

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3057 of 1995

Date of Decision: 02.03.2016

Mrs. Achint Bhatia

... Petitioner

Versus

The State of Punjab and another

... Respondents

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

Present: Mr. Vivek Sharma, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. The petitioner was appointed to a Class-II post of Lady Manager, Doll Making and Allied Handicrafts in the year 1963. She was selected by the Punjab Public Service Commission by way of direct recruitment to the post in the Industries Department, Punjab. The rules of service were called the Punjab Industries Service (State Service Class-II) Rules, 1966 (for brevity "the Rules"). The posts which comprise Class-II service are designated in Appendix 'A' to the Rules. The petitioner's post falls at Sr. No.13 of the Appendix. The cadre of Lady Managers comprise two posts in the pay scale of Rs.250-750/-. At Sr. No.2 are a group of posts including those of Assistant Director/Assistant Controller of Stores/District Industries Officer/Store Inspection Officer/Purchase Officer (Emporia Organization)/Textile Officer, Marketing and Textile Officer (Development) which cadre comprised 48 posts in number in the same pay

scale as enjoyed by Lady Managers. Though the post of Lady Manager (Doll Making) was a cadre post but the same was an isolated post. The rules offered no promotional avenues for the petitioner.

2. Faced with this grim prospect that she would retire after 33 years of service on the same post without earning a single promotion due to lack of availability of a hierarchy of posts, represented to the respondent-State to provide her promotional avenues and the simplest way was to merge the post in a common cadre with Assistant Directors since both types of posts enjoyed the same pay scales and were equal in status; as asserted by the petitioner. On the other hand, Assistant Directors are promoted as Deputy Directors etc. The representation was made on February 05, 1966. No steps were taken by the department/State Government to create a promotional avenue by merging the post of Lady Manager with Assistant Directors. Relief came to the petitioner by Punjab Government order dated December 24, 1986 endorsed on January 15, 1987 (Annex P-4) issued in the name of the Governor of Punjab encadreing the post of Lady Manager, Doll Making and Allied Handicrafts Centre, Punjab Government, Department of Industries substantively held by the petitioner was brought in the common cadre of Assistant Directors w.e.f. December 31, 1963 the date of her recruitment by the Commission. This would have brought her the desired relief but for the order of the President of India (When Punjab was under Central Rule) in supersession of Annex P-4 of even date and same number i.e. December 24, 1986 endorsed on January 15, 1987/January 19, 1988 superseding the previous order by encadrement of the post held by the petitioner in the common cadre of Assistant Directors/District Industries

Officers with immediate effect. The relief was made prospective unlike the previous order. This order (Annex P-5) took away right to seniority from the date when she was appointed and wiped out the benefit given by Annex P-4. By the next order Annex P-6 dated July 27, 1988 the petitioner was posted as Assistant Director Technical (III) Headquarters by way of posting and transfers.

3. Aggrieved by the issuance of the revised order in supersession of Annex P-4 the petitioner submitted a representation to the Secretary Industries Punjab, Chandigarh. The effect of supersession of the previous order entailed loss of seniority gained over 23 years in Class-II Gazetted service which had remained unblemished in the Department of Industries, Punjab. Since the post of Lady Manager, Doll Making etc. and Assistant Directors have been equated in pay and status then past precedents in the Department would be applicable, asserts the petitioner, where Government had encadred certain officers with retrospective effect i.e. from the date of appointment by keeping in view length of service in the same class of post in the Department. She claimed restoration of seniority in Class-II service with effect from the date of appointment. If this was done it would take care of unreasonable discrimination in applying different yardsticks to different officers within the same department relating to service matters like encadrement etc. The representation was made on July 14, 1988. When nothing was heard on the representation and being aggrieved by order dated July 28, 1988 reverting the petitioner from the post of Director Designs Class-I to the post of Assistant Director Technical in Class-II she approached this Court by filing CWP No.6457 of 1988 making multiple

prayers including fixing her seniority w.e.f. December 31, 1963 with all consequential benefits such as promotion etc. for which the petitioner urged she was legally entitled. She sought quashing of the order of reversion and for restoring her promotion as Director Designs. This petition was disposed of on August 02, 1988 directing her representation dated July 14, 1988 be disposed of within one month from the date of the order. In the presence of the representation, this Court found no justification for interference. The Department did not relent and passed order dated September 01, 1988 Annex P-9 informing her that her representation had been considered by the Government and it had decided to reject it. She was directed not to make unnecessary representations to Government time and again since she had been encadred from the date the post was included in the common cadre in accordance with the Government instructions. No other reason was assigned for rejecting the claim and the learned counsel for the petitioner submits that the order is non-speaking in the sense no reasons have been assigned as to why back dated seniority should not be given to her from the date of appointment. The petitioner was also relentless in her pursuit for relief of antedated seniority which grievance persisted causing her to file yet another representation dated September 26, 1988 through proper channel. She then stated that she possessed adequate experience of Class-II service to discharge the duties of Senior Officers in the Department. She named two officers, namely, Amarjit Singh Sidhu and Surjit Singh who had been granted the desired relief. This representation was taken up by the Government and she was called for personal hearing on October 20, 1989 in the Civil Secretariat, Chandigarh. She appeared at the personal hearing and

reduced her arguments in writing on October 25, 1989 for the consideration of competent authority. She pointed out to the stand of the Government taken before the High Court in CWP No.3357 of 1982 relating to the same department admitting that orders were never issued by the Government to treat this post as ex-cadre referring to the post of Lady Manager Doll Making and Allied Handicrafts. In the same affidavit by way of written reply, the State had admitted that there is no specific mention of the word common cadre in the rules. The Government should stand by its affidavit, says the petitioner. The post could not be said to be an ex cadre post since it was mentioned in Appendix 'A' to the Rules of service. She referred to Rule 11 of the service rules which provides that seniority inter-se of the members of the service holding the same class of posts shall be determined by the continuous length of service on that post. The posts of Lady Manager, Doll Making and Assistant Directors were in the same pay scale and enjoyed the same status and it could not be said that her post was in any way inferior in rank or status from the officers allegedly forming the so called unified cadre. She referred to the standing instructions issued by the Government on September 02, 1969 available at page 515-516 of the Manual of Instructions, enjoining upon the department to encadre such posts immediately/temporarily, so that avenues of promotion to such officers are opened and available immediately. These instructions were being ignored.

4. She prayed time and again for the restoration of operation of Annex P-4 and for withdrawal of the revised order Annex P-5 withdrawing the benefit and making it prospective. In the alternative, she prayed that she may be assigned seniority w.e.f. September 02, 1969 amongst the common

cadre officers i.e. the date when Government instructions to encadre isolated/ex-cadre post were issued. These were issues which were not examined by the Government affecting her rights to retain seniority from the date of her appointment which has caused her prejudice gravely affecting her rights adversely. In the alternative she prayed that relief of seniority be granted to her from the date of issue the aforesaid instructions. She prayed for adopting even a third methodology of encadring her from August 02, 1972, the date on which the post of Planning-cum-Survey officers was encadred. But this request was rejected by the order dated January 23, 1995 (Annex P-14) citing the law laid down by the Division Bench in LPA No.402 of 1985, *H.C. Aggarwal and others v. State of Punjab* that the post cannot be encadred from 1972.

5. The question before the Court is short calls upon this Court to consider the validity of the order (Annex P-5) withdrawing the benefit given by order (Annex P-4) which encadred the petitioner in a common cadre of Assistant Directors etc. from the date of her appointment.

6. In the written statement filed by the State, the instructions dated September 02, 1969 (R-1) have been cited which *inter alia* provide for fixation of seniority of an official appointed to isolated post through direct recruitment in the cadre from the date the post was included in the cadre justifying supersession by the order Annex P-5. Government relied on *H.C. Aggarwal* to contend that no executive order regarding encadrement of the ex cadre post in the cadre can be passed with retrospective effect and, therefore, the order Annex P-5 was legal and valid and in accordance with instructions. The petitioner cannot be assigned seniority retrospectively. It

has been pointed out that the petitioner's appointment by way of direct recruitment in 1963 was before the rules of 1966 were notified and the post shown in Appendix 'A' along with other various posts. The post was admitted to be an isolated post. It was common ground that the post held by the petitioner was an isolated post and does not belong to the cadre of Assistant Director/District Industries Officer etc. The post held by the petitioner has entirely different qualifications than those prescribed for the post of Assistant Director/DIO etc. While the qualification of the petitioner is only Faculty of Arts and Diploma in Doll Making and Handicraft whereas the qualifications for the post of Assistant Directors/DIO etc. are M.Sc. Degree in Chemistry with at least two years experience in some Commercial/Industrial concern after taking the M.Sc. Degree; or B.Sc. Degree in Mechanical Engineering or Textile Technology/Textile Engineering/Textile Manufacturing with two years experience in a factory after qualifying the Degree; or MA Degree in Economics, with practical experience of Economics Survey or other relevant experience for at least two years. This differential in qualification justifies unequal treatment and action is not discriminatory.

7. It has also been explained in the written statement that the orders dated January 15, 1987 (Annex P-4) were passed without giving opportunity to the affected persons. The immediately affected party was one N.K. Gupta. He made a representation against the order stating that seniority can only be assigned to the incumbent from the date the isolated post was encadred as per instructions dated September 02, 1969 (Annex R-1). On receipt of representation from Mr. Gupta the matter re-considered in

accordance with the instructions (R-1) and it was decided to supersede the earlier order thereby ordering the encadrement with immediate effect and assigning seniority with effect from the date of encadrement. As such, the order (Annex P-5) is legally sound. The reply goes on to explain the cases of Sarvshri J.P. Mehan, D.S. Virk, K.K. Whig, N.K. Gupta, S.D. Sharda, Mohinder Singh, B.M. Sharma, B.K. Garg, Amarjit Singh Sidhu, G.S. Raju, J.S. Mohal, Pritam Singh, J.S. Grewal and Mrs. Vijay Luxmi.

8. In summary, the stand of the department is that the post of Lady Manager, Doll Making Centre and the post of Assistant Directors belonged to different cadres with different qualifications prescribed, carrying different designations. The petitioner is entitled for seniority from the date her post was included in the cadre of Assistant Director/District Industries Officer and the argument is buttressed by the law rendered in LPA No.402 of 1985.

9. The defence of the State, in the opinion of the court is legal and valid and the correct one taken and is not open to criticism. The petitioner can have no legitimate grievance to claim seniority prior to the date when her post was encadred vide Annex P-5. Government was within its jurisdiction to have superseded Annex P-4 for good and sufficient reason to amend a wrong committed which was brought for review by the immediately affected party N.K.Gupta that retrospective seniority could not be given to the petitioner reducing his chances of promotion. Besides, the job content of both the set of posts was entirely disparate and so were the responsibilities attached to the posts. The qualifications mismatched. Therefore, the petitioner can take her seniority only when she was brought to common cadre. Her initial appointment was prior to promulgation of

rules of service and was on an ex cadre post with no hope of promotion. Her quest for justice for lack of promotional avenues resulted in changing the position vide Annex P-5 to operate prospectively.

10. Consequently, I find no merit in this petition which is ordered to be dismissed.

(RAJIV NARAIN RAINA)
JUDGE

02.03.2016
manju