

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.18700 of 2009

Date of decision: 01.02.2016

Preet Mohinder Singh and another

...Petitioners

versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. Jagdish Manchanda, Advocate,
for the petitioners.

Mr. Keshav Gupta, AAG, Haryana.

Mr. Anurag Goyal, Advocate,
and Mr. Amit Rao, Advocate,
for respondent No.3.

RITU BAHRI, J.

The petitioners are seeking a writ of certiorari for quashing of the order dated 04.08.2009 (Annexure P-1), whereby respondent No.3 has been promoted as Superintendent.

Petitioner No.1 joined as Octroi Clerk on 11.02.1982 in the Municipal Committee, Shahzadpur, District Ambala. His services were regularized w.e.f. 01.04.1993 vide order dated 31.12.1993. He belongs to reserved category being Scheduled Caste. Devinder Kumar, Head Clerk, Panchkula-respondent No.3 was promoted as Superintendent vide order dated 04.08.2009. Initially, respondent No.3 had joined as Clerk in the year 1992. Thereafter, he was transferred in Municipal Council, Panchkula, on

07.08.2007. After his transfer, he cannot claim to be senior most amongst the other Head Clerks working in this Council as the seniority is not fixed State wise but is fixed in the respective Councils. Municipal Council, Panchkula is Class 'A' MC. According to Appendix B, serial No.6, the post of Superintendent has been shown separately for Class 'A', Class 'B' and Class 'C' Municipal Committees. For promotion to the post of Superintendent of Category 'A' Municipal Committee, the person should have at least three years experience as Superintendent (office) in Class 'B' Municipal Committee and for Category 'B', the person should be matriculate with at least three years service as Assistant, Head Clerk in 'A', 'B' and 'C' class committees. Petitioner No.1 made representation dated 31.08.2009 (Annexure P-2) against the promotion of respondent No.3, stating therein that he had been appointed as Clerk on 11.02.1982, whereas respondent No.3 was appointed as Clerk on 03.06.1992 in Municipal Council, Hisar. Petitioner No.1 was senior to respondent No.3 and the promotion of respondent No.3 was against the rules, as he did not have the experience as Superintendent in 'B' or 'C' Class Committees. Further, respondent No.3 has now been given the charge of Secretary, which is against the judgment passed by this Court in CWP No.19418 of 1996. Reference was made to the orders dated 05.06.1990 and 20.07.1990 (Annexures P-3 and P-4), whereby earlier promotions to the post of Superintendent of Class 'A' Municipal Committees were made from amongst the Superintendents of 'B' or 'C' Class Municipal Committees.

Mr. Jagdish Manchanda, learned counsel for the petitioner has argued that respondent No.3, Head Clerk, Panchkula, was promoted as Superintendent on 04.08.2009 prior to the petitioner, even though he had joined as Clerk in the year 1992. He (respondent No.3) had been transferred

to Municipal Council, Panchkula, on 07.08.2007 and his seniority has to be taken from the date when he joined as Clerk. Petitioner No.1 had joined as Octroi Clerk on 11.02.1982. Hence, for all intents and purposes, his seniority could not be ignored while considering the case of respondent No.3 as Superintendent. He has further argued that Municipal Council, Panchkula is Class 'A' Municipal Committee and the relevant condition for promotion as per Appendix 'B' (serial No.6) requires that he should have served at least three years as Superintendent in 'B' class committee. As per Rule 14 of the Haryana Municipal Services (Integration, Recruitment and Condition of Service) Rules, 1982, the *inter se* seniority of the members of the service is to be determined separately for each category by the length of continuous service on a post in the category. The petitioner being appointed as a Clerk in the year 1982 should have been considered for promotion to the post of Superintendent prior to respondent No.3, who was appointed as Clerk in the year 1992.

Mr. Gupta has argued that as per the provisions laid down in Rule 10 (1) of the Haryana Municipal Services (Integration, Recruitment and Condition of Service) Rules, 1982, the post of Office Superintendent (Municipal Council) is to be filled up by promotion amongst the Office Superintendents (Municipal Committee) on seniority-cum-merit basis, who have three years experience on the post, but no post of Office Superintendent exists in any of the Municipal Committees. Due to non availability of the candidate on feeder post, five posts of Office Superintendents were lying vacant in various Councils for the last many years. It has been further stated that the work of Municipal Councils was suffering badly. Out of five posts, two posts were reserved for Scheduled Caste category. Due to non

availability of the candidates in feeder post of Office Superintendent (Municipal Committee), it was decided to fill up these posts from amongst the Assistants/Head Clerks of the municipalities. Necessary relaxation was obtained by the Department from the Government during the year 2002 and relaxation in experience was obtained in the year 2009. Accordingly, respondent No.3 along with other officials, was promoted to the post of Office Superintendent (Municipal Council) after completing all the required formalities in accordance with service rules. The Government has now framed a fresh Service Rules, 2010 after repealing the existing Service Rules, 1982, in which the post of Office Superintendent (Municipal Council) is to be filled up by promotion from amongst the Assistants/Head Clerks on seniority-cum-merit basis, who have five years' experience on the post.

Mr. Anurag Goyal, Advocate, has submitted that vide order dated 08.11.2004 (Annexure R-1), respondent No.3 was promoted to the post of Head Clerk in Municipal Council, Hisar. In seniority list (Annexure R-2), name of respondent No.3 finds mention in the category of Head Clerk. As per Haryana Municipality Services (Integration, Recruitment and Conditions of Service) Rules, 1982, post of Head Clerk is district level post and a separate seniority list of Head Clerks is to be maintained at the district level. After being promoted as Head Clerk in District Hisar, respondent No.3 was transferred to Panchkula as Head Clerk vide transfer letter dated 10.08.2007 (Annexure R-3). In the seniority list (Annexure R-4) of Clerks in Municipal Council, Panchkula, petitioner Nos. 1 and 2 have been shown at serial Nos. 8 and 6. Respondent No.3 was promoted after giving him the benefit of relaxation under Rule 26 of Haryana Municipal Service Rules, 1982. petitioner No.1 was duly informed in this regard vide letter dated 27.10.2009

(Annexure R-6).

After going through the facts pleaded in the petition as well as in the written statements, the present petition deserves to be dismissed. Petitioner No.1 is working in the Municipal Council, Panchkula as Clerk since 11.02.1982 and he was regularized on 01.04.1993. As per seniority list (Annexure R-4), names of petitioner Nos. 1 and 2 figure at serial Nos. 8 and 6 respectively. Respondent No.3, at the same time, was promoted as Head Clerk on 08.11.2004 (Annexure R-1). Petitioners and respondent No.3 are borne in separate cadres of service, one belonging to the Clerks and the other belonging to Head Clerks. The seniority is to be maintained as per Rule 14 of the Haryana Municipal Services (Integration, Recruitment and Condition of Service) Rules, 1982, which reads as under:-

“14. Seniority.- The seniority *inter se* of the members of the service shall be determined separately for each category by the length of continuous service on a post in the category.”

The post of Head Clerk is district level post and separate seniority list of Head Clerks is being maintained at the district level. Since respondent No.3 was transferred from Municipal Council, Hisar to Municipal Council, Panchkula, on 10.08.2007 (Annexure R-3), the petitioners could not claim that they were senior to respondent No.3, as the seniority of petitioners was being maintained in the cadre of Clerks (district wise) and that of respondent No.3 on transfer was to be maintained in the cadre of Head Clerks, which was a separate cadre. Vide letter dated 12.04.2007, Director Urban Local Bodies, Haryana, directed the Deputy Commissioners to send the seniority list of Head Clerks and Assistant Clerks for promotion to the post of Superintendent. As per necessary qualification, any Assistant or Head Clerk who has got experience of two years and was

not facing any disciplinary proceedings against him, was eligible for such promotion. Respondent No.3, as per aforesaid Rules, would become eligible for promotion on 10.08.2009. However, by granting benefit of relaxation under Rule 26 of Haryana Municipal Service Rules, 1982, he was promoted on 31.07.2009, which was conveyed vide Endst. Dated 04.08.2009 (Annexure P-1). Necessary relaxation was required to be given as he had not completed two years as on 31.07.2009. The power of relaxation under Rule 26 of the aforesaid Rules has been rightly exercised by the department to fill up the post of Superintendent, for which, respondent No.3 was eligible as he was not facing any disciplinary proceedings.

In view of the above discussion, this Court is of the view that the impugned order (Annexure P-1) has been passed in accordance with the prescribed rules and the same does not require any interference.

Dismissed.

(RITU BAHRI)
JUDGE

01.02.2016
ajp