

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 13561 of 2015(O&M)
DATE OF DECISION : 29.03.2019

Mohinder Pal

... Petitioner

versus

Registrar Coop. Societies, Punjab & Anr.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Amit Sharma, Advocate,
for the petitioner.

Mr. Abhaypal Singh Gill, AAG Punjab.

Mr. Vikas Singh, Advocate
for respondent No.2.

ARUN MONGA, J. (ORAL)

1. The present petition has been filed, *inter alia*, for issuance of writ in the name of *certiorari* to quash impugned order dated 31.03.2015 (Annexure P-8), owing to which the claim of the petitioner for grant of promotion with effect from the date his juniors were promoted, was declined. A *mandamus* has been sought directing respondents to promote the petitioner and to grant him consequential benefits along with interest.

2. Succinctly, the factual matrix is that the petitioner was appointed as Gate Clerk with the Punjab State Cooperative Supply and Marketing Federation Limited (for brevity, Markfed) in the year 1989. Initially, he joined at District Office, Nawanshehar, but later was transferred to Sri Muktsar Sahib. The services of the petitioner were regularized on

01.11.1992. It is the case of the petitioner that the employees working in the District Office/ Head Office formed a common cadre and are governed by Common Cadre Rules, 1990, which were framed after taking necessary sanction from the Registrar Cooperative Societies, Punjab, to regulate the service conditions of the employees. The grouse of the petitioner is that despite rendering 26 years of unblemished service, he was not given promotion to the next post even though persons junior to him were given the benefit of promotion from time to time. The petitioner made representations and caused a legal notice, but the same were not adverted to by the respondents. However, with the intervention of this Court, a direction was issued to respondent No.2 in CWP No. 22668 of 2014 filed by the petitioner, to pass a speaking order on the representation dated 09.11.2012 (Annexure P-5) and legal notice dated 13.11.2013, (Annexure P-6). Pursuant thereto, respondent No.2 passed the impugned order dated 31.03.2015(Annexure P-8) and rejected the claim of the petitioner.

3. According to the petitioner, respondent No.2 in an arbitrary manner has rejected his claim. The pay scale and nature of duties of a common cadre Clerk and a Plant Clerk are same. Plant Clerk cannot be discriminated against merely because he is from a Plant Cadre. It is averred that initially Common Cadre Rules were made applicable to Plant Cadre employees, but withdrawn lateron, leading to a *lis* before the Industrial Tribunal, wherein the order withdrawing the applicability of Common Cadre Rules was set aside and the previous position was restored. The respondents unsuccessfully challenged the Tribunal award before this Court but the findings of Industrial Tribunal were upheld. The petitioner has also placed reliance on an affidavit dated 25.07.1999, filed by respondent No.2,

stating therein that the pay scales of Clerks of Plant Cadre and Common Cadre are same. Irrespective, the respondent No.2 erred in not extending the benefit of promotion to him, avers the petitioner.

4. In the reply filed by respondent No.2, it is denied that the service conditions of the petitioner are governed by Common Cadre Rules, 1990. It is also denied that any person junior to the petitioner has been promoted from amongst the junior employees working with the petitioner in the same Plant. The action of rejecting the claim of the petitioner is sought to be justified by taking the stand that the junior employees, referred by the petitioner, were actually employees of Khanna Plant and there is different channel for promotion in every Plant.

5. The petitioner in his replication has controverted the stand taken in the written statement and reiterated his averments made in the writ petition.

6. I have heard learned counsel for the parties and have gone through the paper-book carefully with their able assistance.

7. The argument of learned counsel for respondent No.2 that the benefit of promotion has been rightly denied to the petitioner, does not stand the judicial scrutiny. It is totally misconceived in view of the fact that admittedly, as per list, Annexure P-2, the petitioner was senior to the persons who have been promoted from time to time as stated in paragraph 14 of the petition. In the written statement, the said fact has not been controverted. However, a justification has been given that the persons so promoted were given the benefit of seniority, as per the cadre strength of various Plants which are/ were independent entities *de hors* other Plants.

8. Learned counsel for the petitioner has drawn my attention to

order dated 22.05.1998, Annexure P-15, whereby, pursuant to an award rendered by Industrial Tribunal, Chandigarh dated 23.05.1994, it is stated by the Director, Markfed that Common Cadre Rules shall apply in respect of various categories of Plant Cadre viz. Stenographer, Chemist, Lab. Attendant, Typist, Store Keeper, Store Clerk, Driver, Peon, Chowkidar and Sweeper. Learned counsel for the petitioner further points out that the writ petition bearing CWP No. 11911 of 1995, filed by respondent No.2-Marked against the award dated 23.05.1994 was dismissed on 27.11.2002 and the same has since attained finality. He further contends that the argument of learned counsel for respondent No.2 that the Plant Cadre seniority shall apply in the case of the petitioner and he cannot be given the benefit of Common Cadre Rules, therefore, is totally misplaced.

9. I am in agreement with the submissions of learned counsel for the petitioner. That apart, on the larger principles envisaged under Article 14 of the Constitution of India, petitioner cannot be treated unequally once similarly situated employees working in the other Plants have been given the benefit of promotion. The petitioner, on the grounds of parity, is entitled to the same benefit.

10. Learned counsel for respondents submits that the petitioner ought to have impleaded the affected persons as respondents. In the event the claim of the petitioner is accepted, then the seniority list will have to be re-drawn and in order to adjust the petitioner, reversion shall have to be ordered by the respondent-Markfed. The said stand is neither taken in the pleadings nor even otherwise tenable in view of the promotion orders placed on record by respondent-Markfed as Annexures P-10 & P-11, wherein, it has been stated that the promotions are subject to outcome of the court

cases.

10. In view of the reasons and discussion above, the writ petition is allowed. The respondents are directed to extend the benefit of promotion to the petitioner as has been given to the other similarly situated employees from Plant cadre w.e.f. the date his entitlement is found due by applying what is stated in order dated 22.05.1998 (Annexure P-15) that Common Cadre Rules shall be applicable in the case of a Plant Clerk. The pay and seniority of the petitioner be re-fixed and he be granted all consequential benefits arising therefrom, within a period of three months.

11. No order as to costs.

(ARUN MONGA)
JUDGE

March 29, 2019
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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |