

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.14793 of 2012(O&M)

Date of decision: 30.04.2015

Narender Singh and others

---Petitioners

Versus

State of Haryana and another

---Respondents

**Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr.Narender Kumar Sharma, Advocate
for the Petitioners.**

**Mr.Sandeep Moudgil, Additional Advocate
General, Haryana for respondent- State.**

HARINDER SINGH SIDHU, J.

The petitioners, who are presently working as Senior Laboratory Attendants in various schools of Government of Haryana have filed this petition with multiple prayers including quashing of Clause (o) Sub-rule (1) of Rule 9 which is the criteria prescribed for promotion to the post of Senior Laboratory Attendant vide 'the Haryana Education Department Sub Officer Ministerial (C) Service Amendment Rules, 1998 which have amended the Haryana Education Department Ministerial (Group-C) Service Rules, 1983 (Annexure P-1). They have prayed that promotional avenues be provided for them and that instead of considering them for promotion to the post of clerk they should be promoted to the post of Assistant.

The petitioners along with few others were initially appointed on Group-D posts, namely – Laboratory Attendants on regular basis between the years 1982 to 1997. It is averred that they also possess higher qualifications like M.A., B.Sc, B.Ed, Prabhakar etc. As there were no promotional avenues available to them as Laboratory Attendant they raised a grievance that they be provided promotional avenues and made repeated representations to the respondent – State. In the year 1998, the Haryana Education Department Ministerial (Group-C) Service Rules, 1983 (hereinafter referred to as the “1983 Rules” (Annexure P-1) were amended vide notification dated 6.8.1998 by `The Haryana Education Department Sub Officer Ministerial (C) Service Amendment Rules, 1998 (Annexure P-2) (hereinafter referred as the “1998 amendment”) . By the 1998 amendment a new Clause (o) was added to Sub-rule (1) of Rule 9 by including Senior Laboratory Attendant as a post in the Class C Service. This post was to be filled 20% by promotion from amongst Laboratory Attendants and 80% was by direct recruitment or by transfer or deputation of an official already in the service of any State Government or Government of India. It is averred that the petitioners along with other Laboratory Attendants, who had passed Matriculation, have been designated as `Senior Laboratory Attendants' and also placed in Group-C, vide letter dated 8.10.1998 (Annexure P-8).

It is the case of the petitioners that vide the above action

only their designation/ nomenclature has been changed from

`Laboratory Attendants' to `Senior Laboratory Attendants' but their pay scales have not been enhanced which remain the same as before. It is thus, contended that the change of nomenclature effected pursuant to the 1998 amendment cannot be treated as promotion. It is stated that there is no provision in the 1983 Rules and even after the 1998 amendment for promotion from the post of Senior Laboratory Attendant.

Vide letter dated 22.6.2012 (Annexure P-15) issued by the Director, School Education, Haryana the Heads of different institutions of the State of Haryana, were requested to send the names of Laboratory Attendants according to seniority list, so that the same may be considered for promotion to the post of Clerks. In this regard, the grievance of the petitioners is that there is no difference in the pay-scales of Laboratory Attendant, Senior Laboratory Attendant or the Clerk, and, accordingly it is a misnomer to say that they would be promoted as Clerks. It is urged that in turn the petitioners ought to be promoted to the post higher than that of Clerk i.e. Assistant, etc.

It is in this context that the petitioners have filed the present petition seeking quashing of Clause (o) Sub-rule (1) of Rule 9, which prescribes the method of recruitment to post of Senior Laboratory Attendant as also Sub Rule (j) of Rule 9 of the Haryana Education Department Ministerial (Group-C) Service Rules, 1983 which prescribes the method of recruitment to the post of clerk. It has also been prayed that directions be issued to the respondents to

provide promotional avenues from the post of Senior Laboratory Attendant/ Laboratory Attendant by appropriate amendment in the service Rules.

In response to the notice of motion, written statement has been filed on behalf of respondents No.1 and 2 opposing the prayer of the petitioners.

Defending the service rules and repelling the contention of the petitioners that they should be promoted to the post of Assistants, it is stated that qualification prescribed for promotion to the post of Assistant in the Service Rules, is as under:-

- “(1) 5 years regular service as Clerk including that of Clerk-in-charge, computer-cum-clerk: or*
- (2) Five year regular service junior scale Stenographer or Steno-typist including that of regular clerk.”*

Relying on the aforesaid Rule, it is the stand of the respondents that only those Clerks/ Computer Clerks/ Stenographers/ Steno-typists, who have five years regular service to their credit are eligible for promotion to the post of Assistant. The petitioners were working as Laboratory Attendants in the State. By the 1998 amendment, the nomenclature of the post of 'Laboratory Attendant' was changed to that of 'Senior Laboratory Attendant' in the Class III category (Group C) having the pay scale of Rs.3050-4590. It is also stated that the Rules have been amended further on 8.11.2013 and the qualification of Clerk has been upgraded from

Matric to 10+2, whereas, in the case of Senior Laboratory Attendant

the qualification is Matric with Hindi and Science in addition to five years experience as Laboratory Attendant. It is thus contended that though the scale of the post of petitioners is equivalent to that of Clerk, but as per the Service Rules, the qualification for the post of Senior Laboratory Attendant and clerk are different. There is no similarity in the qualification/ experience of the posts of the petitioners and Clerks. It is further stated that the Laboratory Attendants were promoted by the competent authority as per seniority of Group-D, and the Laboratory Attendants, who have passed Matriculation, were re-designated as Senior Laboratory Attendants in Service Rules and also placed in Group-C vide letter dated 8.10.1998. The cases of Laboratory Attendants were called for promotion for the post of Clerk keeping in view their seniority list. The SLA/LA cannot be promoted directly to the post of Assistant as the line/nature of the work of Laboratory Attendant and Assistant are totally different. The Laboratory Attendants work in Science Laboratories of the Schools, whereas, the Assistants perform file work and other establishment works. It is asserted that the department has never promoted any SLA/LA to the post of Assistant as there is no such provision in the service rules. It is further stated that in case the petitioners want promotion to the post of Assistant, then they have to forego their earlier promotion of SLA/LA. Thereafter, keeping in view their seniority in Group-D, they will be promoted as Clerk and subsequently to the post of Assistant in accordance with the seniority of Clerk.

Ld. Counsel for the petitioners contends that after the 1998 amendment, the Laboratory Attendants have been re-designated as Senior Laboratory Attendant, but there is no change in the pay scales. So, this cannot be termed as promotion. He states that there is no specific provision in the rules for promotion of Senior Laboratory Attendants and hence they are doomed to face stagnation. He states that in Punjab, Rajasthan and Delhi, Laboratory Assistants have been promoted as teachers as per their qualifications. He also states that there is provision in the Haryana Technical Education Department Technical Field Staff (Group C) Service Rules, 1998 for promotion of Laboratory Attendants as Laboratory Assistants in a higher pay scale. He urges that some such similar promotional provision should be made for the petitioners as well.

On the other hand, the Ld. State Counsel has contended that the petitioners who were initially appointed as Laboratory Attendants have been promoted as Senior Laboratory Attendants. He refers to Rule 9(1)(o) as inserted by the 1998 amendment as per which, 20% of the posts of Senior Laboratory Attendants are to be filled by promotion from amongst the Laboratory Attendants. He states that after the 1998 amendment, all the Laboratory Attendants who had passed Matriculation have been re-designated as Senior Laboratory Attendants.

Having heard the Ld. Counsel we are of the view that the
the prayer of the petitioners to quash Rules 9(1)(j) and Rule 9(1)(o)

of the 1983 Rules as amended in 1998 and for directions that the petitioners be promoted to the post of Assistants is without merit.

Rule 9(1)(d) of the 1983 Rules which deals with appointment to the post of Assistant and Clause (o) of sub-rule (1) of Rule 9 introduced by the 1998 amendment as also clause (j) of sub-Rule (1) of Rule 9 of the 1983 Rules, quashing whereof has been prayed are reproduced below:

“9(1) Appointments to the posts in the service shall be made - (d) in the case of Assistants-

(i) eighty per cent by promotion from amongst Junior Scale Stenographers, Steno-typists, Clerks-in-charge, Clerks Computers or Computer-cum-Clerks or by transfer or deputation of an official already in the service of any State Government or the Government of India, and

(ii) twenty per cent by direct recruitment.”

“(j) in the case of Clerks-

(i) twenty per cent by promotion from amongst Group C employees whose scale of pay is less than that of a Clerk and Group D employees who are matriculates 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 per cent by direct recruitment.

Note: The promotion of Group C employees whose grade of pay is less than that of a Clerk or Group D employees shall in the first instance be made on ad hoc basis for a period of six months only. If their work during the aforesaid period of six months is

found to be satisfactory, his case for regular appointment shall be sent to the Board for approval and notwithstanding any thing contained in rule 10, the period of probation of service of person shall start from the date of his regular appointment.”

“(O) In the case of Senior Laboratory Attendant.-

(i) 20% by promotion from amongst Laboratory 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.”

It is well settled that that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, fall within the exclusive domain of the employer. The court would have no role in determining the methodology of recruitment. The power of judicial review in such matter can be exercised only if, it can be demonstrated that there is violation of some constitutional or statutory provision or there is patent arbitrariness.

Ld. Counsel for the petitioners has not been able to point out any legal infirmity in the above rules. He has not been able to spell out as to how the method and manner or recruitment for the posts as prescribed in the rules is in any manner arbitrary. Accordingly, to this extent, the writ petition is dismissed.

Regarding the prayer of the petitioners seeking a mandamus to the respondents to make provision for promotional

avenues for them, it needs to be noted that as per Rule 9(1)(o), 20% of the posts of Senior Laboratory Attendants have to be filled from Laboratory Attendants with five years experience and the remaining 80% by direct recruitment or by transfer or deputation of an official already in service of any State Government or Government of India. It has been stated in the written statement that all the Laboratory Attendants who had passed matriculation have been designated as Senior Laboratory Attendants and placed in Group-C. Ld. Counsel for the petitioners states that though the rules provide for promotion, and undoubtedly the petitioners have been re-designated/ promoted as Senior Laboratory Attendants, but their pay-scale has remained the same even after such re-designation/ promotion. So, this promotion/ re-designation cannot be treated as having created a promotional avenue. If this is so, and this fact has not been denied in the written statement, then there appears to be an anomaly which needs the consideration of the Government.

The petitioners would be at liberty to draw the attention of the Government to this aspect by filing a representation. It is expected that the representation, if filed, would be considered and disposed of expeditiously.

Petition stands disposed of accordingly.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

April 30, 2015
Dinesh