

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.10221 of 2013 (O&M)
Date of Decision: 21.07.2016**

Pratap Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. R.K. Malik, Sr. Advocate,
with Ms. Rimple Kadyan, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. M.S. Sindhu, Advocate,
for respondent No.3.

Mr. J.S. Dahiya, Advocate,
for applicant in CM No.13901 of 2015.

RAJIV NARAIN RAINA, J.

1. The challenge in this petition brought under Article 226 of the COI is to the elaborate order dated May 07, 2013 setting aside the notional promotion accorded to the petitioner w.e.f. June 16, 1997 as Assistant and further promotion given to the post of Deputy Superintendent w.e.f. June 24, 2009 stand withdrawn reverting the petitioner to the post of Assistant with immediate effect. By a separate short order passed on the same day, the Commissioner Gurgaon Division, Gurgaon has posted the petitioner against the vacant post of Assistant in the office of Deputy Commissioner, Palwal with a direction to join at the new place of posting with immediate effect.

These orders have been passed in the wake of directions issued by this

Court in CWP No.15400 of 2010 filed by Amar Singh challenging the benefit of promotion granted to the present petitioner Pratap Singh who was arrayed as respondent. This Court allowed the petition and quashed the orders in favour of the petitioner therein. The operative part of the directions dated May 07, 2013 reads as follows:-

“Keeping in view the above mentioned facts order of Deputy Commissioner, Faridabad for the notional promotion vide order No.2468-70/EB dt 8.9.2009 of Sh. Partap Singh, Assistant from the date 16.6.1997 is quashed and as a result of which order No.1-57/BA-2/2009/10353-56 dated 19.11.2009 by Commissioner, Gurgaon Division with the promotion given to Sh. Partap Singh from the post of Deputy Superintendent and reverting him to the post of Assistant with immediate effect. A separate proceeding to be initiated on behalf of Sh. Amar Singh, Assistant (Retd.) for the post of Deputy Superintendent from back date for promotion on the basis of qualification and seniority for consideration in this office.”

2. The facts briefly put are like this. The petitioner was appointed as a Clerk in the office of the Deputy Commissioner, Faridabad in 1983 whereas the 3rd respondent was appointed as a Clerk in 1976 on *ad hoc* basis through sponsorship by the Employment Exchange with services regularized on May 14, 1980. The petitioner and the 3rd respondent are members of the Scheduled Caste category. The 3rd respondent was promoted to the post of Assistant on May 12, 2000 as per his seniority whereas the petitioner was promoted as Assistant on May 05, 2006. The petitioner did not dispute this date of promotion and remained satisfied and never challenged his promotion w.e.f. May 05, 2006 in any Court of competent jurisdiction that the date of promotion deserved to be antedated.

submitted a representation dated July 10, 2009 to the Commissioner of the Division for re-fixation of his seniority on the post of Assistant with retrospective effect from June 16, 1997 despite being promoted by the Commissioner in 2006. The representation was forwarded by the Commissioner to the Deputy Commissioner, Faridabad for consideration of the case who after examining the same recommended that the petitioner is entitled to be promoted as Assistant w.e.f. June 16, 1997 and re-submitted the case to the Commissioner for further consideration.

4. The service conditions of Clerks and Assistants are governed by statutory rules called The Haryana Revenue Department District Subordinate (Group-C) Service Rules, 1988 ("1988 Rules"). Under the said rules, promotions to the post of Assistant are made from amongst Clerks working in the office of Deputy Commissioner as per Rule 19 (g). There are admittedly 18 sanctioned posts of Assistants in District Faridabad and it is the say of the petitioner that only one SC category candidate namely Vidya Sagar was promoted against reservation quota of SC category. The remaining Scheduled Caste candidates were promoted on their own seniority. The petitioner claimed roster point 42 which should have been filled up from the SC category but he contends that it was wrongly filled up from the general category. This is what was made subject matter of the representation mentioned above. The petitioner pleaded that he had been wrongly ignored for promotion w.e.f. June 16, 1997 when roster point 42 occurred and was filled up from the general category against the rights of the reserved category candidates.

5. Vide amendment dated August 18, 2000 Rule 9 (g) was deleted

and the Deputy Commissioner ceased to be the appointing and promoting authority in case of Assistants. At the same time on August 22, 2000 the 1988 Rules were amended and Rule 9 (c) was added and the Commissioner of the Division being designated as the appointing/promoting authority in the case of Assistants working in the offices of Deputy Commissioners in the Division and in the Commissioner's office. However, the Commissioner thought that since the claim was antedated prior to the amendment then the Deputy Commissioner should be the person to decide the representation. In exercise of this power, the Deputy Commissioner, Faridabad notionally promoted the petitioner as Assistant w.e.f. June 16, 1997 which order has been set aside by the High Court in Amar Singh's writ petition and the Commissioner directed to pass a fresh order in accordance with law. It may be mentioned that 3rd respondent retired from service as an Assistant on May 31, 2012 and the impugned order dated May 07, 2013 orders that process of retrospective promotion after retirement be processed in the case of Amar Singh for the next higher post. Even the seniority list finalized on August 06, 2012 of Assistants/Stenographers in the office of Deputy Commissioner clearly depicts that the petitioner's name falls at Sr. No.38 whereas the name of 3rd respondent is entered at Sr. No.18 and that seniority list has not been challenged by the petitioner. Moreover, even further promotion as an Deputy Superintendent has been granted to the petitioner w.e.f. June 24, 2009 and he is enjoying the status of a post of higher duties and responsibilities.

6. It is argued by the learned senior counsel Mr. Malik that the impugned orders are liable to be quashed being contrary to the principles of

natural justice. Before reverting the petitioner, no show cause notice was issued to him nor have reasons disclosed in writing on the basis of which the Commissioner decided to revert the petitioner to the lower post. The fact remains that the petitioner was called for personal hearing on which Mr. Malik submits that calling the petitioner for personal hearing without disclosing to him the tentative reasons of reversion is meaningless. So the impugned orders are totally contrary to the rule of *audi alteram partem*. He would then submit with vigour that when 3rd respondent-Amar Singh filed CWP No.15400 of 2010 the official respondents had fully justified the promotion of the present petitioner as Assistant w.e.f. June 16, 1997 and his further promotion as Deputy Superintendent w.e.f. June 24, 2009 and, therefore, the State action is suspect as it shifts its stand and in the presentr petition criticizes in a volte face what they had earlier stoutly defended in Court. It is argued that the further promotion has been arbitrarily withdrawn without just cause and legal justification and therefore the impugned order deserves to be annulled and the petition allowed.

7. Mr. Malik further submits that the sanctioned strength of the cadre of Assistants in Faridabad District was 18 and out of 18 the share of SC category comes to 4 by applying the prescribed percentage of reservation available to SC category in Class III service and there was only one candidate, namely, Vidya Sagar who was promoted as Assistant against the SC quota. Therefore, roster point 42 was available to reserve category candidates (SC) but was wrongly diverted and filled from the general category.

8 Then the speculative argument is raised by Mr. Malik placed in

a cul-de-sac to demonstrate how that 3rd respondent has no case in challenge to the promotion of the petitioner. He contends that up to August 22, 2000 the Assistants were to be promoted on the basis of seniority of Clerks of District level. The petitioner was appointed as Clerk in Faridabad District while the 3rd respondent was appointed as Clerk in Mohindergarh District. The petitioner was promoted as Assistant w.e.f. June 16, 1997 while 3rd respondent was promoted as Assistant on May 17, 2000. Hence, the 3rd respondent has no case for promotion as Deputy Superintendent w.e.f. June 24, 2009 but arbitrarily without any basis, rhyme or reason the impugned orders at Annex P-9 & P-10 have been passed.

9. Mr. Malik explains that indisputably the sanctioned posts of Assistants in District Faridabad were 18 and share of promotion of SC category comes to 4 posts. Again indisputably only Sh. Vidya Sagar was promoted as Assistant on 29.3.1996 against SC category quota vacancy/post and other SC category candidates namely Sh. Karan Singh was promoted on 6.2.1990 on his own seniority cum merit without aid of reservation along with his junior, namely Sh. Lekh Raj belonging to general category. The copy of the promotion order of Karan Singh dated 6.2.1990 is attached as Annex P-11. Similarly, Sh. Bhim Singh and Sh. Ram Singh although belonging to SC category were also promoted on the basis of their own seniority-cum-merit with their junior from general category, namely Sh. Ishwar Singh. The copy of the promotion order dated 6.9.1990 is attached as Annex P-12. Similarly, Sh. Niranjan Lal although belonging to SC category was also promoted on the basis of his own seniority-cum-merit alongwith his juniors Sh. Om Parkash and Sh. Jagir Singh belonging to general

category. The copy of the promotion order dated 15.3.1991 is attached as Annex P-13. Since Sarvshri Karan Singh, Bhim Singh, Ram Singh and Niranjana Lal belonged to the SC category but were promoted on the basis of their own seniority-cum-merit alongwith their juniors of general category and that was the reason why Sh. Vidya Sagar was promoted as Assistant against SC category quota on 29.3.1996. If Karan Singh, Bhim Singh, Ram Singh and Niranjana Lal would have been promoted against SC category quota then the quota for SC category stood consumed and therefore even Vidya Sagar was not entitled to be promoted as Assistant against SC category quota.

10. In the written statement filed by respondents 1 and 2 the department rely on the instructions dated 25.3.1975. Although the official respondents are aware that the instructions dated 25.3.1975 already stand superseded in light of the authoritative decision of the Supreme Court rendered in Indira Sawhney's case dated 16.11.1992 (Indira Sawhney v. Union of India, AIR 1993 SC 477, 1992 Supp 2 SCR 454) declaring, inter alia, as under:-

“If any member/members belonging to Scheduled Castes/Backward Classes is/are selected on the basis of their own merit, they will not be counted against the quota reserved for SC category”

11. The copy of the instructions of the Govt. to this effect are found attached as Annex P-14. So in light of the above factual position Mr. Malik contends that the petitioner was rightly promoted against SC category as Assistant w.e.f. 16.6.1997 and further rightly promoted as Deputy Superintendent w.e.f. 24.6.2009 and the above promotion of the petitioner

does not suffer any legal infirmity and deserves to be upheld.

12. On the other hand, Mr. Mahabir Singh Sindhu, learned counsel appearing for 3rd respondent submits the Deputy Commissioner was denuded of power or authority to promote the petitioner on the post of Assistant vide order dated August 27, 2009 (P-3) and subsequent order dated September 08, 2009 (P-4) passed by the Deputy Commissioner is patently illegal, arbitrary, non est and liable to be struck down as suffering from inherent lack of jurisdiction. He submits and rightly so that the law is well settled on the point that “where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all” citing Taylor Vs. Taylor (1876) 1 Ch.D 426. This principle has duly been applied and followed by the Supreme Court of India in a number of judgments. Reference can be made to one of the judgments in Babu Verghese and others Versus Bar Council of Kerala (1999) 3 SCC 422 (Paras 31 & 32).

13. On these premises, it is argued that the petition is devoid of merit and deserves to be dismissed. The State has filed a written statement and has contested the case. The State admits that following the amendment the Deputy Commissioner for the District ceased to be appointing and promoting authority in case of Assistants governed by the 1988 Rules as amended on August 22, 2000. The power is conferred on the Commissioner of the Division alone who became the appointing/promoting authority in the case of Assistants working in the offices of Deputy Commissioner's of the Division and in the Commissioner's office. On August 22, 2000 the petitioner was still working as Clerk in the office of Deputy Commissioner, Faridabad and was promoted as per his seniority on May 05, 2006 by the

Commissioner, Gurgaon Division, Gurgaon whereas 3rd respondent was already promoted as Assistant on May 17, 2000 by the Deputy Commissioner, Narnaul under the old rules before the amendment came into force on August 18, 2000. In view of the amendment to the rules a seniority list was prepared at the Divisional level for Clerks/Steno-typists within the Division in the year 2001 which was further amended on September 27, 2001. The copy of the seniority list has been placed at Annex R-1. This seniority list was finalized after adopting the due procedure after considering objections of the employees. The same was finalized in accordance with law. Again a tentative seniority list was circulated on June 24, 2009 and finalized on August 06, 2012 after considering objections of the employees. In this list, the name of the petitioner is at Sr. No.38 and name of 3rd respondent is at Sr. No.18. This seniority list has never been challenged by the petitioner. The State has adverted to CWP No.15400 of 2010 and the directions issued therein to the Commissioner to decide the legal notice served by Amar Singh. Opportunity of hearing was afforded to both the petitioner and 3rd respondent (the then petitioner) and after perusal of record the competent authority found that the post of Assistant for the SC category was wrongly shown as vacant on the basis of roster point 42 whereas post of Assistant for SC category was already filled and sufficient number of Assistants belonging to SC category were already in position on June 16, 1997. This is the reason why the orders passed by the Deputy Commissioner, Faridabad giving notional promotion w.e.f. June 16, 1997 against SC category were withdrawn and the order dated November 19, 2009 and the consequential orders promoting the petitioner as Deputy

Superintendent were also withdrawn and the petitioner was reverted to the post of Assistant vide order dated May 07, 2013 passed by the Commissioner which order is under challenge.

14. The State in its reply maintains by way of preliminary submission that the petitioner has concealed the true material facts regarding the factual position of filling up of posts reserved for SC category as on June 16, 1997 in the office of DC, Faridabad. He has also not disclosed the sequence of events about his promotion as Assistant granted on May 05, 2006 and the drawing of the seniority list of Clerks at divisional level finalized from time to time which are also not under challenge. In paragraph 4 the State has explained the roster position. The petitioner was junior at the relevant time and could not be promoted. However, his case was considered in the light of Government instructions issued from time to time and was rightly ignored. The office note of DC, Faridabad dated June 03, 1997 to June 16, 1997 clearly state about this fact. It has been explained in the note that the quota of SC category was full when roster points 39, 40, 41 and 42 occurred. Therefore, roster point 42 meant for Scheduled Caste had to be diverted to the general category. The note is made in great detail and the position of post No.42 has been discussed at page 132 of the paper-book. The note was discussed and approved by the Deputy Commissioner on June 16, 1997. While one Deputy Commissioner rejected the claim for promotion of a reserve category candidate (SC) on roster point 42 the successor-in-interest has wrongly allowed the claim w.e.f. June 16, 1997, in what I may say was done in a mischievous and cloistered manner and the Commissioner Gurgaon Division, Gurgaon is perfectly correct and within

jurisdiction in withdrawing the illegal promotion as Assistant and Deputy Superintendent from the incorrect dates and reverting/demoting the petitioner as an Assistant to take his proper place on promotion in 2006 on the basis of seniority-cum-merit.

15. Mr. Rathee appearing for the department has pointed out the relevant parts of the written statement and the documents in support of the stand of the State to assist this court.

16. Mr. Malik's reliance on Ajit Singh Januja and others v. State of Punjab and others, AIR 1996 SC 1189: JT 1996 (2) 727 (Jajuja-1) is without any basis with reference to the facts of this case. The petitioner was not even the senior most Clerk who could have lawfully staked claim for promotion to the post of Assistant from 1997. It appears that the petitioner waited for fair weather to make a representation after many years and get his case decided behind the back of parties likely to be affected without notice or hearing. This undue benefit has rightly been reversed by the Commissioner to bring the factual and legal position in conformity with rules and the seniority list.

17. I find no plausible reason to disagree with the Commissioner Gurgaon Division, Gurgaon in passing the impugned order for the relevant reasons assigned in the elaborate order at Annex P-9 after consulting the record. At the same time I have no reason to agree with the submissions of Mr. Malik in defence of a per se illegal order granting retrospective promotion to them petitioner as Assistant from the back date. The petitioner has neither challenged his promotion order not the seniority list. His argument based on roster point 42 is a figment of his imagination and is

rejected. The quota of reserved category candidates from SC source at the relevant time was replete.

18. Accordingly, there is no merit in this petition which is liable to be dismissed. It is so ordered.

19. In view of dismissal of the petition, there is no necessity to pass orders in CM No.15296 of 2013 presented by Mr. M.S. Sindhu, learned counsel for the applicant for vacation of stay. With the dismissal of the petition the interim stay stands automatically vacated. (CM No.15296 of 2013 already stands disposed of by interim order dated 28.04.2015)

20. CM No.13901 of 2015 filed under Order 1 Rule 10 CPC for impleading Kundan Lal as respondent No.4 was allowed at the final hearing and accordingly Mr. Dahiya representing the applicant was also heard on his application including on the merits of the case.

(RAJIV NARAIN RAINA)
JUDGE

21.07.2016
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Whether speaking/reasoned	Yes
Whether reportable	Yes