

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13139 of 1995 (O&M)

Date of Decision:- 12.07.2016

Amir Chand

....Petitioner

Versus

Director, Haryana Institute of Public Admn. and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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. Raman B. Garg, Advocate, for the petitioner.

Mr. K.K. Gupta, Advocate, for the respondents.

RITU BAHRI, J.

Petitioner is seeking directions to respondent Nos.1 and 2 to promote and appoint him against one of the post of Clerk in his regular line of promotion and thereafter to fix his seniority over and above respondent Nos.3 and 4.

Petitioner was initially working as Dairymen with the Haryana Diary Development Cooperative Federation. The petitioner along with some other staff members were retrenched by the Diary Federation. Thereafter, the Government of Haryana decided to absorb such declared surplus staff in various other Boards and Corporation. The name of the

petitioner was recommended as Peon to respondent No.1 for appointment as per appointment letter dated 25.04.1989 (Annexure P-1). Accordingly, the petitioner joined the services of the respondent institute as Peon on 12.06.1989 in the pay scale of ₹750-940. As per the tentative seniority list (Annexure P-2), prepared by the respondent Institute, the name of the petitioner figured at Sr. No.12. As per the instructions (Annexures P-3 and P-4), issued by Government of Haryana, which were adopted by Boards and Corporations in the Haryana State, the Class IV and Class III employees whose scale of pay is less than that of Clerk such as Restorers and Gestatner Operators, who are matriculate or who improve educational qualification as Matriculate during the course of their service can be promoted to the next higher post of Clerks subject to the following conditions: -

- “i) His work and conduct should be satisfactory.
- ii) He had worked on Class IV post at least for a period of 5 years.
- iii) Number of such promotion should not exceed 20% of the total sanctioned post of the Clerks in that Deptt./organization. (In the institute it is 25%).”

As per the above said instructions, the petitioner became eligible to be promoted as Clerk on 11.06.1994 i.e. on completion of 5 years as Peon and made an application on 15.12.1994 (Annexure P-5) in this regard. One post of Gestatner Operator was lying vacant in the respondent-Institute, which is a Class III and ex-cadre post. Thereafter, applications were invited from Class IV employees working in the institute and the petitioner along with another person, namely, Ashok Kumar, who was selected and appointed as Gestatner Operator. Thereafter, in the month of May, 1995, the petitioner was fully eligible to be promoted as Clerk,

respondent No.1 without his consent, appointed the petitioner as Gestatner Operator, which is an ex-cadre post, vide letter dated 09.05.1995 (Annexure P-6). Petitioner immediately after joining as Gestatner Operator made a representation to respondent No.1 to consider him for promotion as Clerk, which is his line of promotion and after some time he submitted another application (Annexure P-8). Thereafter, respondent No.1 promoted respondent No.3, who was at Sr. No. 16 of the seniority list as Clerk, vide order dated 31.05.1995 (Annexure P-9). Thereafter, respondent No.4 was appointed as Clerk by way of transfer, vide order dated 26.05.1995 (Annexure P-10). The claim of the petitioner is that he should be appointed as Clerk as per the eligibility criteria (Annexure P-11), which is as under: -

Clerks:-	950-1500 + Rs.40/- S.P.	i) By direct recruitment 75% of the total posts	Matric 1 st Class Sec. or Intermediate II Class/Graduate or equivalent with knowledge of Hindi up to Matric.	Should pass type test in English/Hindi at a Speed of 30/25 w.p.m.	Direct
		ii) By promotion 25% amongst Class III & Class IV.	On seniority-cum-merit basis.	5 years service on Class III post (where scale of pay is less than that of Clerk or equal to a Clerk or any Class IV post or combined experience on such Class III & IV.	

The grievance of the petitioner is that if his name considered for promotion to the post of Clerk after the promotion was given to respondent Nos.3 and 4, he will be considered afresh by ignoring his seniority in the Class IV cadre and he became junior to the persons already promoted amongst the Peon and by transfer basis.

During the pendency of the present writ petition, the petitioner, vide CM No.3520 of 2007, has placed on record the promotion letter dated 03.01.2007 (Annexure A-1), vide which, respondent No.3-Kailash

Chander, Clerk, was further promoted to the post of Assistant. Petitioner has also placed on record promotion order dated 23.06.2000 (Annexure P-12) whereby respondent No.4-Smt. Arun Lata Sharma, has been appointed as Assistant.

Thereafter, by way of C.M. No16698 of 2010, the petitioner has placed on record instruction dated 20.10.1983 (Annexure P-12) whereby a conscious decision has been taken by the Executive Council of the Haryana Institute of Public Administration to adopt the rules contained in the Punjab Civil Services Rules (except pension rules) and other instructions issued by Govt. from time to time for its employees. The Chief Secretary, Govt of Haryana, has issued instructions dated 21.05.1981 (Annexure P-13) with regard to promotion of Class IV employees on the post of Clerk on regular basis. It has been clarified that in these instructions the pay scale of the post of restorer and Gestatner Operator became equivalent to the time scale (400-600) of the post of Clerk w.e.f. 01.04.1979 on revision. At the same time, even though the pay scale are the same but the duties and responsibility to the post of Clerk was higher and it was clarified that a Class III employees working as Restorer and Gestatner Operator should be promoted as Clerk keeping in view the higher duties and responsibilities.

Learned counsel for the petitioner has been vehemently argued that as per the circular/clarification given by the Chief Secretary, Govt. of Haryana dated 21.05.1981 (Annexure P-13) that an employee appointed on the post of Class 3 in time scale may be equal to the time scale of the post of a clerk but their duties and responsibilities are less than the duties and

responsibilities of the post of Clerk. The circular dated 05.06.1973 has been amended from 01.04.1979 as on revision of pay scale, the pay scale of post of Gestatner Operator & restorers and that of Clerk became same i.e. 400-600 and as per the instructions dated 05.06.1973 the promotion to the post of Clerk stood abolished. As per the clarification/circular dated 21.05.1981 (Annexure P-13), they could still be promoted as responsibilities to the post of Clerk was higher. Further, as per the proceedings/decision dated 20.10.1983 (Annexure P-12), taken by the Executive Council of the Haryana Institute of Public Administration, they had decided to adopt the rules contained in the Punjab Civil Services Rules (except pension rules) and other instructions issued by Govt. from time to time for its employees. Hence, as per the above-said instructions, the petitioner's representation made for appointment as a Clerk immediately after being appointed as Gestatner Operator should have been considered. He has further argued that the post of Operator-cum-Mechanic has to be filled up by direct recruitment as per Rule 9 [Clause 17 under Group C] of HIPA Administrative Employees [Group A, B, C, D] Service Bye-Laws, 2005.

Upon notice, a written statement has been filed on behalf of respondent No.1 and it has been admitted therein that the petitioner has joined respondent No.1-Institute as Peon on 12.06.1989 in the pay scale of 750-940. A post of Gestatner Operator was notified on 03.11.1993 (Annexure R-1/1) in the pay scale of 950-1500 and this post was to be filled up amongst Class-IV employees of the Institute and the subordinate Institutes working under respondent No.1. The petitioner had applied for

the same vide application dated 10.11.1995 (Annexure R-1/2). Thereafter, the petitioner participated in the selection process wherein one Sh. Ashok Kumar was placed at Sr. No.1 of the merit list and the petitioner was placed at Sr. No.2 of the merit list. Since, there was only one vacancy for the post of Gestatner Operator and Sh. Ashok Kumar, who was at Sr. No.1, was given the appointment letter. The name of the petitioner was now in the waiting list against future vacancy. Subsequently, another vacancy arose and accordingly it was decided by the competent authority to appoint the petitioner, who was placed at Sr. No.2 in the merit list. The petitioner willingly joined the same w.e.f. 15.05.1995 in the pay scale of Rs.950-1500 + Rs.40/- as special pay. Since, the pay scale of Clerk and that of Gestatner Operator was same i.e. 950-1500 + Rs.40/- as special pay as per instructions (Annexures P-3 and P-4), therefore, the petitioner was not eligible to be considered for promotion to the post of clerk. Both the posts were equivalent status and in the matter of pay scales. The petitioner himself joined on the post of Gestatner Operator and he has no claim to retain the seniority of Class IV employees.

Keeping in view the promotion orders (Annexure A-1 and P-12) of respondent No.3 and 4 it is explained that the post of Assistant is a promotional post of the feeder post of Clerk and the petitioner is not entitled to be considered for promotion to the post of Assistant as he has his own channel of promotion and he is eligible to be considered for promotion to the post of Operator-cum-Mechanic in the revised pay scale of ₹5450-8000, which is equivalent to the post of Assistant in the matter of pay scale. As and when the post of Operator-cum-Mechanic became

available the petitioner will be considered for the same.

Reference, at this stage, can now be made to a judgment of Division Bench of this Court in case **Baldev Raj Preenja Vs. State of Punjab and others**, 1997(1) RSJ 571 whereby the question for consideration before the Division Bench was that the petitioner appointed as Master in the Education Department and was promoted as Lecturer. Thereafter, he was appointed as Headmaster in the Government High School, Sethiala, from there he superannuated and was drawing his salary in his own pay scale of lecturer. Thereafter, he retired as Headmaster in the pay scale of Lecturer. He and others had earlier filed writ petition seeking promotion to the Punjab Education Service Class-II in their own cadre (lecturers). The writ petition was disposed of by holding that the petitioner had been appointed as a Headmaster but was given the salary in his own pay scale as that of a Lecturer and he has never given his consent to be appointed as Headmaster, which was a change of cadre. Rather the petitioner was compelled to serve in spite of his specific protest. Hence, for all intents and purposes, his lien on the post of lecturer could not be terminated and even if the lien was taken away by the respondents, an opportunity of hearing should have been given to the employee. The writ petition was allowed and the petitioner was held entitled to all the retiral benefits in the scale of P.E.S. Class-II – Service.

After hearing the learned counsel for the parties, going through the record, this Court is of the considered view that the reference can still be made to the instructions dated 21.05.1981 (Annexure P-13) issued by the Chief Secretary, Govt. of Haryana, whereby it has been clarified that an

employee appointed on the post of Class 3 in time scale may be equal to the time scale of the post of clerk but their duties and responsibilities are less than the duties and responsibilities of the post of Clerk. The circular dated 05.06.1973 has been amended from 01.04.1979 on revision of pay scale, the pay scale of post of Gestatner Operator and restorers and that of Clerk became same i.e. 400-600 and as per instructions dated 05.06.1973 their promotions to the post of Clerk stood abolished. This clarification is applicable to the employees of HIPA as per the decision taken by their Executive Council on 20.10.1983 (Annexure P-12). The respondents have not filed any reply to C.M. No.16698 of 2010 with regard to above-said instructions. Hence, as per the clarification/circular (Annexure P-13) all Class IV as well as Class III employees are entitled to be promoted to post of a Clerk even if their pay scales are same w.e.f. 01.04.1979. The clarification is with regard to Class III employees, who are working as Restorers and Gestetner Operator. The petitioner even after being appointed as Gestetner Operator had a right to be considered for promotion to the post a Clerk when respondent Nos.3 and 4 were promoted, who were juniors to him in the seniority list of class IV employees. The stand taken by the official respondent(s) that after accepting the appointment of Gestenter Operation he had gone to a separate cadre is liable to be rejected in view the clarification/circular (Annexure P-13). There is only one promotional avenue for the petitioner and that too was to be filled up by way of direct recruitment. The petitioner has been granted the benefit of ACP scale as is evident from the order 03.02.2009 on the recommendation of 6th Central pay commission and ACP Rules 2008 on 03.02.2009 and 2nd

ACP as per order dated 18.07.2014. Merely by granting the benefit of ACPs, the rightful claim of the petitioner for promotion to the post Clerk, cannot be washed out. However, the petitioner has further placed on record promotion orders (Annexures A-1 and P-12) of respondent Nos.3 and 4, who have been subsequently promoted to the post of Assistant whereas the petitioner has not been extended the above-said benefits.

In view of the above, the petitioner after being appointed as Gestenter Operator had a right to be considered for promotion to the post of Clerk as further promotion to the post of Operation-cum-Mechanic was not available as it was to be filled up only by way of direct recruitment. The petitioner has been denied a right to be appointed on a post which carries higher responsibilities as is clear by the circular dated 21.05.1981 (Annexure P-13). Accordingly, the present writ petition deserves to be allowed and directions to the respondents to consider the petitioner for promotion as a Clerk from the date of his juniors were promoted in the cadre of Clerk and further the petitioner would be entitled to all the consequential benefits. There shall be no order as to costs.

July 12, 2016
naresh.k

(RITU BAHRI)
JUDGE