks were down-graded to "B Satisfactory" by the Full Court. It is the said entry in the ACR, which is subject matter of challenge in the present writ petition. Such entry was recorded on the basis of Full Court decision dated 25.07.1996, which is subject matter of challenge in the present writ petition. It may be noticed at this stage that said decision was rescinded on 21.12.1998. It may also be noticed that the petitioner was again graded "B Satisfactory" in the year 1997-98.

4. The petitioner submitted a representation on 19.02.1999 in respect of the remarks recorded in the year 1997-98, which was declined vide communication dated 07.06.1999. The petitioner submitted another representation on 08.01.2001, but the same was also declined on 04.01.2002. The petitioner submitted another representation for up gradation of his remarks for the year 1995-96 on 11.07.2002, which was declined vide communication dated 05.06.2003. The petitioner asserts that the learned Inspecting Judge has actually graded the petitioner "B Plus (Good)" for the year 1995-96, but the same was down-graded by the Full Court in view its decision taken on 25.07.1996.

5. It is also pointed out that the Officers junior to the petitioner as per revised seniority were promoted as Additional District & Sessions Judge earlier in time than the petitioner and that down-grading of his remarks for the year 1995-96 is not justified, therefore, he is entitled to be promoted by taking his grading as that recorded by the learned Inspecting Judge and is entitled to promotion from the same date on which his juniors were promoted.

6. In reply, it is mentioned that the petitioner was considered for selection as Civil Judge (Senior Division)/Chief Judicial Magistrate/Judge Small Cause Court/Additional Civil Judge (Senior Division) along with other officers, in the Full Court meeting held on 16.12.1996, 07.04.1997, 05.09.1997 & 17.02.1999, but he did not fulfill the criteria for selection and was passed over. It was on 22.12.1999, the petitioner fulfilled the criteria for selection as Civil Judge (Senior Division)/Chief Judicial Magistrate/Judge Small Cause Court/Additional Civil Judge (Senior Division) and his name was approved for selection. It is also pointed out that

even as per the revised seniority list, the petitioner was not fulfilling the criteria for selection on 12.03.1996, when Shri Harjinder Pal Singh, the immediate junior to the petitioner was selected as Additional Civil Judge (Senior Division). It was only on 22.12.1999, the petitioner fulfilled the criteria for designation.

7. In CWP No. 14805 of 2004 titled "Ashwani Kumar Mehta & others Vs. State of Punjab & others" decided today, the notification granting seniority to the petitioner below Shri Bal Krishan Mehta and above Shri Harjinder Pal Singh has been set aside. Consequently, the petitioner ranks at Sr. No. 17 of the merit list.

8. The petitioner was not fulfilling the criteria for designation as Civil Judge (Senior Division)/Chief Judicial Magistrate/Judge Small Cause Court/Additional Civil Judge (Senior Division) prior to the date on which he was selected. The grievance of the petitioner in this regard is untenable. We do not find any merit in the claim of the petitioner that he is entitled to be selected as Civil Judge (Senior Division)/Chief Judicial Magistrate/Judge Small Cause Court/Additional Civil Judge (Senior Division) from May 1996.

9. In respect of promotion as Additional District & Sessions Judge, it is pointed out that the petitioner did not fulfill the criteria of having "five B Plus (Good)" reports in the preceding 7 years of service when the Full Court considered the cases of the petitioner and his juniors on 14.05.2001. He had only three B Plus (Good) reports at that time. In the subsequent meeting held on 08.04.2002, the petitioner had got only four B Plus (Good) reports though five B Plus (Good) reports are required for promotion. It was only on 18.09.2002, the petitioner fulfilled the criteria of having five B Plus (Good) for promotion, when he was promoted. It is also pointed out that after the Hon'ble Inspecting Judge recorded his remarks, the report is put up before the Administrative Committee and, thereafter, before the Full Court for consideration. It is thereafter such report is finalized. It is also pointed out that a Sub Committee of the High Court submitted a report dated 15.02.1996 with regard to the criteria for recording of Annual Confidential Reports by the Full Court. Such report of the Committee was approved by the Full Court on 25.07.1996. The relevant decision is as under:

(iii) If the Inspecting Judge has given higher grading to an officer in the Annual Confidential Report in comparison to the Full Court grading of the previous year, then the Full Court grading shall remain the same for the year in question, as was given to him in the previous year.

10. It is in view of such decision of the Full Court; the grading recorded by the Inspecting Judge was down-graded to B - Satisfactory. It is also pointed out that ACR on the work and conduct of the petitioner for the year 1997-98 was B - Satisfactory and there was no down-grading.

11. A Division Bench of this Court in A.D. Gour's case (supra) has held that the process of the down-grading of the remarks recorded by the Inspecting Judge on the basis of decision of the Full Court as illegal. It was observed as under:

20. As already noticed, the confidential report of the petitioner for the year 1997-98 was down graded by the Full Court on 03.12.1998, the petitioner had moved his first representation dated 8th February, 1999, which was rejected. He subsequently filed another detailed representation, when he was ignored for promotion, relying upon the judgment of the Hon"ble Supreme Court. However, his second representation was rejected by the High Court by a short order. Obviously and as record reveals, the representation of the petitioner was considered by the High Court on two different occasions, after pronouncement of the judgment in Ishwar Chander Jain Vs. Punjab and Haryana High Court (CWP No. 4941 of 1993 decided on 10.09.1998).

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For the reasons afore-recorded, we allow this writ petition, quash the orders dated 19.02.1999, 07.06.1999 and 22.02.2003, Annexures P/3, P/5 and P/7 respectively and direct the Registry of the High Court to record the confidential report of the petitioner as "B + (Good)" for the year 1997-98, unless some material is placed before the High Court to take any other view, as may be permissible in law.

12. Since the down-grading by the Full Court was without any material, but only on the basis of report of the previous year, we find that the issue raised in the present petition is concluded by the judgment of this Court in A.D. Gour's case (supra). Therefore, we set aside the decision of the Full Court communicated on 06.03.1997 (Annexure P-5) down-grading the petitioner from "B Plus (Good)" to "B-Satisfactory".

13. In view of the above, the matter is remitted to the High Court for finalization of Annual Confidential Report of the petitioner for the year 1995-96 on such material, as it may have. Consequent to the finalization of Annual Confidential Report for the year 1995-96, the claim of the petitioner for promotion shall also be considered in accordance with law. Disposed of accordingly.