

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

CWP No. 20719 of 2014

Date of decision:-01.02.2016

Bhim Chand and ors.

...Petitioners

versus

Board of Governor and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Dinesh Kumar, Advocate,
for the petitioner.

Mr. A.S. Virk, Advocate
for the respondents

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

RITU BAHRI , J.

Petitioners have approached this Court praying for issuance of writ in the nature of certiorari quashing the impugned orders dated 25.03.2014 (P-22) and 06.08.2014 (P-25) vide which the claim of the petitioners for stepping up of their pay at par with junior counterpart belonging to reserved category has been rejected.

Petitioners who belong to General Category were initially appointed as Clerks in the Regional Engineering College, Kurukshetra now known as National Institute of Technology, Kurukshetra and thereafter, promoted as Assistants/Accounts Clerk/Head Cashier.

However, some employees belonging to reserve category of Scheduled Caste though appointed later than the petitioner and were junior in the cadre of Clerks were promoted to the post of Accounts Clerk/Junior Accountant/Assistant on the basis of reservation policy. The below mentioned chart clearly shows that the petitioners were senior to the employees belonging to reserve category:-

<i>Sr. No.</i>	<i>Name</i>	<i>Initial Appointment with position</i>	<i>Date of promotion and position</i>
1	Gopal Krishan	Clerk 28.04.1979	Assistant 01.08.1996
2	Urmil Kumari	Clerk 01.05.1979	Accounts Clerk 20.12.1999
3	Kamlesh Kumari	Clerk 06.06.1979	Accounts Clerk 28.03.2002
4	Lal Chand	Clerk 11.06.1979	Assistant 24.03.2000
5	Swaran Chawla	Clerk 02.07.1980 (AN)	Assistant 17.07.2002
6	Bhim Chand	Clerk 03.07.1980	Accounts Clerk 08.02.2003
7	Jagir Dass	Hostel Clerk 03.07.1980	Head Cashier 22.08.2006
8	Prabhu Dayal	Clerk 09.07.1980	Head Cashier 22.08.2006
9	Surya Lal Yadav	Clerk 10.09.1980	Assistant 16.04.2001

The details of reserve category employees with regard to their date of appointment and promotion reads as under:-

<i>Sr. No.</i>	<i>Name</i>	<i>Initial Appointment with position</i>	<i>Date of promotion and position</i>
1	Jeet Ram	Clerk 24.12.1982	Accounts Clerk 07.05.1993 Jr. Accountant 17.07.2002
2	Tara Chand	Clerk 03.07.1980	Assistant 31.07.1990

From the above comparison chart, it is clear that the petitioners were senior to Jeet Ram and Tara Chand in the feeder cadre. So far as Bhim Chand viz-viz Tara Chand is concerned, Bhim Chand belonging to General Category and Tara Chand belonging to reserve category and both were appointed on the same date but Tara Chand belonging to S.C category was promoted as an Assistant on 31.07.1990

and Bhim Chand was promoted as Accounts Clerk on 08.02.2003. NIT had prepared a seniority list of Clerks in which name of Bhim Chand was mentioned at Sr. No. 8 and name of Tara Chand does not find mentioned in the said seniority list.

In this regard, petitioners have given a detailed representation dated 30.07.2009 and 12.02.2010 and reference was made to various instructions and judgments for stepping up of pay at with the junior belonging to reserve category of Scheduled caste. Their claim was rejected in terms of CCS Rule-Reservation and Concessions in Government Service 28(3), the candidates belonging to General/OBC category promoted later will be placed junior to S.C/S.T Government servants promoted earlier even though by virtue of the rule of reservation.

Similar issue has come up for consideration before this Court in ***Krishan Kumar vs State of Haryana and others, decided on 08.02.2016*** whereby this Court allowed writ petition and quashed letter dated 30.10.2010 (P-11) and petitioner was held entitled to stepping up of his pay at par with Mange Ram from the date of his promotion to the post of Senior Scale Stenographer, in view of case decided by this Court in a case of ***Prem Kumar Verma and others vs. State of Haryana, passed in CWP No. 17280 of 2011, decided on 07.08.2012*** wherein also petitioners were general category employees

and were appointed, after clearing the departmental test, as Sub-Divisional Clerks before Sh. Amar Singh, a scheduled caste category employee. Since Sh. Amar Singh belongs to the scheduled caste, he was promoted as Accounts Clerk on 01.02.1982 as per the roster point granting him the benefit of reservation whereas the petitioners, who were senior to him in the feeder cadre of Sub-Divisional Clerk, were promoted as Accounts Clerk after 16.03.2006 on various dates. Thereafter, their claims for stepping up of pay, was rejected.

This Court while following the ratio of law laid down in ***M. Nagaraj vs. Union of India, (2006) 8 SCC 212 and Ajit Singh Janjua and others vs. State of Punjab and others, JT 1999 (7) S.C. 153*** allowed the writ petition and petitioners were held entitled for stepping up of their pay at par with Sh. Amar Singh from the date of their promotion to the post of Accounts Clerk. This Court held as under:-

“In view of the above, this Court has no option and hesitation to hold that the decision of the Government of Haryana, as circulated through its instructions dated 16.03.2006 (Annexure P-8), granting accelerated seniority to the scheduled caste employees as a consequence of promotion under the reservation policy, is ultra vires as the same runs counter to the dictum in M. Nagaraj’s case (supra) and, therefore, deserves to be quashed.”

In the aforesaid judgment, reference has further been made to a judgment of Hon'ble the Supreme Court of India in a case of ***U.P. Corporation Ltd v. Rajesh and others, JT 2012 (4) SC 459*** wherein Hon'ble the Supreme Court struck down the benefit of accelerated seniority and in para 39 to 41 observed as under:-

“ 39. At this stage, we think it appropriate to refer to the case of Suraj Bhan Meena and another (supra). In the said case, while interpreting the case in M.Nagaraj (supra), the two-Judge Bench has observed:

“10. In M.Nagaraj case, this Court while upholding the constitutional validity of the Constitution (77th Amendment) Act, 1995 and the Constitution (85th Amendment) Act, 2001, clarified the position that it would not be necessary for the State Government to frame rules in respect of reservation in promotion with consequential seniority, but in case the State Government wanted to frame such rules in this regard, then it would have to satisfy itself by quantifiable data that there was backwardness, inadequacy of representation in public employment and overall administrative inefficiency and unless such an exercise was undertaken by the State Government, the rule relating to reservation in promotion with consequential seniority could not be introduced.”

40. In the said case, the State Government had not undertaken any exercise as indicated in M. Nagaraj (supra). The two-Judge Bench has noted three conditions in the said judgment. It was canvassed before

the Bench that exercise to be undertaken as per the direction in M. Nagaraj (supra) was mandatory and the State cannot, either directly or indirectly, circumvent or ignore or refuse to undertake the exercise by taking recourse to the Constitution (Eighty-Fifth Amendment) Act providing for reservation for promotion with consequential seniority. While dealing with the contentions, the two-Judge Bench opined that the State is required to place before the Court the requisite quantifiable data in each case and to satisfy the Court that the said reservation became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes candidates in a particular class or classes of posts, without affecting the general efficiency of service. Eventually, the Bench opined as follows:-

“66. The position after the decision in M. Nagaraj case is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required.

67. The view of the High Court is based on the decision in M. Nagaraj case as no exercise was undertaken in the terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Caste and Scheduled Tribe communities in public services. The Rajasthan High Court has rightly quashed the notifications

dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Caste and Scheduled Tribe communities and the same does not call for any interference.”

*40.1. After so stating, the two- Judge Bench affirmed the view taken by the High Court of Rajasthan.. As has been indicated hereinbefore, it has been vehemently argued by the learned senior counsel for the State and the learned senior counsel for the Corporation that once the principle of reservation was made applicable to the spectrum of promotion, no fresh exercise is necessary. It is also urged that the efficiency in service is not jeopardized. Reference has been made to the Social Justice Committee Report and the chart. We need not produce the same as the said exercise was done regard being had to be the population and vacancies and not to the concepts that have been evolved in M. Nagaraj (supra). It is one thing to think that there are statutory rules or executive instructions to grant promotion but it cannot be forgotten that they were all subject to the pronouncement by this Court in **Vir Pal Singh Chauhan (supra) and Ajit Singh (II) (supra)**. We are of the firm view that a fresh exercise in the light of the judgment of the Constitution Bench in M. Nagaraj (supra) is a categorical imperative. The stand that the constitutional amendments have facilitated the reservation in promotion with consequential seniority and have given the stamp of approval to the*

Act and the Rules cannot withstand close scrutiny inasmuch as the Constitution Bench has clearly opined that Articles 16(4A) and 16(4B) are enabling provisions and the State can make provisions for the same on certain basis or foundation. The conditions precedent have not been satisfied. No exercise has been undertaken. What has been argued with vehemence is that it is not necessary as the concept of reservation in promotion was already in vogue. We are unable to accept the said submission, for when the provisions of the Constitution are treated valid with certain conditions or riders, it becomes incumbent on the part of the State to appreciate and apply the test so that its amendments can be tested and withstand the scrutiny on parameters laid down therein.”

This Court further in LPA No. 1749 of 2011 titled as **State of Haryana and others vs. Kiran Bala and another**, decided on 26.09.2011, while deciding the appeal preferred by the State of Haryana against the judgment dated 28.04.2011 passed by the learned Single Judge in CWP No. 8318 of 2010 wherein the orders denying the benefit of stepping up of their pay at par with the juniors belonging to the reserved category who were promoted earlier to them on account of accelerated promotion, were set aside on the ground that the respondents were unable to justify their action of granting the benefit of 85th Amendment Act of 2009 vide instructions dated 16.03.2006 being contrary to the judgment of the Supreme Court in the cases of

Ajit Singh Janjua (supra) and M. Nagaraj (supra). The Division Bench of this Court has also observed in its order dated 26.09.2011 that in pursuance to the judgment passed by the Supreme Court in **M. Nagaraj's case (supra)**, State of Haryana did not carry out any exercise for ascertaining the factors noticed by the Hon'ble Supreme Court for grant of accelerated seniority and promotion pursuant to the 85th Constitutional Amendment to the reserved categories.

Further in the present case, as per the information received under the R.T.I Act, a legal opinion was given that the petitioners were entitled for stepping up of their pay at par with junior. Despite this, impugned orders have been passed.

Following the ratio of law laid down in the above mentioned judgments and instructions dated 05.03.2009 (P-7) and 23.11.2009 (P-8), this writ petition is disposed of and the matter is remanded back to respondent Nos. 2 and 3 and they are directed to pass a detailed speaking order, after taking into consideration the above mentioned judgments and the legal opinion given in favour of the petitioners, as is evident from Annexure P-23. The above said exercise shall done within a period of three months from the date of receipt of certified copy of this order

(RITU BAHRI)
JUDGE

01.02.2016

G Arora

GAURAV ARORA
2016.02.29 10:42
I attest to the accuracy and
integrity of this document