

C. W. P. Nos. 24271, 20057, 24527, 24589, 24621, 24650, 1
24660, 24910, 26303, 26489, 28469 of 2013, 2225, 10504,
10524, 10548, 10600, 11100, 18049 of 2014, 2251, 5618,
5676, 10284 and 17048 of 2015.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P.Nos.24271, 20057, 24527, 24589, 24621, 24650,
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2225, 10504, 10524, 10548, 10600, 11100,
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17048 of 2015.

Reserved On : September 23, 2015.

Pronounced On : September 30, 2015.

C. W. P. No. 24527 of 2013 :

Dharam Singh		Petitioner
vs.		
State of Haryana and others		Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Jai Bhagwan Sharma, Advocate
Mr. Saurabh Arora, Advocate
Mr. Vikas Kuthiala, Advocate
Mr. Pankaj Mehta, Advocate
Mr. Sunil Kumar Bhardwaj, Advocate
for the petitioner(s).

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

These cases, being a bunch of 23 writ petitions, involving

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similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment.

The facts, in brevity, which have emerged from the record of the case, as also from the arguments raised at the bar, are that in the year 1987, there existed vacancies of Clerks in the State of Haryana, for which selection was held through the Haryana Subordinate Services Selection Board (hereinafter referred to as – the Board). Though the advertisement did not indicate the number of vacancies, the Board conducted the written test and thereafter, select list of 5373 candidates was prepared on 15.10.1989. In accordance with the prescribed procedure, from out of the said list, the Board recommended the names of 1692 candidates for appointment to different Departments, but while making such recommendations, the names of the candidates were not sent in accordance with their merit, but at random. When appointments were made, out of the above referred 1692 candidates, those occupying higher position in the merit list, challenged their appointment by filing writ petitions before this Court. The issue was finally pronounced upon by the Apex Court in **Roshni Devi vs. State of Haryana and others – 1998 (8) SCC 59** by the issuance of the following directions :-

“We issue the following directions in substitution of the directions made by the High Court in the impugned judgment :-

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(1) *The appointments already made from out of the list prepared on 15-10-1989 will not be annulled.*

(2) *The last person who is stated to have been appointed being at serial no. 4645, persons occupying higher position than him could be considered for appointment to the post of clerk if there exists any vacancy for them.*

(3) *The vacancy in this context would mean the vacancies which were available in the State of Haryana prior to the advertisement issued for selecting persons for the said post for the year 1995. It is to be made clear that if no vacancies exist on the aforesaid date then no further appointment would be made from out of the list prepared on 15.10.1989 notwithstanding the directions of the Punjab and Haryana High Court in Sudesh Kumari's case.*

(4) *If vacancies did exist on the date as aforementioned then the appointments from out of the list prepared on 15.10.1989 could be made strictly on the basis of their merit position in the list.*

(5) *We strongly deprecate the practice of selecting and preparing an unusual large list compared to the vacancy position and the State Government should*

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either amend the Recruitment Rules in that respect and till then should issue positive administrative instructions giving the right to the Selection Board to select only some persons in excess than the requisition for which the Board is going to select people.

(6) *We also do not approve of the inaction on the part of the State Govt. in not assailing the judgment of the Punjab and Haryana High Court in Sudesh Kumari's case and now coming up before us making submissions that the judgment is practically incapable of being implemented.”*

The above referred directions given by the Apex Court were not implemented, leading to the filing of Contempt Petitions before the Apex Court. In these Contempt Petitions, the then Chief Secretary to the Government of Haryana admitted that the number of vacancies of Clerks, as available between 15.10.1989 to 18.11.1995, were 145. Those Contempt Petitions were disposed of by the Apex Court vide order dated 15.12.2000 giving liberty to the petitioners therein to approach appropriate Forums.

In the year 2009, two writ petition being **C. W. P. No. 53 of 2009 – Darshan Singh and others vs. State of Haryana and another** and **C. W. P. No. 3429 of 2009 – Dharam Singh and others vs. State of Haryana and another** were filed in this Court seeking appointment as Clerks in pursuance to the above referred selection against the posts

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reserved for Ex-servicemen. These writ petitions were disposed of vide order dated 03.08.2010 directing the respondent State to appoint the petitioners therein against the posts reserved for Ex-servicemen on the basis of their inter-se seniority. The judgment of the learned Single Judge of this Court in the above referred two writ petitions was taken up in intra-court appeal. The leading case in the bunch of appeals being **L. P. A. No. 1509 of 2010** was decided by a Division Bench of this Court on 09.11.2012. After scrutinizing the entire history of the case, the following directions were issued :-

“We thus set aside the direction of the learned Single Judge given in the order dated 03.08.2010 or other orders which confined to the filling up the posts on the basis of the inter-se merits of the writ petitioners alone. Instead, it is directed that 103 numbers of vacancies which according to the State of Haryana still exist pertaining to the period 15.10.1989 to 18.11.1995 shall be filled up strictly on the basis of the merit position in the merit list prepared by the respondents.”

As per the directions reproduced above, 103 number of

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vacancies, which, according to the State of Haryana, still existed, pertaining to the period from 15.10.1989 to 18.11.1995, were directed to be filled up on the basis of merit. It is the admitted case between the parties that in pursuance to the above directions, the petitioners were, as per their merit, given appointments. However, in the offer of their appointments, it was stipulated that they would be governed by the New Defined Contribution Pension Scheme (hereinafter referred to as – the New Pension Scheme), which came into force through notification of the Government of Haryana dated 28.10.2005. It is this clause of the appointment letter, which is challenged by the petitioners through the present petitions. The petitioners pray that they be governed by the Old Pension Scheme, which was prevalent at the time, when persons lesser meritorious to them had been appointed. According to the petitioners, the Old Pension Scheme provides more financial benefits and to apply the New Pension Scheme upon the petitioners in the facts of the case, would be unfair, especially when the State has acted in a highly arbitrary and discriminatory manner by not appointing the petitioners in spite of the fact that they were higher in merit and had been delaying the issue in spite of directions given by the Apex Court and this Court, as also on the ground that no fault for the delay could be attributed to the petitioners and that the persons lower in merit should not be allowed to reap more financial benefits than the petitioners.

At the time of hearing, counsel for the State of Haryana, while

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producing the record, has brought a letter dated 30.03.2015 to my notice which is ordered to be taken on record as 'Mark A' and is reproduced as under :-

*“This matter has been examined by
Chief Secretary, Haryana (in General
Services-I Branch)*

*2. AD is advised to grant the benefit of
deemed date of appointment, seniority,
notional fixation of pay to Sh. Raj Kumar
from the date his juniors in rank were
appointed in the Department. Further, for
opening of GPF account and benefit of old
pension scheme, AD is advised to take up
the matter with Finance Department at their
own level.*

3. File of AD is returned herewith.”

A perusal of the above quoted letter shows that after examination of the matter, the Chief Secretary to Government of Haryana had advised the General Administration Department to grant deemed date of appointment to the petitioners, seniority from the date persons lesser in merit had been appointed, to fix their pay notionally with effect from the date the persons lower in merit to them had been appointed. So far as the

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applicability of the Old Pension Scheme is concerned, the General Administration Department was advised to take up the matter with the Finance Department. The record, as reproduced by the State of Haryana, further reveals that in pursuance to the above advice, the Education Department in the State of Haryana has granted deemed date of appointment to all the Clerks like the petitioners, who were appointed in the year 2013 with effect from the date persons lesser in merit to them have been appointed. They have also been granted seniority over and above them and their notional pay has been fixed from the date a Clerk lesser in merit to them was appointed. The order dated 15.06.2015 is ordered to be taken on record as 'Mark-B', the relevant portion of which is reproduced below :-

*“In continuation of the office
order No. 13/80-2013 HRME (5) dated 08-
05-2013, the following Clerks are hereby
granted the benefits of appointment from
deemed date i.e. 12-04-1990, seniority and
fixation of pay from the date their junior in
rank were appointed. They will entitle for
pay fixation notionally from 12-04-1990 and
actually from the date they joined their duty
actually. They are also eligible for seniority
to their junior in rank were appointed.*

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Sr. No.	Name	Father's Name	Address	Place of Posting	Category	Roll No.	Merit	D.O.B.
1.	Sameer Singh	Gopi Ram	VPO Madina Gindran Mohalla Pahal Garhi, Distt. Rohtak	GGSSS Gohana, Sonapat	GEN	166537	602	06-09-1955
2.	Bharat	Hawa Singh	Vill Bhaini Mato PO Bhaini Surjan, The Maham, Distt. Rohtak	GMS Narwal, Kaithal	GEN	66103	607	30-05-1965
xx	xx	xx	xx	xx	xx	xx	xx	xx
39.	Satyapal	Rameshwar Dass	H. No. 239/2 Kaistan Mohalla, Darjiyon Wali Gali, Panipat	GHS, Sector 19, Panchkula	BC	197916	2243	03-04-1963

Note :- To open GPF account and to grant the benefit of old pension scheme, case has been sent to finance department for approval.”

Once, on the advice of the Chief Secretary, Haryana, the above benefits have been given to the Clerks appointed in the Education Department, Haryana, there is no reason why the same benefits should not be applicable to all the Clerks similarly situated irrespective of the Departments, in which they have been appointed.

A perusal of the above quoted orders Mark-A and Mark-B shows that the issue with regard to the applicability of the Old Pension Scheme to the petitioners has been referred to the Department of Finance. The Court was requested to await the decision of the Finance Department.

Already, 25 years have elapsed when persons like the petitioners have been agitating and clamouring for their rights. I do not

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have a heart to prolong their agony any longer, especially when it is the conceded position that the petitioners and other similarly situated Clerks, who were appointed in the year 2013, have been given a deemed date of appointment with effect from 12.04.1990 i.e. the date on which the persons lesser in merit to them had been appointed along with seniority. Their pay had also been fixed, though notionally, from the date persons lesser in merit to them had been appointed. Once the State of Haryana has, on its own, given the petitioners deemed date of appointment with effect from 12.04.1990 along with seniority and notional pay fixation, they would be deemed to have been appointed on 12.04.1990 and on account of this fact, there is no reason in law or in fact why the Pension Scheme, as applicable on 12.04.1990 be not made applicable to them. Once the State of Haryana itself acknowledges their date of appointment to be 12.04.1990, then it does not lie in their mouth to deny the applicability of the Pension Scheme which has been made applicable to persons, who were appointed on 12.04.1990.

The delay in offering the appointments to the petitioners is entirely attributed to the State of Haryana, for which the petitioners cannot be faulted with and resultantly, cannot be put to loss. In the facts of the case in hand, right from the start, the State of Haryana has acted in a highly discriminatory and arbitrary manner and for inactions, even invited strictures from the Apex Court in **Roshni Devi's** case (*supra*) as under :-

“In all these cases the legality

of the Full bench judgment dated 13th July, 1994, passed by a bench of Punjab and Haryana High Court and the directions given thereunder are under challenge. These cases depict a sordid state of affair in the State of Haryana in relation to recruitment to the post of clerks and the State all along has been a mute spectator. As it appears from the records and the different documents appended thereto in the year 1987 there existed some vacancies in the post of clerks in the State of Haryana and the impugned judgment indicates that the service Selection Board had received requisitions from different departments of the Government for a total number of 662 posts. The advertisement which had been issued inviting applications from the candidates, however, did not indicate the number of vacancies. The Service Selection Board conducted the written test and thereafter selected 5373 candidates and prepared a list of those candidates on 15.10.1989. In accordance with the prescribed procedure from out of the said list the Selection Board recommended the names of 1692 candidates to different departments; but while making such recommendation the candidates were not

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*sent in accordance with their merits but at
random. [Emphasis supplied]”*

In view of the above facts, as also delay on the part of the respondent State, in offering appointments to the petitioners, they cannot be made to suffer financial loss as it is the un rebutted case that the Old Pension Scheme entitles them to much higher financial benefits than the New Pension Scheme. Even otherwise, once the Old Pension Scheme with higher financial benefits is made applicable to persons lesser in merit to the petitioners, then there is no reason why the same benefit should be denied to persons, who were and are higher in merit to them.

In view of the above, this bunch of 23 writ petitions is allowed with a direction to the respondents to make applicable in the case of the petitioners, the Old Pension Scheme by disregarding the impugned clause in their offer of appointment, which, in view of the observations made above, is quashed.

The necessary formalities, as per applicable procedure and rules, be completed within three months from the date of receipt of a certified copy of this order.

The writ petitions stand allowed in the above terms.

**(DEEPAK SIBAL)
JUDGE**

Pronounced On : 30.09.2015

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