

(2017) 3 SCT 82

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 22309 of 2013

Arun Kumar Verma

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Feb. 6, 2017**Acts Referred:**

- Constitution of India, 1950 - Article 14, Article 16, Article 226

Citation: (2017) 3 SCT 82**Hon'ble Judges:** P.B. Bajanthri, J.**Bench:** Single Bench

Advocate: R.K. Malik, Senior Advocate with Mr. Kuldeep Sheoran, Advocate, for the Petitioners; Harish Rathee, Sr. D.A.G. Haryana, for the Respondent; Shireesh Gupta, Advocate, for the Respondents No. 5 to 8, 16 to 18, 20, 25 to 32, 36, 41 to 45 and 50; Rajbir Sehrawat, Advocate, for the Respondent No. 21

Final Decision: Allowed

Judgement

P.B. Bajanthri, J.—In the instant petition, the petitioners have questioned the validity of the order dated 12/13.9.2013 by which claim of the petitioners to assign seniority from the date of deputation/posting in the Labour department has been rejected and they were assigned seniority w.e.f. 8.3.2011 with reference to their option, which they exercised for permanent absorption.

2. The petitioners were appointed on different dates/years in the Industries Department as clerks during the period from 1986 to 1995. The Chief Secretary, Government of Haryana issued a policy decision dated 18.9.2003 to all the Heads of the Department in Haryana relating to guidelines regarding transfer of excess employees as a result of restructuring/right sizing of Government Department. Pursuant to the said guidelines, Industries Department identified 91 clerks, 15 process server and equivalent cadre and 3 cleaners and sent them to the Labour Department by order dated 17.2.2004. The same was implemented by the Labour Department while accepting the duty report of the

petitioners among others on 29.6.2004. Thereafter, the Labour Department sought option from the petitioners to remain in the Labour Department or to go back to their parent department i.e. Industries Department. The petitioners have exercised their options in the year 2010 and the same were accepted by the Labour Department on 8.3.2011. When thing stood thus, the Labour Department issued a provisional seniority list of clerk as on 27.2.2013 while inviting objections from the persons who are affected by the said provisional seniority list. Pursuant to the same, the petitioners are stated to have submitted their objections stating that they are entitled to seniority w.e.f. 29.6.2004 the date on which their services have been taken by the Labour Department. The official respondents while considering objections of the petitioners to the provisional seniority list rejected their objections stating that their options for permanent absorption in the Labour Department is dated 8.3.2011 and the same cannot be preponed. Thus, the petitioners have presented this petition.

3. Learned counsel for the petitioners submitted that the petitioners who were working in the Industries Department at the behest of the Chief Secretary Government of Haryana to stream line the departments with reference to restructuring/right sizing of Government Department were transferred/deputed to the Labour Department on 29.6.2004. Therefore, they are entitled for seniority in the Labour Department from 29.6.2004 and not from 8.3.2011 the date on which their options were accepted. Learned counsel for the petitioners pointed out that as per instructions dated 17.3.1987 (Annexure P-11), Para 12 (B) (vi) relates to seniority in which it is held that the seniority be fixed from the date of their original deputation and not from the date of exercise of their option. The date of deputation of the petitioners is 29.6.2004. Hence, their seniority is required to be given w.e.f. 29.6.2004. It was further pointed out that while passing the impugned order, instructions dated 17.3.1987 has not been taken into consideration by the Labour Commissioner in its order dated 12.9.2013. Thus, order dated 12.9.2013 is liable to be set aside and the petitioners are entitled for seniority w.e.f. 29.6.2004 the date on which they have been deputed/posted to the Labour Department.

4. On the other hand, learned counsel for the respondent-State pointed out that the services of the petitioners to the Labour Department on deputation w.e.f. 29.6.2004 was for a period of one year. Thereafter due to administrative reason, their services have been continued and for the first time they have sought options from the petitioners and others and the same was finalized on 8.3.2011 while accepting the options of the petitioners and others. It was further submitted that when the date of absorption is itself 8.3.2011. Their seniority is required to be counted w.e.f. 8.3.2011 and not from 29.6.2004. Hence, there is no infirmity in the impugned order dated 12.9.2013 passed by the Labour Commissioner.

5. Learned counsel for the private respondents except respondent No.21 submitted that they were recruited subsequent to 29.6.2004. Therefore, their seniority would be affected if the seniority of the petitioners is fixed from 29.6.2004 instead of 8.3.2011. It was further pointed out that the petitioners were on deputation and their services were absorbed in

the Labour Department only on 8.3.2011 after receipt of the options exercised by them in the year 2010. Therefore, the petitioners are not entitled to seniority w.e.f. 29.6.2004. Hence, rightly the Labour Commissioner has rejected the claim of the petitioners vide impugned order dated 12.9.2013.

6. Learned counsel for respondent No. 21 submitted that reliance of the petitioners on Annexure P-11 is not applicable having regard to the language employed in Annexure P-11 in particularly para 2.4 that the petitioners are not on deputation and they were only posted from one department to another. Therefore, instructions dated 17.3.1987 is not applicable. Thus, the petitioners were not on deputation and they were posted in Labour Department. Hence, no interference is called for in respect of order dated 12.9.2013.

7. Heard learned counsel for the parties.

8. The petitioners who were working in the Industries Department as clerks, their services have been deputed to the Labour Department on the ground that they were in excess in Industries Department. Such an arrangement has been made pursuant to the decision of the Chief Secretary to the State of Haryana vide Annexure P-1 dated 18.9.2003. Thus, it is in the public interest the petitioners' services have been deputed to the Labour Department. Irrespective of the word used in Annexure P-5 whether services of the petitioners were posted to Labour Department or on deputation which is for a period of one year as stated in the order dated 17.3.2004. The same has not been implemented by the Labour Department or Industries Departments that is to say that the Labour Department never repatriated the services of the petitioners nor Industries Department borrowed back the services of the petitioners. Thus, the petitioners were compelled to continue in the Labour Department for seven long years.

Thereafter, the respondents in the Labour Department took a policy decision to seek options for permanent absorption of the petitioners and others. The options were exercised by the petitioners and others. Such seeking and exercising options is in the public interest. Whenever there is a public interest in respect of transfer or on deputation or absorption, the services rendered in the parent department is required to be counted. Case of the respondents is not that the petitioners have requested on their own to seek options for permanent absorption so as to deny their seniority or other benefits for the service rendered in the parent department i.e. Industries Department. In fact, the petitioners have also rendered their services in the Industries Department. However, what has been sought by the petitioners that they are entitled for counting their seniority from the date of deputation or posting in the Labour Department i.e. 29.6.2004 having regard to the instructions dated 17.3.1987 in particularly Para 12 (B) (vi). Para 12 (B) (vi) reads as under:

"(vi) Seniority:- The seniority of officers/officials opting for service in enterprises should be fixed in a particular grade with effect from the date of their original deputation to that grade and not from the date of exercise of their option regardless of the terms offered to

them."

Thus, the petitioners are entitled for counting their services from the date of their original deputation for the post held by them in the Labour Department which is very reasonable.

9. The contention of the private respondents that petitioners have exercised their option only in the year 2010 and the same has been considered on 8.3.2011. Any absorption would be prospective and the service rendered by the petitioners prior to their absorption cannot be counted for the purpose of seniority. Such contention can not be accepted for the reasons that passing the order of deputation or posting the petitioners do not indicate that their services would be absorbed etc. Moreover, official respondents have continued the petitioners for seven long years in the Labour Department which indicates/reveals that their services were very much required in the Labour Department in the administrative and public interest. Therefore in the interest of administration, the petitioners' services have been continued. Having regard to this read with option exercised by the petitioner, conditions have not been imposed by the officials respondents insofar as service benefit like seniority is concerned. Supreme Court in the case of **Kumod Kumar and another v. State of Jharkhand and others; 2015 (4) SCC 646** has held as under:

"25. In our considered view, as a general proposition, in the absence of any express provision, there can be no dispute whatsoever, that consequent upon appointment by way of transfer, a transferred employee who acquires the right to hold an equivalent post in the exigency of service or in public interest, is entitled for the determination of his seniority, to count the period of service rendered by him against the erstwhile post, alongwith the period of service rendered by him in that post to which he has been transferred. The situation herein is however, different. The appointment of the appellants (on reversion) is neither in public interest nor in exigency of service. The appellants' appointment (on reversion) to the general line, is for the benefit of the appellants (who belonged to the Stenographers' cadre), on account of lack of promotional avenues. An employee who accepts to partipate in the process of selection to determine his suitability, as contemplated in the provisions extracted hereinabove, cannot be allowed to contend that his appointment (on reversion) to the general line, was on account of the employer's will. Having participated in the process of selection, the appellants will be deemed to have sought and opted for their appointment (on reversion) to the general line of the police force. It is only on the determination of the incumbents's suitability, through a selection process, that an individual from the Stenographers' cadre, will gain entry into the general line of Sub Inspectors/Assistant Sub-Inspectors of Police. Such appointment is neither in public interest nor in the exigency of service. Furthermore, it is not possible for us to accept, that appointment (on reversion) contemplated in the present case, can be equated with an appointment by way of transfer, as generally understood. *Stricto senso*, therefore, it is not possible for us to accept, that the appointment of the appellants from the Stenographers' cadre would fall within the regime contemplated, under the extracted clause, relied upon by the learned counsel for the appellants (from the departmental instructions, dated 26.8.1997.). 26. General principles of service law jurisprudence are

applicable, only in situations wherein there are no express rules governing the determination of seniority. We would venture to express the legal position on the basis of a sample illustration. Take for instance, the post of Constable. In the police department, the cadre of Constables is at the District level. Persons holding the same post would, therefore, be placed in separate and district District Cadres (depending upon their recruitment, to a particular District). Each District Cadre of Constables, will have a separate seniority list. In terms of seniority, Constables in one District Cadre, would not be comparable with other Constables in the remaining District cadres. Even though the post is the same, if a constable is transferred "at his own request/option" from one cadre to another, i.e., from District "A" to District "B", he would be placed at the bottom of the seniority of the cadre to which he is transferred, i.e., at the bottom of the seniority of Constables in District "B". He would not legally be entitled to count his seniority with reference to the date of his induction into the service of the police departmental instructions (dated 26.8.1997). The position would be quite different in case a constable is transferred from one district cadre to another district cadre in public interest and/or on account of a policy decision. In such a situation, even though the Constable is transferred to another cadre, i.e., from District "A" to District "B", he would legally be entitled to count his seniority with reference to the original date of his appointment against the post of constable in District "A" while determining his seniority in District "B". The above illustration would be clearly inapplicable in case a person holds post-say "X", is appointed (say, on reversion) to another post-say "Y", after participating in a selection process. When an individual moves from post "X" in a particular cadre to post "Y" in another cadre, the principle relied upon by the learned counsel for the appellants, would be inapplicable. As in the present case, the appellants were originally inducted into the Police Department to the cadre of Steno Sub-Inspectors/Steno Assistant Sub Inspectors and thereafter, were appointed on reversion to the cadre of Sub-Inspectors/Assistant Sub- Inspectors of Police in the general line of the Police Department. Herein, the appointment contemplated is from a different post with different duties and responsibilities, to another separate and distinct post with wholly different duties and responsibilities. This appointment contemplates shifting from one cadre to a different cadre. This appointment is preceded by a process of selection, to be conducted by the Central Selection Board. Herein, in the absence of statutory rules and/or express executive instructions, the transferee would not be entitled to count the period of service rendered by him in the former post, on the basis of the principle invoked by the learned counsel for the appellants. In the submissions advanced by the learned counsel for the appellants, he seeks to refer to the factual position in the latter illustration, but desires to apply the principle contemplated in the former situation. It is only because the submissions advanced at the hands of the learned counsel for the appellants, deserved to be clarified, that we have demonstrated the position through the illustration referred to hereinabove. In view of the above, we are satisfied that the claim of the appellants, based on the second contention advanced at the hands of the learned counsel for the appellants, is clearly untenable. It is so, not only because of the legal position depicted hereinabove, but also because, the general principles of seniority applicable to transfers, are inapplicable to the facts and

circumstances of the case in hand."

10. In view of the above facts and circumstances, the impugned order dated 12.9.2013 (Annexure P-10) passed by the Labour Commissioner, Haryana, is liable to be set aside. The petitioners are entitled for counting their seniority in their respective cadre in the Labour Department from the date of their deputation/posting i.e. 29.6.2004. The same shall be fixed by the official respondents of the Labour Department within a period of three months from today and further to extend all monetary benefits to the petitioners arising out of such assigning of seniority. The official respondents are also directed to examine whether the private respondents have been promoted to the further cadre. If it is so, the petitioners shall be promoted from the date of juniors' promotion. If there is shortage of vacancies, the official of the Labour Department shall give necessary notice to such of those candidates who are likely to be reverted. After receipt of reply, necessary orders would be passed by the official respondents. Such exercise shall be completed within a period of six months from today.

Petition stands allowed in the above terms.