(2016) 11 P&H CK 0109

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 26621 of 2013, CWP No. 10825 of 2015, CWP No. 7798 of 2015, CWP No. 9543 of 2015, CWP No. 9575 of 2015

Sukhminder Singh	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision: Nov. 10, 2016

Acts Referred:

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

Citation: (2017) 1 SCT 552

Hon'ble Judges: Daya Chaudhary, J.

Bench: Single Bench

Advocate: R.K. Chopra, Senior Advocate with Sunny Singla, Advocate, for the Petitioners; Rupam Aggarwal, DAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Daya Chaudhary, J. - By this judgment of mine, five writ petitions bearing CWP Nos. 26621 of 2013, 10825, 7798, 9543 and 9575 of 2015 are being disposed of as common questions of law and facts are involved therein. For the sake of convenience, facts are being extracted from CWP No. 26621 of 2013.

2. This petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of impugned order dated 31.11.2013 (Annexure P-4) vide which the claim of the petitioners has been rejected. A further prayer has also been made for issuance of directions to the respondents to consider the case of the petitioners for promotion as Principal as they fulfil the requirements of eligibility including experience.

3. Brief facts of the case, as made out in the present petition, are that the petitioners were initially appointed as Masters in different subjects in the Department of Education. They also performed the duties of higher post of Headmaster and thereafter promoted as

Headmasters on regular basis. For promotion to the post of Principal, 30% posts are to be filled up from the cadre of Headmasters. The petitioners have not been considered only on the ground that they are not having requisite experience, whereas, the petitioners have been also working on the higher post.

4. Learned counsel for the petitioners submits that for promotion to the post of Principal, an employee should be working as Headmaster under the Director and should have experience of 7 years as Headmaster. The petitioners have been working as Headmasters under the Director and are having more than 7 years of experience as Headmasters but still they are not being considered for promotion on the ground that they are not having experience of regular appointment. Learned counsel submits that experience of the petitioners on ad hoc basis has not been considered. The petitioners also filed CWP No. 16599 of 2010, which was disposed of with a direction to the respondents to consider their claim in accordance with law but still their case has not been considered. Learned counsel submits that in similar case i.e. CWP No. 12679 of 2010 titled as Chandigarh Administration v. Vipin Gupta and another, decided on 25.10.2010, similar issue was raised wherein it was held that for promotion to the post of Executive Engineer, the experience gained on current duty charge will also be counted. At the end, learned counsel for the petitioners submits that action of the respondents is not only unjustified but arbitrary and mala fide as well.

5. Learned State counsel has opposed the submissions made by learned counsel for the petitioners and submits that as per requirement of the Rules applicable to the case of the petitioners, experience of 7 years is to be considered but the petitioners are not having required experience of 7 years which is mandatory for promotion to the post of Principal.

6. Heard arguments of learned senior counsel for the petitioners as well as learned counsel for the State and have also perused the impugned order dated 31.11.2013 whereby claim of the petitioners has been rejected. Admittedly, 7 years of experience as Headmaster is required for promotion to the post of Principal. The petitioners have been working as Headmasters under the Director but said experience has not been considered only on the ground that they were not working on regular basis. It is not disputed that ad-hoc/current duty charge service towards experience is also to be counted for promotion. A similar issue was raised in CWP No. 12679 of 2010. In that case, the issue was as to whether the working experience counted for promotion to the post of Executive Engineer will include experience gained on current duty charge. This Court while relying upon different judgments of this Court has held that once an employee has gained experience whether working on ad hoc or regular basis, then the requirement of Rules stands satisfied and promotion of the employee cannot be withheld on the ground that the experience is not gained as a substantive holder of the post. The relevant portion of that judgment is reproduced as under:-

"14. A perusal of Rule 6(1) makes it patent that appointment to the service must be made as prescribed in Appendix `B''. Sub-rule (2) of Rule 6 makes it further clear that no person

could be appointed to a post in the Service unless he possesses the qualification and experience as specified against that post in Appendix `B''. A further perusal concerning requirement given in Appendix `B'' shows that for becoming eligible for promotion to the post of Executive Engineer, a Sub Divisional Engineer must have experience of working for minimum period of eight years. The Rule provides for filling up the post of Executive Engineer from that of Sub Divisional Engineer by hundred percent promotion. Therefore, as long as a person has working experience of eight years a Sub Divisional Engineer becomes eligible for promotion to the post of Executive Engineer. The expression `working experience'' cannot be construed to mean that he must have gained the experience while working on a permanent substantive post on which he has been appointed on regular basis. In other words, long term regular promotion would not be necessary to gain experience of working because whether a person works on a post in his capacity as ad hoc/current duty charge holder/temporarily his nature of duties continues to be the same which any regularly promoted person would require to discharge. Therefore, it follows that the applicant-respondent No. 1 was entitled to count his experience for the purposes of eligibility from 6.11.2001 to 30.1.2003 towards qualifying period of eight years for determining eligibility for promotion to the post of Executive Engineer.

15. In the present case, it is significant to notice that the applicant-respondent No. 1 is in any case senior most and by counting the aforesaid period of about more than 2 years he is not going to overrule any of his senior. Therefore, the argument raised by Mr. Kaushal that such a rule could work to the detriment of a senior resulting in his suppression would not arise. Therefore, we leave the question concerning application of the principle open, namely, whether experience gained on ad hoc/CDC basis could be counted for determining eligibility to the detriment and suppression of a senior employee in the cadre. On the aforesaid interpretation and rationale the conclusion reached by the Tribunal does not deserve to be interfered.

R E: QUESTION - B

16. It is also pertinent to notice that order dated 1.10.2008 passed by the Competent Authority (A-13) has granted approval for counting of service rendered by the applicant-respondent No. 1 as Sub Divisional Engineer (Civil) on CDC basis from 6.11.2001 to 30.1.2003 towards qualifying service for the purpose of eligibility for further promotion to the post of Executive Engineer subject to various conditions. This order has not been withdrawn till today. In any case, the decision passed by the Competent Authority does not suffer from any legal infirmity and, in fact, has a substantial support in the precedents of this Court. Therefore, on that account also the writ petition is liable to be dismissed.

17. As a sequel to the above discussion and the answer given to the both the questions we are of the considered view that the writ petition does not merit admission and is hereby dismissed. The applicant-respondent No. 1 is held entitled to reckon service

rendered by him on CDC basis from 6.11.2001 to 30.1.2003 towards qualifying service for determining eligibility for promotion to the post of Executive Engineer (Civil). The needful shall now be done within a period of three months from the date of receipt of a copy of this order."

Similar view has been taken by this Court in judgments rendered in **Ashok Kumar, Clerk v. State of Haryana, 2003(5) SLR 773**, **Dharam Singh, Superintending Engineer v. The State of Punjab and others, 1985(1) SLR 358**, **Balbir Singh Yadav and others v. State of Haryana and others, 1983 (1) SLR 466**, **B.S. Jain and another v. The State of Haryana and others, 1981 (1) SLR 233** and **Dr. Ravinder Paul Kaur v. State of Punjab and others, 1979 (2) SLR 645**.

7. In view of facts and law position as discussed above, it is held that the experience gained on temporary post is to be taken into consideration for the purpose of promotion as the experience gained while working on temporary/adhoc basis to the experience gained on regular basis. Even there is no requirement under the Rules that the experience should be of the regular post. The only requirement is that there should be experience of 7 years. In the present case, the claim of the petitioners has wrongly been rejected only on the ground that they have not worked on regular basis on the post of Headmasters.

8. Accordingly, the petition deserves to be allowed and impugned order dated 31.11.2013 (Annexure P-1) is hereby set aside. Respondents are directed to re-consider the case of the petitioners for promotion to the post of Principal against 30% reserved quota for promotion amongst Headmasters/Mistresses, which is lying vacant. The necessary exercise be done within a period of three months from the date of receipt of copy of this order.