

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

LPA No.1036 of 2014 (O&M)

Date of Decision: 21.04.2015

Ramesh Kumar & Ors.

... Appellants

VS.

Azad Singh Clerk & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

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?

Present: Mr. Puneet Gupta, Advocate for appellants

Mrs. Hema Kakkar, Advocate for respondent No.1

Mr. BL Gupta, Advocate for respondents No.2&3

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal impugns the order dated 24.07.2013 whereby learned Single Judge allowed the writ petition filed by the first respondent and has set aside the stipulation contained in the order dated 26.07.1993 (Annexure P9) to the effect that the post of Catalogue Typist occupied by the first respondent shall be part of Clerical cadre 'with immediate effect'. Consequently, it has been directed that the first respondent shall be treated as a part of the ministerial cadre 'since the date of his appointment as a Catalogue Typist'.

(2) A brief reference to the facts may be made.

(3) The first respondent joined Maharishi Dayanand University (in short, 'the University') as a Clerk-cum-Typist on *ad*

hoc basis for a period of three months vide appointment letter dated 14.09.1979. Clause 3 of the appointment letter stipulated that “*the appointment is purely temporary, on adhoc basis for three months or till the regular incumbents join whichever is earlier*”.

(4) The afore-stated appointment was made neither through any competitive test nor a public advertisement was issued. Thereafter, a written test followed by a type-test with a speed of 30 w.p.m. was held by the University for the appointment of Clerk-cum-Typists on regular basis. The first respondent appeared in the written test held on 11.05.1980 but failed.

(5) The University still, vide letter dated 24.06.1980 (Annexure R1), gave second chance to the first respondent to appear again in the written test but he did not avail that opportunity.

(6) On 27.12.1980, Registrar of the University issued a Circular (Annexure P2) to different Heads of Teaching and Non-Teaching Departments inviting applications for the post of Catalogue Typist in the University Library. The applications were invited from the internal Clerks who knew “*typing both in English and Hindi*”. Since the first respondent was still working as *ad hoc* Clerk, he applied for the post of Catalogue Typist and on having been selected, he was offered appointment vide appointment letter dated 25.04.1981 (Annexure P4) on regular basis subject to successful completion of the probation period of one year etc. On

successful completion of the probation period, the first respondent was confirmed on the post of Catalogue Typist w.e.f. 28.04.1982.

(7) The fact that the post of Catalogue Typist was not a part of clerical cadre was known to the first respondent from the very inception as only he was considered and confirmed against that single cadre post. The first respondent thus started representing to the University for assimilation of the post of Catalogue Typist in the cadre of Clerks. According to the stand taken by the University, the first respondent in this regard represented on 30.03.1985, 11.12.1985, 27.11.1987, 19.04.1989, 19.02.1990, 07.11.1991, 16.01.1992. All his representations were considered and rejected and every such decision was duly conveyed to him (please see Annexure R3 colly).

(8) The University also finalized and circulated the seniority list of Clerks and other common ministerial cadre on 24.05.1988 from amongst those who had joined the University on regular basis after 31.12.1978. As per that seniority list, there were at least 200 Clerks appointed on different dates since 1980 onwards who had been meanwhile promoted as Assistants hence respondent No.1 was informed that his request for amalgamation of the post of Catalogue Typist in the Clerical cadre from the very inception, cannot be entertained.

(9) It does appear that the first respondent had his say in the University Administration, for despite repeated rejections in

the past, his yet another representation dated 13.03.1993 (Annexure P7) was entertained and the Executive Council of the University in its meeting held on 28.06.1993 vide Resolution No.B-4 accepted his request to the following extent:-

“Resolved to accept the request of the employee only to the extent that the post of Catalogue Typist shall be a part of the Clerical Cadre with immediate effect only.”

(emphasis by us)

(10) Not being satisfied with the inclusion of the post of Catalogue Typist in the clerical cadre ‘with immediate effect only’, the first respondent approached this Court by way of the writ petition which has been allowed by the learned Single Judge.

(11) It would be useful at this stage to mention here that the appellants joined the University as Clerks in the year 1982-83. Most of them were promoted as Assistants in the year 1991 and then as Deputy Superintendents and/or Superintendents in the year 2013.

(12) Most of the appellants stood promoted as Assistants in the year 1993 when the University included the post of Catalogue Typist in clerical cadre. They were appointed as Clerk-cum-Typists through competitive selection process.

(13) The first respondent in his wisdom did not implead any employee including the appellants against whom he was directly

raising the seniority claim as the inclusion of the post of Catalogue Typist in the clerical cadre from the very beginning obviously means that he wanted to be included in the clerical cadre w.e.f. 25.04.1981, the date when he was appointed as Catalogue Typist on regular basis. He was thus bound to affect the seniority of all those Clerks or other ministerial staff of clerical cadre who were appointed after 24.04.1981 but before 26.07.1993. None of them was impleaded as a party respondent.

(14) The operative part of the order passed by the learned Single Judge reads as follows:-

“Finding no justification in the decision taken by the respondents in initially declaring the post to be an ex-cadre and subsequently rectifying the mistake prospectively, I am of the opinion that the writ petition deserves to be accepted. Allowing the same, the impugned condition contained in Annexure P-9 is set aside and it is declared that the petitioner shall be construed to be a part of ministerial cadre since the date of his appointment as a Catalogue Typist. All the consequential benefits arising therefrom affecting his seniority and promotion etc. shall naturally flow to the petitioner and, therefore, the respondents are further directed to take an

appropriate decision in this regard preferably within a period of four months from the date of receipt of certified copy of this order.”

(15) The appellants as well as the University filed their respective review applications but those were dismissed by the learned Single Judge on 01.04.2014 observing that ***“applicants were not necessary parties in the writ petition and if as a consequence of the order of writ petition there has been some change in the seniority list, the applicants would be at liberty to question the said seniority on the grounds that may be available to them under the law”***. So far as the University’s review application is concerned, the same has been dismissed with cost of ₹5000/-.

(16) The University thereafter decided to implement the order of the learned Single Judge, proposing to include the name of respondent No.1 in the seniority list of clerical cadre at Sr.No.227-A and then to promote him as Assistant retrospectively w.e.f. 14.03.1991 and thereafter to add his name in the seniority list of Assistants at Sr.No.62-A and then to further promote him as Deputy Superintendent w.e.f. 20.02.2013 followed by further promotion as Superintendent w.e.f. 10.05.2013.

(17) Some of the affected employees have thus preferred this appeal.

(18) We have heard learned counsel for the parties and gone through the record.

(19) In our considered view, the learned Single Judge has erred in law while accepting the claim of first respondent not only for the reason that the persons who have been directly affected in terms of the seniority or consequential promotions were not heard but on merit also.

(20) It is his own case that the first respondent joined the University as a Clerk purely on *ad hoc* basis. It was a backdoor entry as no transparent selection process was held. He then failed in the written test held for recruitment on regular basis. He did not even avail the second opportunity accorded to him. The first respondent thus foreclosed his right for appointment in clerical cadre until he had competed again and got selected through the written and the type test, which never was the case.

(21) It was a clear case of sheer favoritism that the first respondent continued as *ad hoc* Clerk despite failing in the written test and was further allowed to compete for the post of Catalogue Typist, for which applications were invited from amongst the serving Clerks of University. The first respondent was fortunate to have availed that opportunity and got appointment as the Catalogue Typist on a regular basis vide appointment letter dated 25.04.1981 (Annexure P4). He was aware of the fact that he earned confirmation just after the expiry

of one year probation period w.e.f. 28.04.1982 (Annexure P5) as it was a single cadre post and he was the only incumbent.

(22) Be that as it may, the first respondent concededly made a series of representations starting from 24.04.1985 till 01.05.1990 seeking merger of the post of Catalogue Typist in the clerical cadre and his every request was entertained and turned down. It was the benevolence of the University that it accepted his request and included the post of Catalogue Typist in the clerical cadre in the year 1993 'with immediate effect'. How did it amount to commission of a 'mistake' or its prospective 'rectification' as observed by the learned Single Judge, is un-understandable. The creation of posts or cadres, merger or segregation of cadres, determination of conditions of service, including rule of seniority fall within the domain of competent authority with a very little scope of judicial review save in a case of hostile discrimination etc. The Courts cannot take on themselves the duty to draw a road map as to how such powers must be exercised by the executive.

(23) The first respondent accepted his appointment as Catalogue Typist with open eyes. He continued to hold that post and enjoyed out of turn benefits like confirmation. Had he had any genuine or sustainable grievance against the non-inclusion of that post in the clerical cadre, he ought to have approached the Court at the earliest opportunity. Repeated unsuccessful representations won't revive the cause of action. The writ petition filed in the year

1993 when first respondent stood rejected in the year 1985 was thus hopelessly belated and could have been rejected on that score only.

(24) When in the year 1993, the first respondent partially succeeded and prevailed upon the University to include his post in the ministerial cadre, he was well aware that hundreds of Clerks etc. had already been promoted as Assistants or other higher posts. None of them was made a party-respondent. In fact in the review application neither did he dispute nor the learned Single Judge rejected the appellant's contention that their seniority has been adversely affected behind their backs. In a catena of decisions including *State of Rajasthan vs. Ucchab Lal Chhanwal, (2014) 1 SCC 144*, the Apex Court has repeatedly ruled that even in a case where a junior has been promoted, the writ Court cannot pass an order adversarial to their interest unless they have been arrayed as parties. Such a fundamental principle of natural justice ought to have drawn adequate attention of the learned Single Judge before he accepted the claim of first respondent.

(25) Equally important here it is to note that the first respondent secured his entry in the clerical cadre by exerting influence on the University authorities and through circuitous means though he had failed to enter that cadre through a competitive test held in the year 1980. The net end effect of the

order passed by learned Single Judge is that the placement for which the first respondent competed in the year 1980 along with other eligible candidates and failed, has been regained by him. This is totally impermissible in law as well as equity.

(26) For the reasons afore-stated, we allow this appeal; set aside the orders dated 24.07.2013 and dated 01.04.2014 passed by learned Single Judge and dismiss the writ petition filed by first respondent. Consequently, the first respondent shall be taken to have joined the clerical cadre w.e.f. 28.06.1993 only i.e. when the Executive Council resolved in his favour. The service benefits, if any, granted pursuant to the orders of learned Single Judge shall stand withdrawn with immediate effect.

(27) Ordered accordingly. **Dasti**.

(Surya Kant)
Judge

21.04.2015
vishal shonkar

(P.B. Bajanthri)
Judge