

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.9030 of 2015

Date of Decision: May 08, 2015

Chandigarh Administration and another

.....Petitioners

versus

Vikas Mittal and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Vishal Sodhi, Advocate, for the petitioners.
Mr.S.S.Pathania, Advocate, for the caveator-
respondent No.1.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

Chandigarh Administration is aggrieved by the order dated 21.11.2014 passed by Central Administrative Tribunal, Chandigarh Bench, directing the petitioner-authorities to review the whole matter regarding merger of the posts of Hostel Attendants and Clerks in the Chandigarh College of Architecture. The Tribunal has in its penultimate paragraph observed that by not effecting the merger of Hostel Attendants with the Clerks, injustice has been definitely caused to Hostel Attendants as at one point of time, the entry qualification, pay-scales and even nature of duties of both the posts were broadly similar.

[2] Since the contesting respondent is on caveat, we have heard learned counsel for the parties and perused the

record with their assistance.

[3] It is contended on behalf of Chandigarh Administration that the direction issued by the Tribunal, which, in a way, commands the petitioners to merge the cadres of Hostel Attendants and Clerks, is unsustainable legally as well as on facts. It is urged that the power to create cadres, their merger and/or determination of service conditions of the employees exclusively falls within its domain and is exercisable by the Executive alone. It is further urged that the creation or merger of cadres or services is beyond the scope of judicial review, save in a case of hostile discrimination or violation of any constitutional or civil rights.

[4] On facts, it is contended that no case of discrimination or violation of any law is made out by the contesting respondent for the reasons that (i) there is a mark distinction in essential qualifications prescribed for the post of Clerk viz-a-viz the post of Hostel Attendant. The minimum qualification for the post of Clerk is graduation, whereas the entry level qualification for the post of Hostel Attendant is 10+2 only, (ii) the pay scale of Clerk after the 5th Pay Commission is Rs.10300+34800+3200 GP while that of Hostel Attendant is Rs.5910-2000+2400 GP, and (iii) the nature of duties of Hostel Attendant are not similar or inter-changeable with the Clerk.

[5] On the other hand, learned counsel for the contesting respondent submits that the qualification of graduation for the post of Clerk has been introduced first time on promulgation of the 'Chandigarh College of Architecture Chandigarh (Group 'C' post Non Ministerial) Recruitment Rules, 2013 w.e.f. 17.10.2013. It is maintained that at that time

when contesting respondent was recruited, the qualification for the post of Clerk as well as Hostel Attendant was 10+2 only. He maintains that differentiation in pay-scales came in the year 2011 on implementation of 5th Pay Commission and prior thereto, their pay-scales were similar. He refers to certain documents to suggest that a Hostel Attendant performs the duties which are similar to Clerks.

[6] Having given our thoughtful consideration to the rival submissions, it appears that the Tribunal or for that matter even a Writ Court would be zealously reluctant to direct the creation, merger or bifurcation of service cadres. Such like decisions are essentially Policy matters and are the prerogative of Executive who is well equipped with the facts, figures, administrative needs and the desired expertise. It is only the violation of any law, constitutional or other rights, if established, that the power of judicial review need to be invoked to scrutinize the decision making process.

[7] In the instant case, it cannot be over-looked that at the time when the Tribunal issued directions to review the previous decision or to re-consider the matter regarding merger of two cadres, there exists substantial difference in the academic qualifications, pay-scales and even the nature of duties are also not identical. Any blanket direction of merger would amount to equating two unequals and the Courts' own direction would be hit by Articles 14 & 16 of the Constitution. Further, it shall, in a way, amount to directing the respondents to amend the Statutory Rules formulated under proviso to Article 309 of the Constitution.

[8] Nevertheless, the hardship being faced by Hostel Attendants due to their stagnated service career, deserves to

be redressed by the petitioners. How and in what manner adequate promotional avenues can be provided to Hostel Attendants, is an exercise that can be undertaken by the petitioners alone. Similarly, the petitioner-authorities can effectively look into the issues like prescription of lower pay-scale for the Hostel Attendants and/or their entitlement for its upgradation.

[9] In the light of the above discussion, we allow this writ petition in part; modify the order dated 21.11.2014 of the Tribunal and direct the petitioners to look into the grievances of Hostel Attendants with reference to non-availability of promotional avenues and/or desired pay-scales and redress the same within their policy-framework. Nothing would preclude the authorities from upgrading the post of Hostel Attendant and merge the same with clerical cadre, if it is so decided or required in administrative and public interest.

[10] Let an appropriate decision be taken within a period of four months from the date of receiving a certified copy of this order.

[11] Ordered accordingly.

[12] Dasti.

[SURYA KANT]
JUDGE

May 08, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE