

(2014) 07 P&H CK 0738

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition Nos. 21581 of 2010 and 1465 of 2011

Dewan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 9, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: Aman Arora, Advocate for the Appellant; Pankaj Mulwani, DAG, Punjab,
Advocate for the Respondent

Final Decision: Dismissed

Judgement

Rameshwar Singh Malik, J.

Two writ petitions bearing CWP No. 21581 of 2010 (Dewan Singh Vs. State of Punjab and others) and CWP No. 1465 of 2011 (Major Singh Vs. State of Punjab and others), are being decided together, because both are based on similar set of facts and identical issues are raised for consideration. For the facility of reference facts are being culled out from CWP No. 21581 of 2010.

2. Brief facts of the case are that petitioner joined as Patwari in the respondent-department on 9.6.1978. He was promoted as Kanungo on 10.5.1994. Dissatisfied, petitioner moved a representation, which was accepted by the Financial Commissioner (Revenue) vide order dated 11.3.1998 (Annexure P-1) and he was granted promotion to the post of Kanungo w.e.f. 6.9.1993 instead of 3.5.1994. However, still not satisfied, petitioner further represented and finally, the Financial Commissioner (Revenue), passed an order dated 31.3.2000 (Annexure P-4), reconsidering his earlier order dated 11.3.1998 and petitioner was granted promotion to the post of Kanungo w.e.f. 4.10.1989 and promotion to the post of Naib Tehsildar w.e.f. 8.11.1993. Order dated 31.3.2000 came to be challenged by

Harvinder Singh and others before this Court by way of CWP No. 5630 of 2000 wherein a Division Bench of this Court, vide order dated 28.5.2000, issued notice of motion and stayed operation of the abovesaid order dated 31.3.2000, whereby benefit of retrospective promotion was given to the petitioner. After reconsideration of the entire matter, a show cause notice was issued to the petitioner vide order dated 22.4.2010 (Annexure P-7), as to why the abovesaid promotions granted to him be not withdrawn, because he misled the authorities by concealing true facts, misrepresenting his case. Petitioner submitted his reply to the show cause notice vide Annexure P-8 dated 3.5.2010. After considering the reply filed by the petitioner and careful examination of the relevant official record, competent authority came to the conclusion that promotions granted to the petitioner were contrary to the record, because the petitioner was not eligible for the said promotions from the dates he was granted these promotions. This order came to be passed on 12.7.2010 (Annexure P-9), which has been impugned by the petitioner by way of present writ petition.

3. Notice of motion was issued and pursuant thereto, reply was filed on behalf of the respondents. Writ petition was admitted for regular hearing, vide order dated 22.3.2012. That is how, this Court is seized of the matter.

4. Learned counsel for the petitioner raised twins arguments. His first argument was that once the Financial Commissioner (Revenue) has granted promotions to the petitioner, by granting him relaxation from passing the departmental examination, for the purpose of promotion to the post of Kanungo, there was no illegality in the order dated 31.3.2000 and the same deserves to be restored. The second argument raised by the learned counsel for the petitioner was that since his juniors were promoted earlier than him, he was rightly granted promotion with retrospective effect from the date his juniors were promoted. He places reliance on the facts and figures pointed out in para 6 and 7 of the order dated 31.3.2000 (Annexure P-4) to substantiate his arguments. Finally, he prays for setting aside the impugned order, by allowing present writ petition.

5. Per contra, learned counsel for the State submits that petitioner was never granted any relaxation, from passing the departmental examination for promotion to the post of Kanungo. It was a matter of record that petitioner has not passed the examination in Urdu. Since no exemption was granted and petitioner has not passed the departmental examination for promotion, he was not eligible for promotion. He further submits that persons alleged to be juniors of the petitioner were belonging to reserved category of Scheduled Caste, who cannot be said to be juniors of the petitioner under any circumstances, because they were to be promoted, so as to fill backlog of their quota, as per the reservation policy. Since the petitioner seriously misconducted himself, while concealing the true facts putting the same in distorted and misleading manner, passing of the impugned order was the only way out to rectify the serious mistake done at the time of passing the

earlier order dated 31.3.2000 (Annexure P-4). He prays for dismissal of the writ petition.

6. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that no interference is warranted at the hands of this Court, while exercising its writ jurisdiction under Article 226 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

7. It is a matter of record and not in dispute that under the relevant provisions of law, petitioner was required to pass the departmental examination, so as to make himself eligible for promotion to the post of Kanungo. It is also not in dispute that petitioner did not pass the departmental examination, provided as a condition precedent, so as to make himself eligible for promotion to the post of Kanungo. Having said that, this court feels no hesitation to conclude that petitioner was illegally granted retrospective promotion vide order dated 31.3.2000 (Annexure P-4). Once operation of the impugned order dated 31.3.2000 was stayed by this Court in CWP No. 5630 of 2000, respondent authorities rightly issued show cause notice to the petitioner, so as to comply with the principle of natural justice. Petitioner filed his reply, which was duly considered and after examining the matter carefully, competent authority rightly came to the conclusion, while passing the impugned order dated 12.7.2010 (Annexure P-9), holding that petitioner was not eligible for promotion from the dates it were granted to him vide order dated 31.3.2000. Thus, impugned order has not been found to be suffering from any factual error or patent illegality and the same deserves to be upheld.

8. The relevant statutory rules governing the service conditions and providing the eligibility as well as method of promotion are called as Punjab Kanungo Service Rules, 1976 ("Rules of 1976" for short). Rules 8 and 19 of the Rules of 1976, which are relevant, read as under:-

Rules 8: No person shall be appointed to the Service by direct appointment unless:-

He has passed the high Secondary examination of a recognised University or Institution of its equivalent with Punjabi language upto Matriculation standard;

(ii) He has qualified the departmental examination prescribed in Appendix "C" to these Rules.

(iii) He has undergone the training prescribed in Appendix "D" to these rules.

2. No person shall be appointed by promotion from amongst the patwari Moharrir and the patwaris, unless he has qualified the departmental examination in Appendix "C" to these rules:

Provided that if no patwari who has qualified the departmental examination is available in the cadre of promotion, as Kanungo, the collector may relax this condition and the Patwari so promoted as Kanungo shall have to pass the aforesaid departmental examination within a period of two years of this promotion, failing which he shall be reverted as patwari.

Rule 19 which confers the power to relax the rules, provides as under:-

Where the Financial Commissioner (Revenue) Punjab is of the opinion that it is necessary of expedient so to do, he may, by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons.

9. A bare combined reading of the abovesaid relevant provisions of law would show that petitioner was not eligible and entitled for promotion to the post of Kanungo, unless he would have passed the departmental examination.

10. As noticed above, it was a matter of fact that petitioner has not passed the departmental examination, but he was promoted because of relaxation purportedly granted to him in this regard. So far as relaxation is concerned, it was to be granted, if at all, by the Financial Commissioner (Revenue), under Rule 19 of the Rules of 1976, duly supported with the reasons to be recorded in writing. There was no such order which might have been passed by the Financial Commissioner (Revenue), granting relaxation to the petitioner, after recording the reasons in writing for the said purpose.

11. When a pointed question was put to the learned counsel for the petitioner to refer to any relevant record to show that the Financial Commissioner (Revenue), as a matter of fact, granted relaxation in favour of the petitioner, he had no answer and rightly so, because it was a matter of record. Under these circumstances, it can be safely concluded that the competent authority rightly passed the impugned order (Annexure P-9), so as to rectify the serious mistake committed, while granting promotion to the petitioner, vide order dated 31.3.2000 (Annexure P-4) and the impugned order deserves to be upheld, for this reason also.

12. So far as the argument raised by the learned counsel for the petitioner that petitioner was granted promotion vide order dated 31.3.2000 (Annexure P-4), because his juniors had been promoted, is concerned, the same is to be noticed to be rejected. It is so said, because the argument has been found to be wholly misconceived and fallacious. The persons who were alleged by the petitioner to be his juniors, were belonging to reserved category of Scheduled Caste. In such a situation, promotion of Patwaris belonging to Scheduled Caste in their reserved quota, could not have been made the basis for promotion of the petitioner, alleging them to be his juniors. It has not come on record in any order that any of the juniors of the petitioner from General Category was promoted before him. In this view of the matter, it is unhesitatingly held that petitioner had no case either in law or on

facts and the impugned order deserves to be upheld, for this reason as well.

13. No other argument was raised.

14. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these writ petitions are wholly misconceived and without any substance. Thus, these must fail. No case for interference has been made out.

15. Resultantly, both these writ petitions stand dismissed, however, with no order as to costs.