

CWP No. 15797 of 2011

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No. 15797 of 2011

Date of Decision: February 13, 2015

(1)

Joginder Singh Rathee & others

...Petitioners

Versus

State of Haryana & others

...Respondents

(2)

CWP No. 22075 of 2011

Date of Decision: February 13, 2015

Krishan Ram & others

...Petitioners

Versus

State of Haryana & another

...Respondents

(3)

CWP No. 23732 of 2011

Date of Decision: February 13, 2015

Raj Kumar & another

...Petitioners

Versus

State of Haryana & others

...Respondents

(4)

CWP No. 13486 of 2011

Date of Decision: February 13, 2015

Joginder Singh & others

...Petitioners

Versus

State of Haryana & another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Ravi Verma, Advocate and  
Mr. Surender Dhull, Advocate  
for the petitioners.

Mr. Karan Sharma, Assistant Advocate General, Haryana  
for the State.

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**AUGUSTINE GEORGE MASI, J. (Oral):**

By this order, I propose to dispose of CWP Nos.15797, 22075, 23732 and 13486 of 2011 as the counsel for the parties agreed that the issue involved in these writ petitions is identical and can be disposed of by a common order.

Petitioners, who admittedly are working as Laboratory Attendants in various Government schools in the State of Haryana which post is a Group-D post, are claiming promotion to the post of Clerk under the Haryana Education Department, Sub Offices, Ministerial (Group-C) Service Rules, 1983 (hereinafter referred to as '1983 Rules'). Contention further raised is that despite they fulfilling the requisite qualifications for promotion to the post of Clerk as per the relevant Rules and their juniors having been promoted, the claim of the petitioners having not been considered by the respondents has forced the petitioners to approach this Court by way of these writ petitions. For the sake of convenience, the facts and pleadings are being referred to herein from CWP No.15797 of 2011, titled as 'Joginder Singh Rathee & others Vs. State of Haryana & others'.

It is the contention of the counsel for the petitioners that the petitioners are entitled to be considered for promotion to the post of Clerk under the 1983 Rules. Qualifications required therein is that the employee holding a Group-D post should be a matriculate and should have 5 years' service on the said post. The promotion is based upon seniority-cum-fitness and since the petitioners fulfill the requisite qualifications as have been mentioned in Rule 9 of the 1983 Rules which deals with the method of

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recruitment, they were entitled to the benefit of promotion. His further contention is that the 1983 Rules were amended vide notification dated 06.08.1998, according to which, the promotion avenue to the post of Senior Laboratory Attendant in the pay-scale equivalent to that of a Clerk has been provided by insertion of Clause '(o)' in Rule 9 wherein 20% of promotions are to be made from amongst the Laboratory Attendants to the post of Senior Laboratory Attendants. Rest of the 80% is to be by way of direct recruitment or transfer or deputation. Although the petitioners have been granted the pay-scale equal to that of a Clerk but since the post held by them is a Group-D post, they are entitled to be considered for promotion to the post of Clerk as the equivalence of the pay-scale to that of a Clerk debars only those employees who are holding a Group-C post. In support of this contention, counsel has placed reliance upon the Division Bench judgment of this Court in CWP No.7241 of 2007, titled as 'Asgar Khan Vs. State of Haryana & others', decided on 14.01.2008 (Annexure P-3) as also the judgment of this Court in CWP No.17030 of 2010, titled as 'Lila Ram & others Vs. State of Haryana & another', decided on 29.07.2011 (Annexure P-9).

He contends that the fact that the juniors to the petitioners have been promoted is not disputed. But the reason for granting promotion to the juniors is the judgment which has been rendered by the Division Bench of this Court in *Asgar Khan's* case (supra) against which the Special Leave Petition preferred by the State of Haryana stands dismissed and the review is said to be pending but no orders have been brought to the notice of the Court with regard to the said review application having been allowed. He,

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therefore, contends that the writ petitions deserve to be allowed.

On the other hand, counsel for the respondents submits that some of the petitioners were initially appointed as Class-IV employees in the Education Department but later promoted as Laboratory Attendant in the pay-scale of ₹3050-4590. In the year 1998, the 1983 Rules were amended and the post of Laboratory Attendant was abolished and the post of Senior Laboratory Attendant was created which is a Class-III category (Group-C) having the pay-scale of ₹3050-4590 which is equivalent to that of a Clerk. Since the post of Laboratory Attendant stands abolished and they are drawing the same pay-scale as a Clerk, they are not entitled to the benefit of consideration for promotion to the post of Clerk as per Rule 9 of the 1983 Rules. He contends that initially, notification dated 24.07.1998 (Annexure R-1) was issued wherein all employees holding a Group-C and D post and who are in the pay-scale less than or equal to that of a Clerk were held entitled to consideration for promotion to the post of Clerk but vide subsequent notification dated 15.11.1999 (Annexure R-2), earlier notification has been withdrawn and therefore, the petitioners who now belong to Group-C post would not be entitled to the benefit of Rule 9 of 1983 Rules. He states that the Division Bench judgment of this Court in *Asgar Khan's* case was dealing with a situation where the notification dated 24.07.1998 was applicable and therefore, the said judgment would not help the claim of the petitioners. He concedes that he is not aware of the latest position with regard to the review application pending before the Hon'ble Supreme Court after the dismissal of the SLP preferred by the State of Haryana.

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Counsel for the respondents has placed reliance upon the Division Bench judgment of this Court in CWP No.3495 of 2006, titled as 'Sadhu Singh Vs. State of Haryana & others, decided on 18.08.2006, wherein, it was held that an employee holding Group-C post and drawing the same pay-scale as a Clerk is not eligible for consideration for promotion to the post of Clerk under the 1983 Rules. He, accordingly, contends that the writ petitions being without any merit deserve dismissal.

I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

Rule 9 of the 1983 Rules alongwith Appendix-B would be the determinative provision under which the claim of the petitioners is required to be considered and decided. The relevant provisions of Rule 9 (1) (j) (i) and Appendix-B read as follows:-

***“(9). Method of recruitment.-***

*(1) Appointments to the posts in the Service shall be made:-*

*(a) to (i)      XX              XX*

***(j) in the case of Clerk-***

*(i) twenty percent by promotion from amongst Group-C employees whose scale of pay is less than that of a Clerk and Group D employees who are matriculate on the basis of seniority-cum-fitness; or by transfer or deputation of an official already in the service of any State Government or the Government of India; and*

*(ii) eighty percent by direct recruitment.”*

**APPENDIX “B”**

***Clerks***

*(1) 5 years service as Group D employees or Junior*

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*Laboratory Attendant or restorer or Gasman or Gasman-cum-Mechanic or Table Player working in subordinate offices/institutions of the Department;*

*(2) Passed matric or Higher Secondary Part I of a recognized University or equivalent; and*

*(3) Knows Hindi or English typewriting.”*

A perusal of the above Rule would show that an employee who belongs to Group-C and is drawing pay-scale equal or more than that of a Clerk cannot be considered for promotion to the post of a Clerk under the 20% quota. However, an employee who is belonging to Group-C but has a pay-scale less than that of a Clerk is eligible for consideration. The requirement for a Group-D employee is that he should be a matriculate and there is no mention with regard to the pay-scale of the post held by him. The eligibility for Group-D employees is five years service with matriculation qualification and consideration is on the basis of seniority-cum-fitness only.

The petitioners have specifically averred that they are working on the post of Laboratory Attendant which is a Group-D post which fact has not been disputed by the respondents in their written statement. It has been pleaded on behalf of the respondents that the post of Laboratory Attendant has been abolished but no notification/amendment to this effect has been placed on record to substantiate this contention. Insertion of Clause '(o)' in Rule 9 sub-rule 1 only provides for a channel of promotion to the post of Laboratory Attendant to that of Senior Laboratory Attendant. The same reads as follows:-

**“ 9 (1) (o) In the case of Senior Laboratory Attendant, -**

**(i) 20% by promotion from amongst Laboratory**

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*Attendant; and*

*(ii) 80% by direct recruitment; or*

*(iii) by transfer or deputation of an official already in the service of any State Government or Government of India.”*

This Clause '(o)' falsifies the stand of the respondents with regard to the abolition of the post of Laboratory Attendant. Had the post of Laboratory Attendant been abolished, there could not have been a feeder cadre for the promotion to the post of Senior Laboratory Attendant which would have rendered Clause '(o)' in Rule 9 sub-rule 1 redundant. It would not be out of way to mention here that this insertion of Clause '(o)' in the 1983 Rules was vide notification dated 06.08.1998. It can, therefore, be concluded that the petitioners are holding the post of Laboratory Attendant which post, admittedly, is Group-D post. If that be so, petitioners would be entitled to the benefit of consideration for promotion to the post of Clerk under Rule 9 (1) (j) (i) of the 1983 Rules read with Appendix-B (i) as, admittedly, petitioners have completed more than 5 years of service on the post of Laboratory Attendant.

In view of the above, it is clear that the petitioners are eligible for consideration for promotion to the post of Clerk under the 1983 Rules and therefore, non-consideration of the claim of the petitioners by the respondents is misconceived and they are held eligible for promotion to the post of Clerk.

Reliance placed by the counsel for the respondents on *Sadhu Singh's* judgment (supra) cannot be said to be of any help to the respondent as in that case, the petitioners were holding the post of Senior Laboratory Attendant which is a Class-III (Group-C) post and further the said post

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carried the pay-scale equivalent of the post of Clerk which the Court held rendered them ineligible for consideration for promotion to the post of Clerk under Rule 9 (1) (j) of the 1983 Rules, whereas, in the present case, the petitioners are working on the post of Laboratory Attendant which is a Group-D post for which equivalence or otherwise of the pay-scale is not relevant with the post of a Clerk. Requirement under Rule 9 (1) (j) (i) for a Group-D employee for consideration for promotion to the post of a Clerk is matriculate with 5 years' experience on Group-D post as per Appendix-B to the Rules and the consideration is on the basis of seniority-cum-fitness. Admittedly, Asgar Khan, Ashwani Kumar and Mangesh Kumar who have been promoted to the post of Clerk, were working on the post of Laboratory Attendant and were juniors to the petitioners in the cadre of Laboratory Attendants which fact is not disputed by the respondents. Since the petitioners are senior to them, they are entitled to consideration for promotion to the post of Clerk from the date their juniors were promoted.

Reference at this stage also be made to the judgment passed by this Court in *Lila Ram's* case (supra) where again, similarly placed employee as the petitioners has been held entitled to consideration for promotion to the post of Clerk and it has been stated that the petitioners therein have been granted the benefit of the said judgment and promoted.

In view of the above, these writs are allowed. Petitioners are held eligible for consideration for promotion to the post of Clerk under Rule 9 (1) (j) read with Appendix-B of 1983 Rules and a direction is issued to the respondents to consider and decide the claim of the petitioners for promotion

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to the post of Clerk from the date their juniors were promoted, within a period of two months from the date of receipt of certified copy of the order. Arrears, if any, on promotion of the petitioners shall be restricted to the maximum of 38 months prior to the date of filing of the writ petitions.

There shall be no order as to costs.

**February 13, 2015**  
*Harish*

**( AUGUSTINE GEORGE MASIH )**  
**JUDGE**