

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23116 of 2016

Date of Decision: 08.11.2016

Jaswant Singh

... Petitioner

Versus

The Managing Director, Haryana
Vidyut Parsaran Nigam Limited and others

... Respondents

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

Present: Mr. Pankaj Maini, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. By amendment carried out in the rules governing service experience of one year as a condition of eligibility required for promotion from the post of Circle Assistant to Head Clerk was increased to five years by the respondent-Haryana Vidyut Parsaran Nigam Limited. The rub on the petitioner is that statutory rules have been changed mid way by mere office orders and that too retrospectively when the Departmental Promotion Committee had been convened to consider cases for promotion on January 27, 2016. The work assigned to the Committee should be taken to its logical end. It is urged that the position prevailing at the time of initiation of process of promotion should be the governing law as against vacancies existing prior to the change brought about.

2. Towards this end, the office order dated May 16, 2016 is challenged as not binding on the accrued rights of the petitioner. The petitioner maintains that he is entitled to be promoted to the post of Head

Clerk w.e.f January 27, 2016 when the process of promotions was initiated

and he deserves to be granted all consequential benefits including pay w.e.f. January 27, 2016 by treating the petitioner as promoted to the post of Head Clerk retrospectively. It is pleaded that in September 2014 persons junior to the petitioners were promoted from the post of Upper Division Clerks to Circle Assistants which led him to file a representation demanding justice. His representation was processed and rectification order was passed on September 09, 2014 promoting the petitioner from Upper Division Clerk to Circle Assistant. The next higher coveted post was of Head Clerk. The petitioner and similarly situated employees were granted promotion to the post of Circle Assistant and posted to the designated seats. This was before the disputed process was initiated on January 27, 2016.

3. The respondent Nigam circulated information that steps were proposed to be taken for amending the rules of recruitment and promotion by office order dated January 29, 2016. This had led to the order dated February 29, 2016 by way of corrigendum and the proposed amendment issued on January 29, 2016 was annulled and experience was reverted to one year in accordance with earlier existing position. And accordingly experience of one year was retained as one of the eligibility conditions for promotion to the next higher post.

4. However, the respondent Nigam published the impugned office order dated May 16, 2016 by which the nomenclature and pay scales of the posts in the field ministerial cadre were modified and the post of Head Clerk was re-designated as Deputy Superintendent (Field), while the post of Circle Assistant was re-designated as Assistant (Field). While doing so the experience clause has again be increased to five years from one year. The

petitioner complains that the office order amounts to amending rules without following the procedure of amendment.

5. Heard Mr. Pankaj Maini on his contentions to secure relief to his client.

6. Feeling aggrieved, the petitioner filed a series of representations with the authorities which have not been dealt with by the respondents till date. Hence the petitioner prays for setting aside the impugned office order claiming promotion under old rules to the post of Head Clerk.

7. As far as re-designation of posts is concerned, the final arbiter on subject matter lies in the exclusive domain of the Nigam in review of cadres to suit its changing needs in administration by rationalizing workload and manpower. The post of Head Clerk no longer exists except in its new *avatar* as Deputy Superintendent (Field) and it is not for the Court to nitpick or dissect the need for it.

8. After initiating steps for promotion, the Nigam notified the Recruitment & Promotion Policy in respect of Ministerial Services (Field Cadre) in a comprehensive manner on March 22, 2016 in exercise of powers conferred under section 56 (3) (vi) of Haryana Electricity Reforms Act, 1997 read with the Electricity Act, 2003 and all other enabling powers in this behalf, the Nigam incorporated Clauses 3.8 & 3.9 under Regulation-3, 4.8 & 4.9 under Regulation-4 of the RPP in respect of Ministerial Services (Field Cadre) notified on July 11, 2008 read with subsequent notifications dated July 03, 2009, October 09, 2009, November 13, 2009, February 04, 2010, February 03, 2011, March 06, 2013, April 25, 2014 and August 22, 2014. The prevailing position can be summarized as follows: The mode of

promotion to the post of Circle Assistant in Clause 5.0 when filled by promotion from amongst Upper Division Clerk on seniority-cum-merit basis having three years service as UDC for qualified UDC's and twelve years service as Lower Division Clerk/Upper Division Clerk for unqualified UDCs including minimum three years service as UDC as prescribed for the qualified UDCs. Similarly, the post of Head Clerk when filled by promotion was governed by Clause 6.0 to be filled from amongst Circle Assistants on seniority-cum-merit basis that have passed the Departmental Accounts Examination and have one year service as Circle Assistant to their credit. The other posts have no bearing on this litigation for the present.

9. Then came the modification by the Nigam vide office order dated May 16, 2016 changing the nomenclature and pay-scales of posts in the Field Ministerial Cadre which have been re-designated i.e. Circle Assistant as Assistant (Field) and Head Clerk as Deputy Superintendent (Field) with a difference of ₹ 200/- in Grade Pay. The modification prescribes minimum experience for promotion to the post of Deputy Superintendent (Field) will be five years service as Assistant (Field) and unqualified Assistants will not be promoted as Deputy Superintendent. The modification was approved by the Haryana Bureau of Public Enterprises vide U.O. dated May 16, 2016. It is recorded at the foot of the office order before the signatures of the issuing authority that the modification has approval of the Managing Director, HVPNL in pursuance to a decision of the Board of Directors, HVPNL, Panchkula taken in circulation on January 29, 2016 and confirmation of the same approved in its meeting held on March 30, 2016. The decision taken on January 29, 2016 and March 30, 2016 appear to have delegated power to

the Managing Director, HVPNL to take a decision in accordance with the minutes of the meeting held on March 30, 2016 confirming the decision of the BOD passed by circulation on January 29, 2016. This is how the modified policy has become the law governing service.

10. The office order dated May 16, 2016 is castigated as being beyond the powers of the Managing Director, HVPNL, Panchkula and ostensibly have been issued in exercise of powers conferred by section 56 (3) (vi) of the Haryana Electricity Reforms Act, 1997 read with the provisions of the Electricity Act, 2003 and all other enabling powers in this behalf, and accordingly the HVPNL was pleased to amend Regulation 6 of the RPP in respect of Ministerial Services (Field Cadre) notified vide office order dated March 22, 2016 at Annex P-12 referred to above. By then the post of Head Clerk was transformed into Deputy Superintendent (Field) by changing the nomenclature in Regulation 6.0, a change which has been brought about in Regulation 6.1 prescribing five years service as Assistant (Field) for promotion from amongst Assistants (Field) who have passed the Departmental Accounts Examination and possess the requisite experience of five years service. This is not an office order which the petitioner thinks has no legal value and cannot supersede rule. Though called an "Office Order" is in fact an amendment under statutory powers conferred on the Nigam.

11. The posts of Head Clerk and Circle Assistant have become non-existent and, therefore, it seems to me *a priori* that the initiation of the promotion process on January 27, 2016 has lapsed and rendered infructuous and further promotions can only be made in terms of the new rules and can bear nor fruit; the old tree dead. An altogether new cadre has been created

anew for all the employees by the Nigam uniformly. The petitioner does not appear to me to have an accrued or vested right to promotion w.e.f. January 27, 2016 by citing law that old existing vacancies have to be filled in accordance with the old rules. In view of the sweeping amendment made, it cannot be said that old vacancies of Head Clerk can be utilized to make promotions to the newly created post of Deputy Superintendent (Field) without fulfilling the enhanced experience of five years service in the feeder cadre. Moreover, the designation of the post of the feeder cadre has also been materially altered from Circle Assistant to Assistant (Field). The Nigam is well within its rights to impose condition of longer experience for employees to shoulder higher posts of greater responsibilities to manage its critical public utility service of supply of energy to the State and the National Grid. This concept is clearly indicated by the note that unqualified Assistants (Field) will not be promoted to the post of Deputy Superintendent (Field). There is no place for unqualified employees to fill higher posts of higher responsibility. In any case, mere chances of promotion are not justiciable and therefore reduction or postponement of promotion is a natural consequence of the change in nomenclature and minimum experience. Besides, no person junior to the petitioner has been promoted so far and neither is this the grievance in the petition. Merely taking steps to hold a DPC does not create an indefeasible right till the recommendations are made and accepted by the appointing authority and promotions accordingly made. The ruling in Y. V. Rangiah v. J.Srivanasa Rao, (1993) 3 SCC 284: AIR 1983 SC 852 can be of no help to the petitioner to claim promotion against old vacancies in terms of old rules. The promotion

principle in the Nigam for the posts in question did not involve making of advance panels by holding DPC to make future promotions year wise etc. or by time bound promotions which might create rights to promotion flowing from the old order before the amendment. The ruling closer to the point is by the Supreme Court in such a situation as broadly presents itself in this case is in Deepak Aggarwal v. State of Uttar Pradesh, (2011) 6 SCC 725 that the relevant date is the date of consideration for promotion after amendment of rule to fill old vacancies. This decision comes after dealing with *Rangiah* case and explaining it.

12. Mr. Maini's then places reliance on the Division Bench judgment in Madhu Mati Sharma and others v. Government of India and others, 2014 (1) RSJ 48 (DB) to press his contention based on 'old vacancies-old rules" is misplaced for the reason that the case dealt with abolishing the posts of Senior Clerks-cum-Cashiers and Field Supervisors and re-designating them as as Clerical Cadre to be placed above the Junior Clerks-cum-Cashiers. The post of Field Supervisors were re-designated as Junior Management Scale-I. This was in 1998 while the old rules were of 1988. In the 1988 rules the promotion rule was based on seniority-cum-merit and there was no provision of written test and performance appraisal for promotion which was introduced in the rules of 1998 and posts redesignated. The judgment was based on a special fact situation presented for promotion from clerical cadre to officer cadre emanating out of the written test result of 2000. The Court did not notice any case law and specially *Deepak Aggarwal (supra)*. The decision of the division bench is binding on single judge in its *ratio decidendi*, the rule on which a decision is based and not what follows by

implication. Facts can alter the conclusion of a case in search of justice in a given *lis*.

13. For the foregoing reasons, I find no inherent defect in procedure adopted or error in carrying out the amendment enhancing experience from one year to five years by the Nigam to suit its changing conditions of service to the next level of felt needs of modern principles management otherwise order will not emerge in experimentation of higher goals of achievement in a rapidly changing environment. This experiment must be given free play in executive restructuring of cadres. Otherwise the system will be paralysed for want of room to accommodate change. Rules of service are not to be perceived as static but mostly kinetic and liquid for water to find its level in proper governance and the objectives sought to be achieved by ushering in a new era of constructive regeneration of manpower and need to expand and modernize power supply.

14. As a result of the above consideration of the case, I find no cogent ground to warrant any interference in the writ jurisdiction provided to this Court when the petitioner does not display a clearly demonstrable and actionable right to claim promotion from the date from January 27, 2016 when the DPC met as a matter of right with the promotion process nullified by an amendment to the recruitment rule by way of promotion. If the petitioner does not have the requisite experience he must wait for promotion according to seniority-cum-merit as per turn after acquiring the requisite gestation period qualifying for experience for further promotion on the date of consideration.

15. For these reasons, I find no merit in the petition and would

commend that it should be dismissed it in limine. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

08.11.2016
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Whether speaking/reasoned *Yes*

Whether reportable *Yes*