

Before K. Kannan, J.

RAMJI LAL,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P No. 1642 of 1989

13th May, 2010

Constitution of India, 1950—Art. 226—Promotion to post of Inspector from post of Booking Clerk—Petitioner working as Booking Clerk from 1972—Respondents promoted Booking Clerks from Conductor's post in 1985—Promotion granted to respondents before petitioner to higher post of Inspector is wrong—Petitioner held entitled to be promoted from date when his juniors were promoted with all attendant monetary benefits—Petition allowed.

Held, that the post of Booking Clerk itself is a promotion post for Conductors and Adda Conductors and petitioner had been a Booking Clerk since the year 1972 while the private respondents had come on promotion from Conductor's post to the post of Booking Clerks only in the year 1985. They had also been shown below the petitioners in the order of seniority. The promotion granted in the year 1988 to the private respondents before granting the promotion to the petitioner to the higher post of Inspector was, therefore, clearly wrong and consequently the petitioner is entitled to treat himself as entitled to promotion on the day when the private respondents were promoted, namely on 14th December, 1988.

(Paras 4)

Ashwani Bakshi, Advocate, *for the petitioner.*

None for the respondents.

K. KANNAN, J, (ORAL)

(1) The case is of the year 1989. Learned counsel for the petitioner is present. There is no representation on behalf of the any of the respondents. I, therefore, hasten to dispose of the case with reference to records and with the assistance of the learned counsel for the petitioner.

(2) The petitioner's complaint is that he had been a Booking Clerk in the Transport Department of the State of Haryana having joined the post on 3rd July, 1972. He points out to the fact that there are two feeder cadres to the post of Inspector ; one, from the post of Booking Clerk, who had certain number of years of service and another from the posts of Conductor and Adda Conductor, who had some specified number of years experience for consideration for promotion as Inspectors. Even to the post of the Booking Clerk, the feeder cadre was Conductors/Adda Conductors, who had completed two years of service.

(3) The grievance is that in the seniority list of Booking Clerks, which was issued on 2nd May, 1979, the petitioner had been shown at Sr. No. 13 but persons in Sr. Nos. 18 to 21, who were juniors to him and who held the posts as Booking Clerks had been promoted as Inspectors even in the years 1980-1981 against the respective dates mentioned in the seniority list itself appended as Annexure P-1. Subsequently, orders had been issued by the Transport Commissioner on 26th June, 1985 when persons in Sr. Nos. 17 to 22 had obtained promotion on temporary basis as Booking Clerks. The persons in Sr. Nos. 17, 19 to 22 have been cited as respondent Nos. 3 to 7 respectively. These persons, who admittedly come on promotion as Booking Clerks on 26th June, 1985, have been promoted on 14th December, 1988 to the post of Inspectors while the petitioner who was senior to them having held the post in the year 1972 has not been granted promotion.

(4) It is a fundamental principle of service jurisprudence that where the promotion is on the basis of seniority, the senior-most person alone ought to be considered when vacancy existed for a promotion post and if a junior is promoted, the senior is entitled to treat himself as having been promoted on the same day when the junior was promoted and still retain the seniority over the junior, who had been wrongly promoted earlier. The learned counsel refers to a decision in **Sultan Singh and others versus State of Haryana and others (1)**, which lays down that if more than one category of persons are eligible in the feeder cadre for promotion, amongst those categories, one is a promotion post as compared to other category, the candidates belonging to the promotional post shall have preference over the candidates belonging to the category of lower cadre. All the persons belonging to the higher category, it was held, must be exhausted first. In this case, we have already seen the fact that the post of Booking Clerk

(1) 1998 (4) R.S.J. 524

itself is a promotion post for Conductors and Adda Conductors and the petitioner had been a Booking Clerk since the year 1972 while the private respondents had come on promotion from conductor's post to the post of Booking Clerks only in the year 1985. They had also been shown below the petitioners in the order of seniority. The promotion granted in the year 1988 to the private respondents before granting the promotion to the petitioner to the higher post of Inspector was, therefore, clearly wrong and consequently the petitioner is entitled to treat himself as entitled to promotion on the day when the private respondents were promoted, namely, on 14th December, 1988.

(5) The writ petition is allowed directing respondent Nos. 1 and 2 to treat the petitioner as having been promoted on 14th December, 1988 the date when the private respondents Nos. 3 to 7, who were juniors to the petitioner had been promoted with the attendant monetary benefits. Learned counsel for the petitioner states that all of them have retired and therefore the decision shall have a bearing on the retiral benefits accruing to the petitioner. All the arrears of the benefits shall be calculated and paid to the petitioner within a period of 12 weeks from the date of receipt of copy of the order.

R.N.R.

Before M.M. Kumar & Jitendra Chauhan, JJ.

HISAR RAM NAGAR CO-OPERATIVE HOUSE BUILDING SOCIETY LTD., HISAR,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P No. 10293 of 1992

9th February, 2010

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 6—Society purchasing land situated within municipal limits to develop a residential colony—Govt. issuing repeated notifications for acquisition of land—Petitioner's land excluded from acquisition as it was situated close to municipal & HUDA disposal works—No change in the facts and circumstances pleaded, therefore, once land was released, then it cannot be acquired