

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

CWP No. 18438 of 2014 (O & M)

Reserved on: 02.11.2015

Date of decision: 18.11.2015

Virender Kumar and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. D.S. Patwalia, Sr. Advocate,
with Mr. Sehajbir Singh, Advocate,
for the petitioners.

Mr. Harsimran Singh Sethi, Addl. A.G., Punjab,
for the respondents no. 1 and 2.

Mr. Gurminder Singh, Sr. Advocate,
with Mr. RPS Bara, Advocate,
for the respondents no. 3 to 10.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

G.S.SANDHAWALIA, J.

1. The present petition has been filed for quashing the order dated 16/17.07.2014 (Annexure P-10) vide which, the representation of the petitioners, who are 10 in number, has been dismissed. The petitioners, who were Clerks and were designated as Junior Assistants, seek promotion to the post of Assistants in accordance with the Punjab Civil Secretariat (State Service Class-III) Rules, 1976 (in short '1976 Rules') on the basis of the seniority-cum-merit w.e.f. 03.03.1998 and for refixation of the seniority and further consideration for promotion to the post of Superintendent (Grade-I).

2. It is the case of the petitioners that the representation has been dismissed in violation of the directions issued by the Apex Court in *Saroj*

Rani and others vs. State of Punjab and others, 1999 (6) SCC 637 and the judgment of Division Bench of this Court in *CWP No. 1887 of 2001, Varinder Kumar and others vs. State of Punjab and others* dated 23.08.2002 (Annexure P-5), which was further upheld by the Apex Court in Civil Appeal No. 2863 of 2007 decided on 02.04.2014 (Annexure P-7).

3. The question which arises is whether the State has implemented the judgment of the Division Bench in *Varinder Kumar's case (supra)* in which, no stay was granted and in view of the observations of the Apex Court while disposing of the civil appeal. For adjudicating on the said issue, the pleaded facts will necessarily have to be gone into which are as under:-

4. The case of the petitioners is that they were initially recruited as Clerks in the Punjab Civil Secretariat and on the recommendation of the 4th Pay Commission, 50% of the Clerks were given designations of Junior Assistants in the pay scale of ₹4400-7000 w.e.f. 01.01.1996 and the petitioners are among those Clerks. As per Rule 7 of the 1976 Rules, Clerks are eligible for promotion to the post of Assistants on qualifying a departmental test to be held by the Chief Secretary. For purposes of holding the departmental test, the State had promulgated the Punjab State Assistant Grade Examination Rules, 1984 (hereinafter referred to as 'the 1984 Rules'). Those persons would be eligible for the post of Assistants only who had qualified the Assistant Grade Examination as per the said Rules. Rule 12 of the 1984 Rules gave the power to grant exemption for reasons to be recorded in writing and exempting any class or category or persons from the operation of the Rules. By notification dated 21.01.1991, Clerks who had rendered 18 years of service were exempted from qualifying the Assistant

Grade examination and were made eligible for promotion to the post of the Assistants. Accordingly, two sets of categories of persons became available namely the exemptees who had rendered 18 years of service as Clerks and secondly the qualifiers who had given the examination and qualified. On 03.03.1998, (Annexure P-2) the 1984 Rules were rescinded and similarly vide notification dated 14.06.1999 (Annexure P-3), the condition in Rule 7 (3)(ii) which provided for the departmental examination was withdrawn.

5. Since dispute arose between who had qualified the examination as per the 1984 Rules and those who had been exempted on completion of 18 years of service as clerks, the issue was finally resolved by the Apex Court in *Saroj Rani's case (supra)*, wherein, it was held that vacancies prior to 21.01.1991 on the post of Assistants/Senior Assistants were to be filled up by those who qualified by passing the examination only and the exemptees would have no such claim on such vacancies. After 21.01.1991, the vacancies were to be filled up in the ratio of 70:30 from the exemptees and the qualifiers respectively for each year till all the existing qualifiers were absorbed. The promotions and reversions made had to be readjusted by 31.12.1998 and the employees on account of reversion were entitled for the financial benefits.

6. The petitioners plead that the directions given were on the premise that in most of the departments in the respondent-State, the exemptees were available in large number as compared to those who had qualified the Assistant grade examination, but in the Punjab Civil Secretariat, the number of exemptees were less. On account of the issue arising that where after 21.01.1991 where both exemptees and qualifiers had been exhausted, how the vacancies of Assistants/Senior Assistants had to be

filled came up for consideration before a Division Bench of this Court in *Varinder Kumar's case (supra)* in which most of the petitioners were parties. The Division Bench noticed the stand of the State wherein it had been averred that after the judgment in *Saroj Rani's case (supra)*, all vacancies of Assistants/Senior Assistants which arose after 21.01.1991 were being filled up from amongst exemptees and qualifiers in the ratio of 70:30. It was noticed that an exemptee would be a person who had completed 18 years of service on the repealing of the 1984 Rules on 03.03.1998 and there could not be an exemptee thereafter and similarly, the qualifier would be a person who had qualified prior to the repealing of the 1984 Rules. Wherever vacancies were available where exemptees had been exhausted and qualifiers were still available, promotion would be only to the extent of 30% of the post available and the remaining had to be filled up by clerks according to 1976 Rules. Similarly, where qualifiers had been exhausted and exemptees were available, they would have to be promoted to the extent of 70% of the posts available and the remaining were necessarily had to be filled up by clerks according to 1976 Rules. The writ petition was disposed of with a direction to make promotions accordingly and orders impugned were to be modified, if necessary, in terms of the observations made therein.

7. The State filed Special Leave Petition before the Apex Court without getting any interim relief and thereafter various orders were passed issuing promotion orders of employees whereby, allegedly persons in excess of the per centage as specified in the aforesaid judgments were promoted. It is the case of the petitioners that the excess vacancies which were to come to their share under the 1976 Rules were not given to them as the orders were subject to the outcome of the decision in *Varinder Kumar's case*

(*supra*). A reference is made to one order dated 09/19.08.2006 (Annexure P-6). The judgment of the Division Bench was finally upheld on 02.04.2014 by the Apex Court and a direction was issued to implement the judgment as soon as possible. On account of non implementation in its true letter and spirit, the petitioners filed a representation on 28.04.2014 (Annexure P-9) alleging that there was a violation of *Varinder Kumar's case (supra)* and vacancies had been filled up in given years more than 70% in the exemptee category and the remaining from who had qualified and leaving no vacancy to be filled up under the 1976 Rules. The representation has been rejected on 16/17.07.2014 vide the impugned order, which is the subject matter of challenge accordingly.

8. The case of the petitioners is thus that they had been promoted as Assistants/Senior Assistants but if the respondents had implemented the directions earlier, they would have been promoted to the post of Assistant/Senior Assistants much earlier. It is averred that out of the 15 petitioners in *Varinder Kumar's case (supra)*, petitioners no. 11 to 15 have retired and the petitioners herein are also to retire shortly and have been waiting for promotion since long. The proposed Departmental Promotion Committee which was to consider the case of the petitioners on 08.09.2014 was accordingly challenged since the rights of the petitioners were being affected as persons junior to the petitioners who had been illegally promoted prior to them on the post of Senior Assistants would gain a march over the petitioners for further promotion to the post of Superintendent Grade-I. Accordingly, the writ petition was filed while placing reliance upon a chart Annexure P-8 to demonstrate as to the vacancies which had been filled up from 1991 onwards till 2002 and that 100 excess vacancies which were to

be filled up under the 1976 Rules had been usurped.

9. The impugned order dated 16/17.07.2014 (Annexure P-10) would go on to show that the reasoning of respondent no. 1 was that there was no stay on the seniority list issued by the Secretariat on 30.05.2008 and promotions had been made from the post of Senior Assistants to the post of Superintendents till now. Reference was made to the opinion of the legal remembrancer whether any modification had to be done in the order dated 09/19.08.2006 in view of the order of the Apex Court and since the order dated 09/19.08.2006 was passed in view of the order of this Court in ***CWP No. 9363 of 2004, Shashi Kapoor and others vs. State of Punjab and another***, decided on 04.04.2006, therefore, the orders already stood implemented on account of office orders dated 15.06.2004 (Annexure R-2) and 09/19.08.2006 (Annexure P-6).

10. In the written statement filed by the respondents, the defence taken is that the petitioners have neither qualified the Assistant Grade Examination nor attained 18 years of regular service till 03.03.1998 and they were neither exemptees nor qualifiers. On account of not passing the test, their eligibility for promotion against the available vacancies arose after 14.06.1999 on account of the omission of the condition of the departmental test from the 1976 Rules. The orders of the Division Bench dated 23.08.2008 had already been implemented vide order dated 11/15.06.2004 (Annexure R-2) and a contempt petition had been filed bearing COCP No. 828 of 2004 by the petitioners on account of the non-implementation of the order. The contempt had been dismissed on 26.04.2007 (Annexure R-3/1). The affidavit had been filed in the contempt petition by the then Chief Secretary wherein, it had been mentioned that the

orders had already been implemented and no objection had been raised by the petitioners at that point of time and they had accepted their position of implementation. In the absence of the exemptees, the petitioners had already been considered on the basis of seniority-cum-merit till all the existing qualifiers were absorbed. After the qualifiers had been absorbed, the vacancies in the cadre of Senior Assistants had been filled up on the basis of seniority-cum-merit. The petitioners had not challenged the orders dated 15.06.2004 and the subsequent seniority list issued in the year 2008 and 2013 which were based upon the said order. It was wrong to say that the order of the Apex Court had not been implemented and neither any new direction had been given on 02.04.2014 as the direction of the Division Bench had already been implemented. The proceedings of the Departmental Promotion Committee had been postponed in view of the interim directions of this Court dated 05.09.2014.

11. Private respondents no. 3 to 10 filed an application for impleadment, which was allowed on 13.11.2014 and in the written statement, took the plea that no challenge had been raised to the order dated 09/19.08.2006. In pursuance of the same, the seniority had been reframed and the final seniority list had been issued on 13.10.2013 and neither any challenge had been raised to it. The petitioners were well aware of the order dated 09/19.08.2006 when it was produced in COCP No. 828 of 2004 and the judgment of the Division Bench in *Varinder Kumar's case (supra)* already stood implemented.

12. After a lapse of over eight years, the writ petition was barred by delay and laches and the petition was a frivolous petition and there was no requirement to review the orders passed since the petitioners had already

gained promotions in service. The applicants-respondents had come into the zone of consideration for promotion to the post of Superintendent (Grade-I) and without impleading them, the interim order had been got against them. The petitioners had been appointed as Clerks in the year 1980 onwards and had not completed 18 years of service upto 03.03.1998 to come within the category of exemptees and they could not lay claim to the posts which arose in the department till such time. It was the case that the petitioners had tried to mislead this Court by projecting that the requirement of passing the departmental test was provided in the 1984 Rules. The posts had been filled up directly in accordance with the judgments and without challenging the consequential seniorities and without impleading the persons who had gained promotion in service, the writ petition had been filed. The Division Bench order was implemented by passing a well reasoned speaking order on 11/15.06.2004. The Assistants who had appeared in the examination on 30.11.1997 but the result was declared on 24.08.1998 had been reverted. The said order was accordingly challenged by the said Senior Assistants in CWP No. 9363 of 2004, Shashi Kapoor and others which was allowed on 04.04.2006 and the promotions had to be reviewed vide order dated 09/19.08.2006 which was also not challenged apart from only filing a contempt petition, which was dismissed as withdrawn with the liberty to challenge the said order, if need so arises in appropriate proceedings. Accordingly, the petitioners having no cause of action, could not unsettle the settled matters and were not entitled to be promoted. The answering respondents were senior to the petitioners in the cadre of Senior Assistants and, therefore, the petitioners could not claim promotion to the post of Superintendents prior to them.

13. The petitioners filed replication to the written statement taking the plea that they did not challenge the promotion orders as these orders were subject to the final outcome of the SLP and the principle of lis pendence would apply. The appeal of the State had been dismissed and the State was to revise the promotion orders made by it during the pendency of the SLP which were not in consonance with the findings in *Davinder Kumar's case (supra)*. No stay had been granted in favour of the State Government and that the legal opinion of the legal remembrancer was not in consonance with the directions given by the Division Bench and which had been upheld by the Apex Court. Liberty had been granted to challenge the order dated 09/19.08.2006 if the need so arose and due to the finalization of the litigation, the petition had been filed and the order dated 17.07.2014 was a cryptic and a misfounded order against the tenor of the Division Bench judgment.

14. Similarly, replication to the written statement filed by private respondents was also filed taking the plea that persons in excess of the quota specified in the aforesaid judgments had been promoted. The petitioners at that point of time did not challenge the promotion order as these orders were made subject to the final outcome of the SLP and the principle of lis pendence would apply and there was no question of delay and laches.

15. Counsel for the petitioner has vehemently argued that the exercise has not been conducted by respondent no. 1 and placed reliance upon the chart (Annexure P-8). Reference is made to the conditional orders of promotion subject to the final decision of the SLP to submit that the petitioners had held back at that point of time in the year 2004 and 2006 as

the matter was still pending before the Apex Court. The Apex Court had specifically directed the State to take steps to implement the judgment of the Division Bench and, therefore, the case was not hit by delay and laches as the SLP was only decided on 02.04.2014. The impugned order did not give any reasons and neither redressed the representation given on 28.04.2014 (Annexure P-9) in which it had been specifically prayed that the seniority be recast by promoting the exemptees on the last due dates. That the rest of 30% posts were to be filled up on the strength of the service rules. Reference has also been made to the seniority list which was placed on the record subsequently and the objections filed on 16.01.2015. Reference has also been made to the objections filed which were decided on 10.02.2015 during the pendency of the case whereby, in view of the pendency of the present case, the matter had been put on hold, to submit that the situation was still fluid.

16. Counsel for the State, on the other hand, vehemently submitted that an order dated 11/15.06.2004 (Annexure R-2) had been passed and the petitioners were beneficiaries of the said order. Thereafter, another order dated 19.08.2006 had been passed (Annexure P-6) on account of the decision of this Court in CWP No. 9363 of 2004 filed by Shashi Kapoor wherein, the said employees had been given the benefit of the examination, the result of which was declared after the condition of the departmental examinations had been taken away but benefit had been given to those writ petitioners since there was delay in the declaration of result. Thereafter, all the adjustments had been made as per the 1976 Rules but the petitioners had only filed a contempt petition in the year 2007 which was withdrawn with liberty to challenge and no challenge had thereafter been raised to the order

dated 19.08.2006. No specific instance of any person who was junior who had been made senior had been given and even in the objections now filed on 16.01.2015, there were no specific instances and there was no fluidity at all. The condition of subject to the final decision of SLP was for the persons to whom the benefit was given of promotion so that the order could be withdrawn at any subsequent point due to the pendency of SLP and to put them to notice of the pendency of the proceedings. The private respondents had not been impleaded purposely and neither any proper date had been give to show that which of the vacancies had arisen which had been consumed by the exemptees or the qualifiers and how the petitioners had been put to loss. Accordingly, it was prayed that the writ petition be dismissed.

17. Similarly, senior counsel for the private respondents has submitted that the judgment had already been implemented vide order dated 15.06.2004 and submitted that the said order has been withheld from this Court and has only been placed on record subsequently by the private respondents and also the order passed in the contempt petition dated 26.04.2007. The wrong implementation had never been challenged specifically, in spite of the liberty given in the contempt petition. No fresh cause of action arose and without any legal right being impaired, the petitioners could not come to this Court seeking a writ of mandamus. Various promotions had been made from the year 2006 to 2014 and the upsetting of the seniority list of 2006, 2008 and 2013 was being sought for without even impleading persons who are senior and who had not been impleaded intentionally. The same grounds were available when the contempt petition was filed and thereafter, the order was also passed in

CWP No. 9363 of 2004 on 04.04.2006 and a fresh order was also passed on 09/19.08.2006 (Annexure P-6). The private respondents had cleared the examinations for 03.03.1998 being qualifiers and eligible upto 14.06.1999 and had been promoted under vacancies which had become available and reference was made to the order dated 15.06.2004 to show that every third person was a qualifier as per the 70:30 ratio.

18. After hearing counsel for the parties, this Court is of the opinion that there is no scope for interference in the impugned order and the petitioners have not been able to demonstrate in any manner how they have been prejudiced. Rather they are a party to the implementation of the order of *Varinder Kumar's case (supra)* from day one and have accepted the said implementation also after the dismissal of their contempt petition on 26.04.2007. There is no denying the fact that on 23.08.2002, the Division Bench decided the said issue and issued directions which have already been noted in detail above. The relevant portion reads thus:

“Similarly in a Department where qualifiers have been exhasuted and exemptees are still available the latter will have to be promoted to the extent of 70 per cent of the posts available and the remaining posts will necessarily have to be filled up by Clerks according to 1976 Rules.

In this view of the matter, we dispose of the writ petition with a direction to respondent no.1 to make promotions accordingly and the orders impugned in the writ petition be modified, if necessary in terms of the observations made herein above. There will be no order as to costs.”

19. After the said decision, the State had failed to get any interim orders from the Apex Court and categorically vide order dated

11/15.06.2004 (Annexure R-2), sought to implement the decision of the Court, which would be clear from para no. 3 of the said order which reads thus:-

“3. Whereas that after hearing the Special Leave Petition filed against the orders of the Punjab and Haryana High Court, the Hon'ble Supreme Court has not issued any direction to stay the operation of the orders issued by the Hon'ble Punjab and Haryana High Court, the orders of the Hon'ble Punjab and Haryana High Court dated 23.8.2002 are required to be implemented.”

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“7. THEREFORE, in the light of the above position for implementing the judgment of Hon'ble Punjab and Haryana High Court dated 23.8.2002 in the Punjab Civil Secretariat, following decision has been taken:-”

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“Accordingly, the promotions made after 3.3.1998 have been reviewed and while doing so the Clerks/Junior Assistants mentioned at Sr. No.103, 110, 113, 116, 119, 120, 123 to 141, 143, 145 to 149, 153 to 177, 179 to 185, 187, 191, 194, 197 to 210, 212 to 214 in the Annexure appended with this order are promoted as Senior Assistants in the pay scale of Rs. 5800-9200 w.e.f. the date mentioned against each. These promotions will come into force only on submission of their joining as Senior Assistants. Consequent upon the promotions made so, the dates of promotions of the Senior Assistants detailed in the Annexure shall be deemed to have been changed as per new dates mentioned against each.

8. *The following Senior Assistant who cannot be adjusted by way of review of promotions shall stand reverted with immediate effect as Junior Assistant:-*

<i>Sr. No.</i>	<i>Name of the official</i>	<i>Existing Date of Promotions</i>
<i>1</i>	<i>Smt. Navneet Saluja d/o Shri Mohinder Singh</i>	<i>29.05.2002</i>
<i>2</i>	<i>Sh. Jagpal Singh s/o Shri Sukhdev Singh</i>	<i>29.05.2002</i>
<i>3</i>	<i>Sh. Shashi Kapoor s/o Shri Ram Charan (SC)</i>	<i>10.04.2002</i>
<i>4</i>	<i>Smt. Madhu Bala d/o Sh. Ram Parkash Sharma</i>	<i>10.04.2002</i>

9. *The above promotions/adjustments have been made after accepting the requests of the following Junior Assistants/Clerks who have requested to forego their promotions/seek reversions as Senior Assistant:- ”*

20. A perusal of the above paragraph would go on to show that the petitioners are the beneficiaries as per the above said order and having been given the various deemed dates of promotion as Senior Assistants and figure at various serial numbers, details of which are summarized as below:-

Sr. No.	Name	Existing Date of Promotion	Deemed Date of Promotion	At Serial No.
1	Virender Kumar	21/11/01	01/09/01	121
2	Davinder Kumar	21/02/04		145
3	Kashmir Singh	21/02/04		155
4	Paramdip Singh	21/02/04		167
5	Davinderpal Singh	21/02/04		174
6	Harbans Singh	21/02/04		176
7	Nirmal Singh	21/02/04		194
8	Gurnam Singh	08/11/99	06/07/00	67
9	Harnek Singh	10/06/01	07/02/01	99
10	Bachana Ram	21/02/04		159
11	Sadhu Ram (Retd.)	07/09/01	22/03/01	109
12	Girdhari Lal (Retd.)	04/04/02	05/09/01	122
13	Gurpal Singh (Retd.)	03/04/02		138
14	Hakikat Singh (Retd.)	21/02/04		148
15	Chand Bala (Retd.)	21/02/04		173

21. A perusal of the above said table would go on to show that

petitioner's no. 1 deemed date got pushed down by little over two months whereas for petitioners no. 2 to 7, 10, 13, 14 and 15, there was no change as per the shuffle which had taken place. For petitioner no. 8, his deemed date was pushed down from 08.11.1999 to 06.11.2000. In case of petitioner no. 9, it was preponed from 10.06.2007 to 07.02.2001. In case of petitioner no. 11, it was preponed from 07.09.2001 to 22.03.2011. Petitioner's no. 12 deemed date was preponed from 04.04.2002 to 05.09.2001. Ten of them at Sr. Nos. 138, 145, 148, 155, 159, 167, 173, 174, 176 and 194 got promotion as Senior Assistants in the pay scale of ₹5800-9200 w.e.f. the date mentioned.

22. Thus, the petitioners were subject matter of benefits and adverse orders and their seniority had been reshuffled at that point of time vide the said order but no challenge was raised to it and they were satisfied with the implementation of the judgment of the Division Bench.

23. Three employees, who were petitioners in CWP No. 9363 of 2004, Shashi Kapoor and others vs. State of Punjab and another out of the four, who were reverted, as has been mentioned above, on account of their passing the written exam after 03.03.1998 on account of the late declaration of the result on 24.08.1998 had challenged the said order. The same was allowed by this Court on 04.04.2006 and the said reversion was set aside on account of the fact that the fault could not be attributed to the said petitioners and they could not be prejudiced and their legitimate rights could not be defeated. The relevant portion reads thus:-

“In our view the claim of the petitioners is worth acceptance since this Court in Varinder Kumar's case (supra) has only defined as to who is an exemptee and who is a qualifier. A qualifier, the category to which the

petitioners belong has been declared to be a person who qualified the examination prior to the repeal of the 1984 Rules. The Government itself in its clarification dated August 17, 1998 had declared that the candidates, who had qualified the test prior to the repeal of 1984 Rules on 3.3.1998 and who had appeared and qualified the examination held on 30.9.1997, shall fall in the category of qualifiers. The respondents have relied upon a judgment of Hon'ble Supreme Court of India in Mohan Lal and other vs. State of Himachal Pradesh and others 1997(4) SCC 416 to state that a person is treated to have qualified the test only on the date of declaration of the result and not on the date of appearance in the test. We have perused the judgment and find that the State cannot be permitted to blow hot and cold in the same breadth. The judgment of Hon'ble the Supreme Court taking the view, referred to above, was already available when the State keeping in view special circumstances, had issued a clarification in terms of legal advice, to treat even persons who had qualified the test conducted by the State on 30.11.1997 i.e. Before the repeal of the 1984 Rules to be qualifiers of the test for the vacancies arising before 3.3.1998. Whereas, the State itself had issued a clarification realizing the fact that they themselves were at fault having not declared the result within the reasonable time, cannot now be permitted to defeat the legitimate right of the petitioners.

In view of our above discussion, the writ petition is allowed and the order of reversion of the petitioners is quashed.”

24. Rather, a perusal of Annexure P-7 filed in the said writ petition would go on to show that a notice was issued to seven employees regarding

the implementation of the decision of the judgment in *Varinder Kumar's case (supra)*. On account of no stay having been granted, it was required to be implemented and opportunity of hearing was provided to the said persons by the State before passing the order dated 11/15.06.2004. The notice issued reads thus:-

“Memo No. : 1/43/2001-Estt. 1(4)/104

Dated Chandigarh 13 May, 2004

Subject:- Regarding the implementation of the decision of Hon'ble High Court dated 23.08.2002 in the Case of Varinder Kumar vs. State of Punjab C.W.P. No. 1887 of 2001.

The Civil Writ Petition No. 1887 of 2001 which was filed by Sh. Varinder Kumar Junior Assistant (now Senior Assistant) and Others before the Hon'bl High Court which was decided on 23.08.2002 against which SLP No. 8773 of 2003 was filed before the Hon'ble Supreme Court. But no stay has be granted by the Hon'ble Supreme Court against the order of the Hon'ble High Court dated 23.08.2002 which is required to be implemented. You have been provided with an opportunity of personnel hearing regarding the effect of such implementation before taking any administrative decision. You are required to appear before Junior Secretary Secretariat Administration on 18.05.2004 at 10 a.m.”

25. Thus, it would be clear that the State was very consciously implementing the orders passed by this Court and persons who are aggrieved challenged the same successfully before this Court and, therefore,

it cannot be said in any manner that the said orders were not implemented.

26. The petitioners, instead of raising any challenge to the order dated 11/15.06.2004 (Annexure R-2), only filed a contempt petition bearing COCP No. 828 of 2004 before this Court on 08.07.2004 taking the plea that the said order was against the tenor of the High Court judgment. The pleadings in para nos. 7 and 8 would go on to show the said fact which reads thus:-

“7. That is reading of the order would show that even persons who qualified the Assistant Grade Examination on 24-8-1998 have been held to be qualifiers. This is against the tenor of the High Court judgement. After noticing that the 1976 rules were actually modified on 14-6-1999 yet the High Court has held that with the repeal of Assistant Grade Examination on 3-3-1998, there can be no qualifier thereafter. In any case once the rules themselves have been repealed on 3-3-1998 there is no question of declaration of examination held under those rules thereafter. However, the order Annexure P/2 treats 22 such persons to be qualifier. The order is, therefore, against the tenor of the High Court judgement.

*8. The secondly even prior to 3-3-1998 vacancies have not been divided in the ratio of 70:30 between the exemptees and qualifiers. This ratio has to be maintained from 21-1-1991 upto 3-3-1998. Factually the position is dilated in the chart, a copy of which is attached as **Annexure P/3** with this petition. It is submitted that this clearly shows that even prior to 3-3-1998 not only the judgement of the High Court has been violated but also the basic judgment in Saroj Rani's case has also been violated. Prior to that date in case any category was not available the posts were to be*

carried forward to the subsequent years.”

27. It was thus neither the case of the petitioners even at that point of time that there was any non-implementation and it was only their case that there was a violation of the ratio of 70:30 principle, which was laid down in the judgment of *Saroj Rani's case (supra)*. The categorical defence of the then Chief Secretary was that the petitioners have already been considered on the basis of seniority-cum-merit till all the existing qualifiers were absorbed in view of the provisions of Rule 7 and after all the qualifiers were absorbed, all the vacancies in the cadre of Senior Assistants had been filled up on the basis of seniority-cum-merit. The relevant portion of the affidavit dated 09.09.2004 reads thus:-

“..... In view of judgment dated 23.8.2002, for promotion against 70% of the vacancies which became available with effect from 14th/25th June, 1999 onwards, in the absence of exemptees the petitioners have already been considered on the basis of seniority-cum-merit till all the existing qualifiers are absorbed in view of the provisions contained in Rule 7 of the Punjab Civil Secretariat (State Service Class III) Rules, 1976 and judgment dated 24th August, 1999 in Saroj Rani's case (Reported as 1999 (4) SLR 787). After all the qualifiers were absorbed all the vacancies in the cadre of Senior Assistants have been filled on the basis of seniority-cum-merit.”

28. As noticed, thereafter, the employees who had been reverted vide order dated 11/15.06.2004, were also successful in CWP No. 9363 of 2004 on 04.04.2006. To implement the said order, the State then passed order dated 09/19.08.2006 (Annexure P-6) for implementation of the directions of this Court.

29. Even in the said order, it has been mentioned that the order dated 11/15.06.2004 was for implementing the directions of this Court in *Varinder Kumar's case (supra)*. The said order was then reviewed to implement the subsequent order of this Court in CWP No. 9363 of 2004 and promotions made after 03.03.1998 were accordingly reviewed and incorporated in the Annexure with the said order. Persons who were promoted as Senior Assistants in the scale of 5800-9200 were deemed to have been promoted with effect from the dates mentioned against each. The relevant portion reads thus:-

“Accordingly, the promotions made after 03.03.1998 have been reviewed and incorporated in the Annexure appended with this order. All those promoted as Senior Assistants in the pay scale of Rs.5800-9200 will to deemed to have been promoted w.e.f. the dates mentioned against each. The promotions of all those who were not promoted earlier will come into force only on submission of their joining as Senior Assistants. Consequent upon the promotions made so, the dates of promotions of the Senior Assistants detailed in the Annexure shall be deemed to have been changed as per new dates mentioned against each.”

30. Thereafter, the contempt petition was withdrawn on 26.04.2007 with liberty to the petitioners to challenge the order dated 09/19.08.2006, if need so arose in appropriate proceedings on the statement of counsel for the petitioners. Thus, it is apparent that the petitioners thereafter stood satisfied with the seniority which was fixed and chose not to further agitate the issue. The litigation finally came to an end by the dismissal of the civil appeal on 02.04.2014 and merely because the Apex Court has observed that the State shall do the needful for implementation of the impugned judgment as soon

as possible would not give a fresh cause of action to the petitioners. Nothing has been demonstrated or was pointed out as to how the petitioners had been aggrieved by their fixation of deemed date of seniority which had been done way back a decade earlier. Merely because in the orders dated 11/15.06.2004 and 19.08.2006, a clause has been incorporated that it is subject matter of final decision, would not give the petitioners the cause of action to question the seniority which they have accepted over this long period of one decade. Out of fifteen petitioners, five of the petitioners had already retired but have chosen to litigate and got interim orders for a period of over one year. The said clause was obviously incorporated for persons who had benefitted and promoted and it was only as a caveat as such to tell them that there was further litigation so that tomorrow they would not have been left in the dark.

31. The petitioners were well aware of this order dated 11/15.06.2004 but have chosen not to append it alongwith the writ petition wherein, the details have been mentioned regarding the implementation of the orders of the Division Bench. Even the factum of the contempt petition which had been withdrawn with liberty to challenge the subsequent order has not been mentioned by the petitioners who were party to the earlier round of litigation. The respondents no. 3 to 10, in comparison figured at the same list at Sr. Nos. 16, 17, 25, 31, 34, 36, 42, 48 and their deemed date of promotion was pertaining from periods from 04.03.1998 to 02.06.1999 and they were intentionally not impleaded by the respondents. If the petitioners were so aggrieved against the said persons or other juniors they specifically should have made averments regarding their wrong deemed date of promotion and instances should have been given as how the said persons

had stolen a march over them. The table, which has now been relied upon, would not be sufficient indication of the non-implementation of the judgment and it had also been attached alongwith the contempt petition and now has only been further updated. Annexure R-2 would also go on to show that the person at Sr. No. 135 was the last person qualified vide the test and thereafter, there was no mention of any qualifiers since they stood exhausted at that point of time and thereafter, the Rules have been followed as directed by the Division Bench.

32. In the absence of any specific instance of any person being promoted in violation of the judgment of this Court, the impugned order does not suffer from any infirmity since the order could only meet some specific objections qua a certain person who had been promoted against his entitlement. The argument that the seniority was still at a fluid stage thus is without any basis specifically in the absence of any challenge to the subsequent seniority lists of 2004, 2008 (Annexure P-12) and 2013. The impugned order also notices the history similarly of the litigation and the fact that the seniority list of the Senior Assistants issued on 30.05.2008 and that there was no stay on the said list and on the basis of the same, promotions had been made from the post of Senior Assistants to Superintendents till now. The Apex Court had not given any new directions regarding the promotions of the candidates and the impugned order has also taken into account the opinion of the legal remembrancer that there was no direction from the Apex Court regarding the promotion of candidates and there was no need to review the orders dated 15.06.2004 and 09.08.2006 which have been passed in implementation of the orders of this Court.

33. Resultantly, it is held that the petitioners can have no grievance

against the alleged non-implementation of the orders of this Court and are beneficiaries to the orders already passed and are only seeking to delay the promotions further to the post of Deputy Superintendents and the present writ petition being without any merit is accordingly dismissed.

34. Keeping in view the findings recorded above against the petitioners, this Court is of the opinion that the process of promotion has been deliberately delayed by the petitioners, who got interim orders by approaching this Court without impleading private respondents and other concerned persons. The order dated 11/15.06.2004 has also been apparently and deliberately kept back from this Court to get an interim order to the detriment of the private respondents and similarly situated employees. As noticed above, five of the petitioners already stood retired but have chosen to litigate and got the interim orders.

35. Accordingly, costs of ₹5,000/- per person is imposed upon the petitioners which will be deposited with the Punjab State Legal Services Authority within a period of one month from today, failing which, the State shall take steps to recover the same from the petitioners and deposit the same to the above said authority.

(G.S. SANDHAWALIA)
JUDGE

18.11.2015
shivani

