

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

LPA No.255 of 2013(O&M)
Date of Decision: 05.08.2015

Narpal Singh

...Appellant

Versus

The Speaker, Haryana Vidhan
Sabha and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr. J.S. Jaidka, Advocate
for the appellant.

Mr. Lokesh Singhal, Addl. A.G. Haryana.

Mr. R.K. Malik, Sr. Advocate with
Mr. Vijay Dahiya, Advocate

Mr. Jaivir Yadav, Advocate
for the respondent No.3

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HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the order of the learned Single Judge dated 15.11.2012, whereby, CWP No.4956 of 1994 filed by the appellant challenging the promotion of respondents No.3 and 4 as Deputy Superintendents on 19.11.1993 was dismissed.

The petition was filed by five persons but when it came up for hearing, four of the petitioners abandoned their claims and only the appellant pursued the petition.

The appellant joined as a Copy Holder on 18.03.1967 by way of direct recruitment in the Haryana Vidhan Sabha. On 15.04.1980, he was promoted as Assistant. Vide order dated 12.11.1993, respondents No.3 and 4, who were working as Legal Assistants in the Haryana Vidhan Sabha were promoted as Deputy Superintendents. The appellant and four others filed the writ petition challenging the promotion of respondents No.3 and 4.

It was the case of the appellant that as per the Haryana Vidhan Sabha Secretariat Service Rules, 1981 (for short 'the Rules'), there was no provision for promotion from the post of a Legal Assistant to the post of a Deputy Superintendent. Though, at the time when respondents No.3 and 4 were promoted as Deputy Superintendents, the appellant was not eligible to be promoted as Deputy Superintendent, but the promotion was challenged on the ground that it blocked the chances of promotion of the appellant when he would acquire the eligibility to be promoted as Deputy Superintendent. The relevant rules known as the Haryana Vidhan Sabha Secretariat Service, Rules, 1981 are extracted as under:

Appendix 'B'
(See Rule B)

Sr. No.	Designation of Posts	Academic Qualifications and Experience if any for direct recruitment	Academic Qualifications experience for appointment other than by direct recruitment	Remarks
1.	Deputy Superintendent	****	One year's experience as Assistant Information Officer/Resident Assistant-cum-Care Taker.	

2.	Legal Assistant	Law Graduate preferably as M.A. In History or Political Science with the experience of at least three years' practice of law at Bar	Law Graduate with at least three years' experience as Assistant/Resident Assistant-cum-Care Taker/Assistant Information Officer	
3.	Assistant Information Officer	****	Three years' experience as an Assistant in the Haryana Vidhan Sabha Secretariat.	
4.	Resident Assistant-cum-Care Taker	****	Three years' experience as Assistant in the Haryana Vidhan Sabha Secretariat.	

As per the Rules, for promotion to the post of Deputy Superintendent, one year's experience as Assistant Information Officer/ Resident Assistant-cum-Care Taker is required. For appointment by direct recruitment to the post of Legal Assistant, the qualification required is Law Graduate preferably with M.A. in History or Political Science with at least three years' practice of law at the Bar. For promotion to the post of Legal Assistant, the eligibility requirement is that the candidate should be Law Graduate with at least three years' experience as Assistant/Resident Assistant-cum-Care Taker/ Assistant Information Officer

During the pendency of the writ petition, the appellant was promoted as Resident Assistant-cum-Care Taker in the year 1996.

Learned Single Judge on consideration of the Rules agreed that the Rules certainly do not provide any promotional channel from Legal Assistant to Deputy Superintendent. However, as during the pendency of the writ petition, the appellant had retired and he became eligible for promotion to the post of Deputy Superintendent only in the year 1996, when he was promoted as

Resident Assistant-cum-Care Taker after having worked as Assistant for 16 years, because of efflux of time, it would not be proper to unsettle the promotion of respondents No.3 and 4 even though it was not permitted in terms of the Rules.

Mr. J.S. Jaidka, learned counsel for the appellant has vehemently argued that the promotion of respondents No.3 and 4 being contrary to the Rules could not be protected. Even though the appellant was not eligible for promotion to the post of Deputy Superintendent at the time when respondents No.3 and 4 were so promoted and he acquired the eligibility for such promotion only in the year 1996, yet he was denied his legitimate due for being promoted as Deputy Superintendent. He argued that if respondents No.3 and 4 had not been promoted as Deputy Superintendents on 19.11.1993, two persons in their place would have been promoted from the post of Assistant Information Officer/ Resident Assistant -cum- Care Taker, and resultantly, the appellant would have been promoted to the post of Resident Assistant -cum-Care Taker on 19.11.2003. He argued that merely because he had retired by the time the petition came to be decided in the year 2012, he ought not to be denied the benefit at least of promotion and notional benefits.

On the other hand, Sh. R.K. Malik, learned Senior counsel for the respondents 3 and 4, with reference to the Rules points out that the post of Legal Assistant is a post in the higher pay scale than that of Assistant Information Officer/ Resident Assistant-

cum-Care Taker and that the post of Legal Assistant is a promotional post vis-a-vis these posts, inasmuch as, a Law Graduate with at least three years' experience as Assistant/ Assistant Information Officer/ Resident Assistant-cum-Care Taker is eligible for promotion to the post of Legal Assistant. He argues that even if it is not so specifically provided in the Rules, the inevitable conclusion is that a Legal Assistant is also eligible for promotion to the post of Deputy Superintendent on the basis of his higher qualification and higher pay scale than that of Assistant/Assistant Information Officer/ Resident Assistant-cum-Care Taker. He states that the pay scale of the post of Legal Assistant is Rs.1600-2600 plus Rs.150/- as special pay, whereas, the pay scales for the posts of Assistant Information Officer and Resident Assistant-cum-Care Taker are Rs.1400-2600 plus Rs.100/- as special pay and Rs.1400-2600 plus Rs.60/- as special pay respectively. With reference to decisions of this Court in CWP No.16978 of 1996 **Seth Singh and others Vs. The State of Haryana and others'** decided on 21.02.2013 and CWP No.242 of 1999 titled as **'L.R. Bahmani and others Vs. State of Haryana and others'** decided on 21.02.2013, he contends that any rule, which equates the incumbent of a feeder post and that of a promotional post for the purposes of higher promotion is inequitable and violative of Article 14 of the Constitution for the vice of treating unequals as equals. In **CWP No.16978 of 1996**, this Court struck down the Rules 9(1)(b)(ii)(d) and (e) of the Haryana Development and Panchayats

Department (Group B) Services Rules, 1988, which provided a quota for promotion of Assistants and Accountants, which were feeder post for the post of Head Clerk to the post of Block Development and Panchayat Officer along with a quota for promotion of Head Clerks to the post of Block Development and Panachyat Officer. In **CWP No.242 of 1999**, Rule 9(1)(b)(ii) of Haryana Excise and Taxation Department (Group-B) Service Rules, 1998, which provided a quota for promotion from amongst Assistants and Senior Scale Stenographers to the post of Assistant Excise and Taxation Officer by jumping over their seniors, who were working as Excise and Taxation Officer was quashed for the same reasons. He has also referred to decision of this Court in **CWP No.9804 of 1991**, where a Division Bench of this Court upheld the promotion of Secretary to the Speaker to the post of Deputy Secretary though the post of Secretary to Speaker had not been expressly included in the posts specified in the appendix to the relevant rules. It was held that as the post of Secretary to the Speaker had similar pay scale as the post of Under Secretary of Haryana Vidhan Sabha and there was not much difference in the nature of work of these posts and their work was interchangeable, so far all intents and purposes, for the purpose of promotion to the higher post of Deputy Secretary, the post of Secretary to the Speaker could be considered equivalent to the post of Under Secretary and there was no illegality in the promotion of the Secretary to the Speaker as Under Secretary.

Having heard learned counsel for the parties, we are of the view that there is no merit in the appeal. It cannot be denied that the post of Legal Assistant is a post requiring higher qualification and has higher pay scale and higher responsibility than that of Assistant/Assistant Information Officer/ Resident Assistant-cum-Care Taker. It has been specifically stated in the written statement filed on behalf of respondents No.1 and 2 that Legal Assistants, because of their legal background are entrusted with works of greater responsibility like work relating to Anti Defection Law, Committee of Privileges, Subordinate Legislation etc. Moreover, as per the Rules, it is also a promotional post for Law Graduates with at least three years' experience as Assistant/ Assistant Information Officer/ Resident Assistant-cum-Care Taker. Based on the decisions relied on by the learned Senior counsel for the respondents, we find that there is no illegality in the promotion of respondents No.3 and 4 as Deputy Superintendents.

Accordingly, this appeal is dismissed.

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

August 05, 2015
Atul