

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CIVIL WRIT PETITION NO. 2066 OF 2014

RESERVED ON : SEPTEMBER 06, 2016

DATE OF DECISION: SEPTEMBER 26, 2016

Hari Om son of Late Sh.Lakhmi Chand

.....Petitioner

Versus

B.P.S.Mahila Vishwavidyalaya, Khanpur Kalan  
and another

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA**

**Present:** Mr.Y.P.Malik, Advocate for the petitioner.

Mr.Tribhuvan Dahiya, Advocate for the respondents.

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***TEJINDER SINGH DHINDSA, J.***

The petitioner questions the action of the respondent – B.P.S. Mahila Vishav Vidalya, Khanpur Kalan, District Sonapat (a State University) in having issued an advertisement to fill up the solitary post of Clerk in the Institute of Higher Learning, respondent No.2 (a Constituent College of respondent No.1- University) by way of direct recruitment.

2. Petitioner is a confirmed Class-IV employee with the respondent No.2 – Institute having to his credit more than 13 years of regular satisfactory service. Learned counsel appearing for the petitioner would submit that four Clerks were working in

the respondent-Institute and all are direct recruits. One amongst them having been promoted, a vacancy has arisen. As per applicable statutory Rules, 80% of the posts of Clerk are to be filled up by direct recruitment and 20% by way of promotion from amongst Class-IV employees. The entire case set out on behalf of the petitioner is that against a sanctioned cadre strength of four Clerks in the respondent-University since three are already manned by direct recruits, the vacancy that has arisen now has to fall to the share of promotees and cannot be filled up by resorting to mode of direct recruitment.

3. Upon notice of motion having been issued, a joint written statement has been filed and placed on record on behalf of respondents No.1 and 2. The stand taken on behalf of the respondent-University is that out of the four sanctioned posts of Clerks with the Institute, only two have been filled up by way of direct recruitment i.e. Smt.Nirmala and Smt.Ram Ratti. The other two posts held by Smt.Sushila and Smt.Suresh Kumari are stated to have been created and filled up by way of a rationalization process. As per University, since only 50% of the cadre strength of Clerks has been filled up by way of direct recruitment so far, there would be no impediment for the University to have issued the impugned advertisement to fill up the vacancy against the post of Clerk by resorting to direct recruitment. It has further been argued on behalf of the University that the post held by Smt.Ram Ratti has fallen vacant since she has been promoted as Head Clerk-cum-Accountant and this post being a direct recruitment post had to be necessarily filled up by a direct recruit

only and, therefore, the same has been advertised.

4. Learned counsel for the parties have been heard at length and the pleadings on record have been perused.

5. Certain facts which are not in dispute and which would be relevant for the controversy at hand may be noticed.

6. The Institute of Higher Learning – respondent No.2 where the petitioner is serving as a Peon was earlier known as B.P.S. Mahila Girls College, Khanpur Kalan. It was an aided College being run by a private Educational Society i.e. Mahasabha Gurukul Vidya Peeth. Upon establishment of respondent No.1-University vide an Act of the State Legislature w.e.f. 18.8.2006, the educational Institutions under the control of the Mahasabha became part of the University Administration. In terms of State Government letter dated 21.9.2006 appended and placed on record at Annexure P6, the staff working on aided posts in such Institutions was absorbed in the University. The erstwhile B.P.S. Mahila Girls College had only two sanctioned aided posts of Clerks against which Smt.Nirmala and Smt. Ram Ratti had been appointed by the Mahasabha. On creation of respondent No.1-University, the afore-noticed two employees were absorbed on the regular strength of respondent No.2-Institute on the posts of Clerks. Apart from the two Clerks working on the sanctioned posts, there were two other employees working as Clerks in the erstwhile College, namely, Smt.Sushila and Smt.Suresh Kumari. Their salary and other dues were being paid by the Management/Mahasabha out of their own resources. After creation of respondent No.1-University, a proposal for

rationalization was submitted to the Government. Approval having been accorded, the aforesaid two employees i.e. Smt.Sushila and Smt.Suresh Kumari and who were working not against aided posts but on self-finance basis, were also brought on the regular strength of Institute on the posts of Clerks in the regular pay scale w.e.f. 27.2.2009 i.e. the date when posts were sanctioned.

7. The respondent-University admits to the factum of there being four sanctioned posts of Clerks in the respondent No.2-Institute. Mr.Tribhuvan Dahiya, learned counsel appearing for the University would concede that the statutory Rules applicable to the respondent-Institute are the M.D. University Service and Conduct Rules for Non-Teaching Employees (for short 'the Rules'). Rule 13.4 of the Rules would be relevant for the issue at hand and reads as follows:

*“13.4 a) All posts upto the level of Superintendents (other than Clerks/Steno-typists) shall be filled by promotion on the basis of seniority-cum-merit.*

*b) Clerks*

*i) By direct recruitment : 80%*

*ii) By promotion from amongst confirmed employee of the cadres of Peons and Daftries : 20%”*

8. The University concedes that against the four sanctioned posts of Clerks, two were manned by direct recruits i.e. Nirmala and Ram Ratti. The other two are stated to have been created and occupied by Sushila and Suresh Kumari by adopting a rationalization process. Be that as it may, there is no

escape from the fact that out of the four sanctioned posts of Clerks in the respondent-Institute, none has been filled up by way of promotion. As such, a vacancy having arisen, the University would be obligated to fill up the same by way of promotion as per mandate of Rule 13.4 of the Rules re-produced hereinabove.

9. The stand taken on behalf of the University that the vacancy has arisen on account of promotion of Smt.Ram Ratti and who was a direct recruit and resultantly, such vacancy has to be filled up only by way of direct recruitment, is fallacious. Such a stand, if accepted, would result in a situation where the recruitment Rule i.e. Rule 13.4 would completely break down. Since none of the four sanctioned posts of Clerks have been filled up by way of promotion, as per stand of the University, no vacancy in the future would ever fall to the share of promotee. Such stand cannot be accepted as it would virtually obliterate the 20% quota provided under Rule 13.4 of the Rules for recruitment to the posts of Clerks by promotion from amongst confirmed employees from the cadre of Peons and Daftries.

10. For the reasons recorded above, the action of the respondent-University in advertising the solitary post of Clerk in respondent No.2-Institute to be filled up by way of direct recruitment is held to be bad in law.

11. Mr.Tribhuvan Dahiya, learned counsel appearing for the respondent-University would apprise the Court that in pursuance to the impugned advertisement dated 22.12.2013, the post of Clerk has not been filled up as on date.

12. The writ petition is allowed. Respondent-University is

directed to fill up the solitary vacancy in the cadre of Clerks in respondent No.2-Institute by resorting to the mode of promotion. Since the process of filling up the post had been initiated by the University in December 2013 and the matter having remained stalled ever since, directions are issued to fill up the post of Clerk by way of promotion and such exercise be completed within a period of three months from the date of receipt of a certified copy of this order. Needless to observe that while resorting to the mode of promotion to fill up the post of Clerk, the claims of all eligible candidates including the petitioner would be considered.

13. Writ petition allowed in the aforesaid terms.

SEPTEMBER 26, 2016  
SRM

( TEJINDER SINGH DHINDSA )  
JUDGE

**Note:**      *Whether speaking/reasoned?*      *Yes/No*

*Whether referred to Reporter?*      *Yes/No*