

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16737 of 1991

Date of Decision: 25.02.2016

Balbir Chand Puri

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurnam Singh, Advocate,
for the petitioner.

Mr. Dig Vijay Singh, Advocate,
for respondent No.2.

Mr. J.R. Syal, Advocate,
for respondent No.3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The Punjab Backward Classes Land Development and Finance Corporation (Staff) Regulations, 1979 [acronym 'Backfinco'] classifies staff separately between Administrative and Audit & Accounts etc. [see Reg.9]. The posts of Assistant and Accounts Assistant are mentioned separately in Appendix 'A' to the Staff Regulations. The two posts carry the same pay scale but the qualifications prescribed for filling the posts are different. The minimum qualification required for an Assistant is Graduate with three years experience of working in any Government or Corporation etc. whilst Accounts Assistant have to be B.Com qualified with Mathematics and Economics as subjects and in addition possession of a recognized certificate

of Accountancy and Book Keeping with experience of two years in a commercial firm or public sector enterprise. There can be no doubt that the post of Assistants falling at Sr. No.12 and Accounts Assistant falling at Sr. No.13 are different posts in separate cadre with different nature of work.

2. Mr. Gurnam Singh, appearing for the petitioner submits that both the petitioner and 3rd respondent were offered promotion as Enforcement Officers which they declined to accept. The reason given by the petitioner was that the grade pay was not made known and when it was he was already serving in the same pay scale. He thought what would be the use of promotion without being placed in a higher pay scale. He, however, complains that while 3rd respondent also did not opt for promotion as Enforcement Officer but she was bestowed a favour by the order dated May 07, 1984 promoting her as Deputy Superintendent.

3. It is the stand of the State in the written statement that the seniority list relied upon by the petitioner at Annex P-2 was never finalized and, therefore, acquired no legal force. It has been averred in para.6 that the list was prematurely circulated in the expectation that the Corporation's proposal in its meeting held on December 27, 1984 recommending clubbing the posts of Assistants and Accounts Assistants as a unified cadre would be approved by the State Government. However, approval of State Government failed to materialize. Thus the cadres of Assistants and Accounts Assistants remained distinct cadres as was the position obtaining before the proposal was mooted and failed to .

4. Learned counsel for the Corporation would draw the attention of the Court to Regulation 24 of the Staff Regulations which prescribes the

method of determining seniority of members of the Service. The first proviso to Regulation 24 stipulates where there are different cadres in a Service the seniority shall be determined separately for each cadre.

5. Mr. Gurnam Singh, to demolish the stand of Backfinco submits that it took a divergent stand in CWP No.72 of 1991 filed by the present 3rd respondent, where they have pleaded in the written statement that the posts Assistants and Accounts Assistants are in the same scale of pay and form one cadre. This writ petition was filed assailing the order dated December 11, 1990 passed by Backfinco granting the benefits of military service to the impleaded respondents. The petitioner was not a party therein. The Court is informed that the writ petition was dismissed.

6. On in extenso reading of the para. in which the alleged admission is made the same also reveals that the statement, for whatever be its worth, flies in the face of the Regulations where the posts are not grouped in single cadre. In any case, a statement made would have to yield to the mandate of the Regulations which are clear and unambiguous. It may be mentioned that in that writ petition filed by Sucheta Trehan, the 3rd respondent in this case, one ex serviceman, namely, Bahadur Singh was the contesting respondent who had been given benefit under the National Emergency (Concession) Rules, 1965 and from that point of view, the stand taken was that grant of seniority and promotion were two separate concepts. Therefore, I would not make much ado of nothing i.e. the contradictory or divergent stand which, in any case, cannot govern or alter the legal position since the issue involved does not arise even remotely in the instant case.

Bahadur Singh and Sucheta Trehan were borne on the common seniority list

of Assistants while the petitioner belongs to the cadre of Accounts Assistant. The argument cuts no ice and is rejected.

7. There is another reason why I would not accept the petition which is that the cause of action accrued to the petitioner on May 07, 1984 when the Office Order was passed promoting the 3rd respondent as Deputy Superintendent. The present petition was filed in the year 1991. Consequently, it suffers from delay and laches as well.

8. Accordingly, the petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

25.02.2016

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