

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.9891 of 2000 (O&M)

Ishwar Singh and others ... Petitioners

Versus

The Registrar, Cooperative Societies,
Haryana, Chandigarh and others ... Respondents

2. CWP No.534 of 1987

Ishwar Singh ... Petitioner

Versus

The State of Haryana and another ... Respondents

Date of Decision: 30.11.2016

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

Present: Mr. Puneet Kansal, Advocate,
for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. R.K. Malik, Sr. Advocate,
with Ms. Rimple Kadyan, Advocate,
for respondent No.2.

Mr. D.S. Patwalia, Sr. Advocate,
with Mr. Kannan Malik, Advocate,
for respondents No.4 to 8 (in CWP No.9891 of 2000)

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.9891 of 2000 titled *Ishwar Singh and others v. The Registrar, Cooperative Societies, Haryana, Chandigarh and others* & CWP No.534 of 1987 titled *Ishwar Singh v. The State of Haryana and another*.

2. Endless are the disputes between promotees and direct recruits making matters of seniority and promotion highly inflammable disputes on which a large numbers of careers turn.

3. The petitioners claim 10% promotional quota rights against vacancies arising prior to 1976. The dispute is factual as to calculation of posts/vacancies. They were Peons or Record Keepers inducted into service between December 1979 and April 1983 on different dates. The petitioners were consequently promoted as Clerks under the 1976 Rules. Thereafter, on the representations filed by the petitioners, the respondent bank gave them notional promotion & seniority as Clerks under the 1976 Rules with effect from 25.3.88 vide orders dated 10.10.95. Now, by the impugned order dated 24.7.2000, the benefit of notional promotion and seniority granted by the orders dated 10.10.95 has been withdrawn. The said action of the respondent-bank is challenged by way of the present writ petition.

4. The stand of the Bank is that by the orders dated 14.12.1990 petitioner No. 3 was promoted as Clerk from Peon w.e.f 27.11.1990 and vide orders dated 12.10.1991 the petitioners No.1, 2 and 4 were similarly promoted with immediate effect. By orders dated 10.10.1995 all of them were granted retrospective promotion from 25.03.1988 in an arbitrary manner and thus they were made senior to the Clerks appointed directly during August 1988 and November 1989. By the impugned order dated 24.07.2000 the orders dated 10.10.1995 stand withdrawn and the tentative seniority list as on 31.12.1991 circulated on 16.04.1992 restored. Moreover, it was not a case where any junior to the promotee Clerks had been promoted necessitating promotion of these officials with retrospective

effect. The alteration took place after issuing show cause and hearing the affected parties.

5. At the stage of joining service the petitioners were governed by the conditions of service in The Haryana State Cooperative Bank Staff Service (Common Cadre) Rules, 1976 ("1976 Rules") which came into force on January 29, 1977. Ten per cent quota of Clerks was reserved for promotees. To secure promotion, the essential qualification was Matriculate with three years experience as Peons/Record Keeper. They were eligible for promotion as Clerks as on December 24, 1986 as per turn. They claimed that the respondent-Bank made successive appointments to the post of Clerks by way of direct recruitment in excess of 90% quota prescribed for them during the interregnum to their loss.

6. The private respondents are direct recruits to the post of Clerks. The 1976 Rules were amended and superseded by the Haryana State Cooperative Apex Bank's Staff Service (Common Cadre) Rules, 1988. Previously, the 1976 Rules were amended vide order dated August 13, 1987. The qualification criteria for promotion was changed. It was, inter alia, provided that a Peon or Daftri/Record Keeper will be eligible for promotion on completion of 10 years of service instead of earlier period of 3 years after acquiring the requisite academic qualification. The dispute is regarding the number of posts which have fallen vacant in the cadre of Clerks after January 29, 1977 and onward. The question which has arisen is whether the promotees are entitled to vacancies falling for promotion from amongst the 10% quota before January 29, 1977.

7. The litigation started when the respondent-Bank advertised 17

posts of Clerks on December 24, 1986 to be filled by way of direct recruitment. The history is narrated below.

8. Petitioner No.1 Ishwar Singh, Peon filed CWP No.534 of 1987 in which notice of motion was issued and has been heard with the main case since they are tagged together. Ishwar Singh claimed directions to the Bank to consider him for the post of Clerk by promotion before making fresh recruitment under the advertisement dated December 24, 1986. There was no stay granted and the recruitment process led to appointment of direct recruits.

9. The 1976 Rules were amended and thereafter repealed in 1988 when new rules were brought into force. These rules considerably reduced the chances of promotion of the petitioners in view of enhancing experience from 3 to 10 years from the date of acquiring the essential qualification. In the face of new rules, the petitioners, feeling aggrieved, submitted a representation praying that they should be promoted against vacant posts of Clerks in accordance with the 1976 Rules against vacancies remaining unfilled prior to the promulgation of the new rules. Petitioners No.1, 2 and 4 were successful. They were promoted as Clerks under the 1976 Rules. The 3rd petitioner was promoted as Clerk on November 27, 1990.

11. CWP No.1946 of 1996 was filed by one Satya Narayan challenging the promotion of petitioners No.1, 2 and 4 as Clerks under the 1976 Rules. The petition was dismissed on October 28, 1996 observing that the petitioners have been given their dues against the quota reserved for them and the action of the Bank was justified in doing so under the old Rules.

12. CWP No.655 of 1997 was filed by one Jai Singh Clerk who was junior to the petitioners whereby he challenged his reversion from the post of Clerk to Peon as he had been promoted vide order dated October 12, 1991. The writ petition was allowed on March 20, 1998 accepting the factual position that in the year 1986-87 vacancies were available and Jai Singh was eligible under the old Rules for promotion as Clerk and could not be reverted.

13. On October 10, 1995 the respondent-Bank gave notional promotion to all the petitioners as Clerks w.e.f. March 25, 1988.

14. Aggrieved by the retrospective/notional promotion granted to the petitioners retrospectively, Suraj Mal Sangwan and others filed CWP No.1296 of 1996 in this Court challenging the order dated October 10, 1995. These petitioners were direct recruits to the post of Clerk from August 1988 to November 1989. The writ petition was admitted for regular hearing to be heard along with CWP No.534 of 1987, which both petitions are part of this bunch of cases. By an interim order, the Bank was restrained from making any further promotions on the basis of the tentative seniority list circulated vide letter dated April 16, 1992 of Clerks and Steno-typists. The petitioners allege that due to change of political climate in September/October 1989 Suraj Mal Sangwan and others started representing to the Government and the Bank to withdraw the order dated October 10, 1995 granting retrospective promotions to the petitioners. There was change of guard in the post of Managing Director of the Bank. This was in the year 2000. On the basis of the fresh representation filed by Suraj Mal Sangwan and others the respondent-Bank issued show cause notices dated June 07,

2000 to the petitioners for withdrawal of the order dated October 10, 1995.

The petitioners filed their reply to the show cause notices on June 19, 2000.

15. Threatened by imminent reversion, the petitioners filed CWP No.8449 of 2000 challenging the show cause notices. On July 10, 2000, the Division Bench disposed of the petition directing the respondents to file replies wherever necessary and if any decision adverse to the petitioners is taken, the same shall not be implemented for a week from the date the orders are communicated to the petitioners. On July 24, 2000 and July 27, 2000 the order dated October 10, 1995 were withdrawn. When the adverse order was conveyed to the petitioners they brought the present petition i.e. CWP No.9891 of 2000 which is part of this bunch.

16. On February 21, 2002 the learned Single Judge of this Court by a detailed interim order culled out the crux of these cases directing the Managing Director of the Bank to file an affidavit giving information as called for in the order. The order is self-speaking and would facilitate decision-making and is, therefore, reproduced:-

“In these four cases the promotees and direct recruits are making conflicting claims. On behalf of the promotees it has been claimed that the posts were available for promotion of Peons etc. to the posts of Clerks. The mandate of the Rules was not followed. Thus, their seniority was adversely affected. On behalf of the direct recruits it is claimed that they have been given seniority with effect from the actual date of appointment. Thus, persons like the petitioners who were promoted later have no cause to complain.

It is the admitted position that the Registrar had approved the Haryana State Cooperative Bank's Staff Service (Common Cadre) Rules 1976 on January 29,

1977. It was inter-alia provided that the posts of Clerks etc. shall be filled up by direct recruitment. It was further provided that the posts could also be filled up by promotion from Record Keepers, Drivers, Peons, Chowkidars and Sweepers etc. A quota of 10% was laid down for promotion. The Rules of 1976 were amended vide order dated August 13, 1987. The qualification for promotion was changed. It was inter-alia provided that a Peon or Daftri shall be eligible for promotion on completion of 10 years service instead of 3 years after acquiring the requisite academic qualification.

Besides raising arguments on the interpretation of Rules, the counsel are at variance with regard to the number of posts which had fallen vacant after January 29, 1977. Mr. Puneet Kansal, learned counsel for the promotees, has placed reliance on the written statements filed in different cases to contend that the posts falling to the quota of promotees were available prior to the amendment of the Rules and that the respondent-Bank be directed to promote them with effect from the date of availability of posts. On behalf of the direct recruits, it has been contended that they were recruited within the quota assigned to their category and that the Bank is not entitled to make any retrospective promotion.

It appears that the Bank has been moving like a weather-cock. It has taken conflicting stands in different positions. The only consistency was in opposing the person who had approached the Court. If the promotees came, the Bank opposed their claims. If the direct recruits made a complaint, the Bank prayed for the dismissal of their petition. In this situation, it is essential to get the correct facts from the Bank.

It is directed that the Managing Director of the respondent-Bank shall file an affidavit giving the following information:-

1. The number of vacancies which occurred in the cadre of Clerks from January 29, 1977 during each successive years till 1995.

2. *The number of persons who were promoted from the lower posts to those of Clerks during each year.*
3. *The number of persons who were appointed as Clerks by direct recruitment during each year.*
4. *If the available posts were filled up only by direct recruitment and not by promotion, the reasons, if any, for not filling up the posts falling to the share of promotees during each relevant year.*
5. *The respondent-Bank shall also furnish the documentary evidence in support of each of the above mentioned items.”*

17. In the meantime, pleadings were required to be completed.
18. The affidavit has been filed by the Bank which will be discussed during the course of the order at the appropriate stage.
19. It would be appropriate to mention that direct recruits are also before the Court in CWP No.1296 of 1996 which is not listed in this bunch and has been de-tagged since the issues raised by the promotees can be answered independently where both sides are represented and in the presence of the contesting Bank. The other cases have also been de-tagged and presently only two writ petitions i.e. CWP No.9891 of 2000 and CWP No.534 of 1987 are listed for hearing and have been considered.
20. I have heard Mr. Puneet Kansal, learned counsel for the petitioners, Ms. Shruti Jain Goyal, AAG, Haryana for the non-contesting respondent-State, Mr. R.K. Malik, learned Senior counsel with Ms. Rimple Kadyan, Advocate for respondent No.2 & Mr. D.S. Patwalia, learned Senior counsel with Mr. Kannan Malik, Advocate for respondents No.4 to 8 at great length today and had dismissed the petitions and upheld the impugned orders passed by the Bank with reasons to follow. The reasons for

dismissing the petitions are detailed below:-

21. In my considered view and going by the settled legal position, normally no person can be promoted with retrospective effect from the date he was not born in the cadre so as to adversely affect the accrued seniority rights of others in the cadre. The petitioners cannot steal a march over the direct recruits of 1988-89. See State of Bihar and others v. Akhouri Sachindra Nath and others, 1991 SCC (L&S) 1070 provided the direct recruits came within quota of 90%. The petitioners can have no grievance. Prior to July 29, 1974 there were no service rules of the Bank and the competent authority decided how the post has to be filled. For the first time rules were notified on July 29, 1974 and from that date the cadre strength of Clerk was 26. Under these rules 80% posts were to be filled up by way of direct recruitment and 20% by promotion from Peons/Record Keepers etc. These rules were not retrospective. They were repealed and the new rules came into force w.e.f. January 29, 1977. The ratio was altered leaving only 10% posts for promotion. The Bank explains in its written statement that after January 29, 1977, 76 posts of Clerks were created of which the big chunk came on March 25, 1988 with 32 posts added to the cadre. These posts were created on different dates from March 24, 1977 to March 25, 1988. The previous rules were repealed and replaced by 1988 Rules. The ratio between direct and promotion quota remained fixed at 90:10. The 1988 Rules provided the minimum qualification of Matric and ten years experience as Record Keeper. The share of promotees was seven posts prior to May 05, 1988. The Bank brought about another change on August 13, 1987 when qualification for promotion to the post of Clerk was modified.

The position before and after August 13, 1987 is tabled as follows:-

<i>Before 13.8.1987</i>	<i>After 13.8.1987</i>
i) Matriculation	i) Matriculation
ii) Three years experience as Record Keeper/Peon.	ii) At least 10 years Exp. as Record Keeper, Driver, Peon/Chowkidar, Gunman, Sweeper and Gardner, in all or any of the above categories after attaining Matriculation.

22. Still further, the Bank explains that the posts available between January 29, 1977 to August 13, 1987 were 44 and out of this the promotees share comes to 4 posts. Two Peons and Record Keepers were promoted as Clerks against these posts on May 18, 1979, March 02, 1985 and April 15, 1986 respectively. One post could not be filled due to a dispute between Parvesh Kumar, Peon and Banta Singh, Record Keeper. Banta Singh had raised a dispute when Parvesh Kumar was promoted on March 02, 1985 before the Registrar, Cooperative Societies, Punjab with the grievance that Record Keeper is a higher post in comparison to Peon, so Record Keeper has prior right. The prayer of Banta Singh was accepted by the Registrar as well as the Government and ultimately this Court quashed the orders of the Registrar and Government in the year 1988. The Bank asserts that even if post is lying vacant, no person can claim promotion as a matter of right. Employer can choose not to fill up the post for some time. This is how the single post could not be utilized prior to August 13, 1987 and the qualification for promotion stood changed. The Bank refutes the eligibility of the petitioners for promotion as Clerks at any time between 1982 and 1986. The Bank has explained the vacancy position in the written statement and in the further pleadings called upon to be put in to clarify factual position. The principle in Y.V. Rangaiah and others v. J. Sreenivasa Rao

and others, AIR 1983 SC 852 is not applicable to this case because the rules of the Bank did not provide for drawing of advance panel for promotion from where appointments could be offered from the due dates when the vacancies arose. Rangaiah case has been explained by the Supreme Court in Deepak Aggarwal v. State of Uttar Pradesh, (2011) 6 SCC 725. There is no doubt that there has been intense litigation involving the Bank in matters of seniority and promotion and that there may have been conflicting stances taken by the parties. Even then, shorn off all unnecessary weight and baggage this case carries, the impugned order has to be seen in its results and whether it does substantial injustice to the petitioners. Difficulties may have been experienced for periods when there were no rules in place and when rules were promulgated for the first time and thereafter repealed and modified.

23. In these circumstances, it would not do any credit to read the case by the book. The details of the number of vacancies which occurred in the cadre from January 29, 1977 to 1995 has been explained in the affidavit of the Managing Director of the Bank dated March 14, 2002 with the chart attached at Annex A-1 which is self explanatory. I do not see any hidden agenda in the pleadings of the Bank and in its affidavit to cause harm to the petitioners so long as there has been proper sharing of quota between the promotees and the direct recruits. The impugned order only withdraws retrospective promotion so as not to affect the rights of the direct recruits coming within their quota. It has not been demonstrated before me that the direct recruits were in excess of their quota.

25. I would not be persuaded to hold that petitioners were eligible

for promotion to the post of Clerk w.e.f. December 28, 1982, August 17, 1984, September 24, 1983 and July 1986 in the order in which they have been arrayed as petitioners. Even a vacancy was available under the 1976 Rules relief will not come by automatically in view of overhauling the qualification and experience for promotion. The date of consideration would be the governing principle since none of the petitioners had a right to promotion as a fundamental right. No person junior to them was promoted as Clerks. It is always open to the Bank to undo a wrong from the date when the wrong was done.

26. I would not agree with the petitioners that a right to seniority is a statutory or legal right but right to promotion is a fundamental right and, therefore, there is no reason to enter into the debate on the conflict between the legal right viz.-a-viz. a fundamental/Constitutional right and which right would prevail. I do not see any legal mala fides, bias or political influence exerted from the corridors of power on the Managing Director of the Bank to do a particular thing in a particular way by remote control. When the direct recruits were promoted the petitioners were yet to see their birth in the cadre. *Akhouri Sachindra Nath's* case is the well to draw water from. Retrospective promotions are always suspect unless there is good and sufficient reason or there is a Court directive to comply. The rights as between the promotees and the direct recruits have to be balanced in a fair, just and equitable manner in consonance with the principles of natural justice. Dozens of judgments have been cited by the parties which would add heft to the order if dealt with case by case. No party should be made to suffer in the matter of seniority or promotion in any way, by failure of the

State or its authorities to implement the rules laid down by it. The petitioners had secured the benefit of an arbitrary and capricious order giving them retrospective promotion which has been undone by corrective measures. It is not necessary to deal with all the relied upon judgments of the respondents or the spiral bound compendium of the judgments provided by Mr. Kansal.

27. Both the petitions are dismissed.

(RAJIV NARAIN RAINA)
JUDGE

30.11.2016
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>