

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

**CWP No.17884 of 2015
Date of decision: 22.08.2016**

Badri Nath and others

..Petitioners

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. Abha Rathore, Advocate
for the petitioners.

Mr. Pankaj Mulwani, DAG, Punjab
for the respondents-State.

Daya Chaudhary, J.

The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 20.02.2015 (Annexure P-6) and also for grant of benefits of deemed date promotion as Senior Assistant and Superintendent along with all consequential benefits arising therefrom the date junior to the petitioners have been granted.

Briefly, the facts of the case as made out in the present writ petition are that the petitioners are retired employees and earlier they were working in various wings of Irrigation Department. Initially, they were appointed as Clerks and thereafter, they were promoted after clearing the SDC examination on various dates. Ultimately, they retired from their respective posts. The services of the petitioners were governed by the Punjab Public Works Department (Irrigation Branch), Circles Clerical State Service, Class-III Rules 1955 (hereinafter called as 'the Rules 1955'). As per

Rule 10(d) of the Rules 1955, no Assistant, Clerk or official holding in the service of the State Government or of the Union was to be considered fit for permanent appointment to the post of Sub-Divisional Clerk, Assistant Clerk, unless he passes examination prescribed under Annexure 'D' of the aforesaid Rules. Meaning thereby, the Assistant Clerks and temporary Clerks have to pass the examination to become eligible for promotion to the post of Sub Divisional Clerks. The petitioners qualified the said examination but due to introduction of new Rules i.e., The Punjab State Assistant Grade Examination Rules, 1984 (hereinafter called as 'the Rules 1984'), they were denied promotion. As per "the Rules 1984", passing of Assistant grade examination for appointment to the post in civil under the State of Punjab designated as Assistants, including similar course higher in rank to that of the post of Clerk, in the same or in an identical pay scale. The respondents abolished the post of Sub-Divisional Clerk. Only those persons, who had qualified Sub-Divisional Clerks examination were to be promoted to the post of Sub-Divisional Clerks.

The grievance of the petitioners in the present writ petition is that they had already passed the Sub-Divisional Clerks examination, syllabus of which was not less than the Assistant Grade Examination, and as such, department should not insist for passing of Assistant Grade examination as per "the Rules 1984". Similarly situated employees filed CWP No.9289 of 1987, which was decided on 23.09.2011. By relying upon the aforesaid judgment, the petitioners made representation to consider their case and to grant them consequential benefits with deemed date promotion.

It was also mentioned in the representation that similarly situated employees

had been granted benefits but the same was not granted to them. When no action was taken on the representation as well as legal notice, the petitioners filed CWP No.19801 of 2014, which was disposed of vide order dated 23.09.2014 with the direction to the respondents to consider the claim of the petitioners as made out in the legal notice by passing a speaking order within a period of two months from the date of receipt of certified copy of the order. The claim of the petitioners was rejected from the deemed date i.e., 01.01.1978 and 01.01.1986 as granted to their juniors.

The impugned rejection order dated 20.02.2015 (Annexure P-6) is subject matter of challenge in the present writ petition.

Learned counsel for the petitioners submits that the action of the respondents, in rejecting the claim of the petitioners, is illegal, arbitrary and against the statutory provisions of service rules as well as against principles of natural justice. No reason whatsoever has been given as to why the petitioners are not entitled when the same relief has been granted to their juniors. Moreover, the judgment passed by this Court in CWP No.9289 of 1987 laid down certain guidelines. Learned counsel also submits that the action of the respondents is not only discriminatory as well as violative of Articles 14 and 16 of the Constitution of India as similarly situated employees have been granted benefits.

Learned State counsel opposes the submissions made by learned counsel for the petitioners and submits that the petitioners have been granted benefits of deemed date promotion to the post of Senior Assistant and Superintendent vide orders dated 18.06.2013, 19.06.2013 and 25.09.2013 but they are claiming the benefits from the date their juniors

have been granted. The claim of the petitioners has been rejected by passing a detailed speaking order dated 20.02.2015, so the present writ petition is liable to be dismissed.

Heard arguments of learned counsel for the petitioners as well as learned State counsel.

The facts regarding appointment of the petitioners on different posts and their dates of joining as well as passing of examination are not disputed. It is also not disputed that the petitioners are retired employees. As per “the Rules 1955”, the petitioners were to be considered for permanent appointment to the post of Sub-Divisional Clerks, Assistant Clerks on passing of prescribed examination. The petitioners qualified said examination but subsequently, new Rules of 1984 came into existence whereby, new examination was introduced. The petitioners made representation to the respondent-Department not to insist for passing of Assistant Grade Examination for promotion as they had already passed Sub-Divisional Clerks examination. It is also not disputed that CWP No.9289 of 1987 was filed before this Court on the same issue, which was decided on 23.09.2011 wherein it was held that promotional posts be filled up from amongst the senior most Sub-Divisional Clerks. The petitioners made representation in view of aforesaid judgment for grant of consequential benefits with deemed date promotion and thereafter, a legal notice was also served upon the respondents. When no action was taken, they filed CWP No.19801 of 2014, which was disposed of vide order dated 23.09.2014 with the direction to the respondents to consider the claim of the petitioners by passing a speaking order within a period of two months from the date of

receipt of certified copy of the order. The claim of the petitioners was rejected by passing a non-speaking order as the claim of the petitioners was considered to the posts of Senior Assistants from 1982 but their claim was rejected from the deemed dates i.e., 01.01.1978 and 01.01.1986 as granted to their juniors.

In the impugned order of rejection dated 20.02.2015 (Annexure P-6), it has been mentioned that the petitioners are promoted as Senior Assistants but they have not been held entitled to any arrears for deemed date promotion. They are not held entitled for promotion as Senior Assistants w.e.f.01.01.1978 and Superintendent Grade II w.e.f.01.01.1986.

Learned State counsel has not been able to show any document as to how the petitioners are not held entitled for benefits from the date their juniors have been granted.

In the impugned order, neither any reasoning has been given nor any finding has been recorded as to how the petitioners are not entitled for the benefits granted to their juniors.

Accordingly, the impugned order dated 20.02.2015 (Annexure P-6) is set-aside being non-speaking and the respondents are directed to re-consider the case of the petitioners by passing a speaking order in view of the seniority list of the petitioners as well as the employees, who have been granted benefits. In case, the petitioners are required to give any opportunity of hearing, the same be granted to them. The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.

In case, the petitioners are found to be entitled for the relief

claimed in the petition, the same be granted to them within a period of two months thereafter and in case, the petitioners are still aggrieved in any manner, they are at liberty to avail the appropriate remedy available to them.

Disposed of accordingly.

22.08.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No