

CWP No.24916 of 2013-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.24916 of 2013

Date of Decision :10.8.2015

Kewal Kaur

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present: Mr.P.K.Ganga, Advocate
for the petitioner.

Mr.Gagandeep S.Wasu, Addl.AG, Haryana.

.....

MAHESH GROVER.J.

The petitioner has made a grievance of the promotion granted to her in the year 2009 which she claims she was entitled to with effect from 1998 at par with the cases of respondents No.4 to 6. The petitioner as also the private respondents were inducted into service as Masters as per the following details :-

Sr. No.	Name	D.O.A.as Mater	Date of promotion as Lecturer	Sr.No.as on 1.4.2005
1.	Ramphal Kaushik, Lect.Psychology,D.I.E.T, Madina (Rohtak)	22.9.1994	21.7.1998	5003
2.	Mahesh Chand, Lect.Psychology, D.I.E.T, Gurgaon	13.7.1993	21.7.1998	5002
3.	Jagdish Kumar, Lect.Psychology, D.I.E.T, Mattersham (Hissar)	30.9.1988	21.7.1998	2001
4.	Kewal Kaur petitioner	7.10.1992	1.8.2009	

By referring to her prior date of appointment in the year 1992 the petitioner proclaims herself to be senior.

No rules in this regard have been extracted in the petition and neither they have been relied upon during the course of arguments. The petitioner has based her assumption solely on the afore-stated date and has stated that the existence of separate cadres for men and women teachers were struck down in the case of *Neelam Rani v. State of Punjab and others* **2010(2) RSJ 70**. It is thus contended that a joint cadre was to be maintained by the official respondents which would have entitled her to promotion from 1998 when her juniors were promoted.

The petition suffers from various fallacies. No rule of seniority has been shown to the court by which the incumbent belonging to separate cadres of male and female were to be maintained in accordance with Punjab Education Service, Class-III School Cadre Rules, 1955 which were prevalent at that point of time i.e. before 1998.

The official respondents have stated that the instances cited by the petitioner would have no relevance as respondents No.4 to 6 were clearly in the male cadre and were promoted in accordance with the law and as per their turn whereas the petitioner who was in the female cadre could not reach the zone of consideration in the year 1998 whereafter new rules, namely,

Haryana State Education School Cadre (Group-C) Service Rules,

1998 were notified and cases of promotion, seniority, etc. were considered in accordance with these 1998 rules. The petitioner makes no mention of these rules in this petition and even after filing of the reply by the respondents no counter affidavit has been filed to explain her stand. The case relied upon by the petitioner *Neelam Rani* (supra) would have no applicability to the facts of the case in view of what has been observed hereinafter :-

“32. In **Rameshwar Parshad’s case** (supra), a male teacher has sought preparation of joint seniority list for purposes of further promotion. It was found that the petitioner can have a grievance only when a person from their branch is promoted without considering their claim. Though there is no reference to clause (3) of Article 15 but separate cadre for women was not found to be illegal. In **Ranuka Daaiya’s case** (supra), the petitioner has sought appointment against the post of Science teacher (General Category). The minimum marks fixed for short listing the female candidates were 36 as against 26 fixed for male candidates. The Court found that Appendix A refers separate cadre of teachers for male and female. This has been the position since 1955 and all recruitments have so far been made separately advertising the posts of male and female teachers.

33. The Court has upheld the bifurcation of cadre into male and female as a part of distribution of number of

posts amongst male and female teachers keeping in view separate schools for the male and female students. Similarly in **Mandeepwant Kaur's case (supra)**, the question examined was – Does the constitution of separate cadres infringe the equality clause as enshrined in the Constitution? Though the Court has found that separate cadres are permissible but the question whether there could be reservation in favour of male candidate was neither raised nor examined in both the above said judgments. The decisions of this court relied upon by the learned counsel for the respondent runs counter to the Supreme Court judgment in **Rajesh Kumar Daria's case Supra**. Therefore, the said judgments cannot be said to be binding judgments.

34. Clause (3) of Article 15 of the Constitution empowers the State Government to make special provision for women and children to uplift their economic and social status. Therefore, fixing posts for women per se cannot be said to be violative of either Article 15 or 16 of the Constitution of India. Such reservation is a horizontal reservation and not vertical reservation as in the Rules. The horizontal reservation for women is in tune with the constitutional mandate and not the vertical reservation. Therefore, creation of vertical reservation for women is not sustainable.

35. The policy decision of the State Government that girl students studying in exclusively girls schools should be taught by women teachers can not be said to bad. In fact, the argument of learned counsel for the petitioners is that such reservation is permissible and justified in view of Article 15(3) of the Constitution. Therefore specified number of posts in exclusive girl's schools can be filled from amongst the women candidates. Such policy decision cannot be said to unjustified. However, whether the extent of number of posts reserved for women is justified or not or it violates the other provisions of the Constitution has not been examined as no such argument was raised before us.

36. However, in respect of the posts which are said to be meant for men category, we are of the opinion that women cannot be excluded from competing against the posts specified to be filled up from amongst men. Neither Article 15 nor Article 16 contemplates reservation of posts in favour of men. Such posts are required to be filled in on the basis of merit alone and if on the basis of merit women are meritorious, they are entitled to be appointed against the posts described as reserved for men to the extent of posts meant for women.

37. As per the judgments mentioned above, a combined merit list of all the candidates is required to be prepared. If

on such merit, women candidate are not selected to the extent of posts reserved for them, only then women lower in merit will be selected and appointed to fill up the requisite posts meant for such women candidates. Such course alone will be an act of horizontal reservation and in accordance with the mandate of Articles 14 to 16 of the Constitution of India.

38. Therefore, we read down Rule 3 and the Appendix A to mean that posts other than the posts meant for female candidates are required to be filled up on the basis of merit without any classification on the basis of sex. Thus the words - Headmaster, Lecturer (Male) and Masters wherever they appear in the Rules will include the persons of both sexes. However, such declaration of law is without examining the extent of reservation in favour of women and that whether such extent of reservation violates any law.

39. It is since the year 1955, Rules prescribe separate cadre of men and women. Such cadres have been found to be not tenable. Therefore, principles laid down in this judgment shall be applied prospectively. All the previous appointments shall not be reopened or can be said to be invalid on the basis of law declared by this judgment but all future appointments shall be made on the basis of merit in the manner discussed above.”

For the afore-stated reasons when the petitioner has failed to bring out her grievance of entitlement of promotion with effect from 1998, the petition would be held to be without any merit, particularly when there is no explanation forthcoming that even after the petitioner was promoted in the year 2009 she chose to agitate her claim in the year 2013 but this would be in addition to what has been observed earlier. It was projected to this Court that no seniority list was circulated which prevented the petitioner from acquiring knowledge of promotion of her juniors. This was one singular factor at which notice of motion was issued but a perusal of the petition shows that it is eloquently silent in this regard.

No ground to interfere.

Dismissed.

10.8.2015
dss

(MAHESH GROVER)
JUDGE