

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

CWP No.27592 of 2015

Date of decision: 8.1.2016

Rajesh Kumar

....Petitioner

VERSUS

Union Territory of Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Ankit Goel, Advocate for the petitioner.

HEMANT GUPTA, J.

The challenge in the present writ petition is to the amendment in the Chandigarh Union Territory Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (for short 'the Rules') whereby the Stenographers were permitted to switch over to the Ministerial/Supervisory Cadre after completing minimum period of 10 years. The relevant offending extract of the Rule reads as under:-

“Note.- The Stenographers may be permitted to switch over to ministerial/supervisory cadre after they have completed a minimum period of ten years service subject to the condition that the option once exercised shall not be revoked.”

The petitioner was appointed as a Clerk in the District and Sessions Court, Chandigarh on 19.08.1997 and promoted as Assistant/Reader to Civil Judge (Senior Division)/Chief Judicial Magistrate upon the said post falling vacant on 15.02.2014.

The service condition of the petitioner and that of Stenographers in the District Courts, Chandigarh are governed by Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 as extended to Chandigarh. The service condition of the employees of the subordinate Courts came up for consideration before the Shetty Commission, the First National Judicial Pay Commission, appointed to consider the service conditions of the staff of the subordinate Courts. The Shetty Commission *inter-alia* recommended as under:-

“We, therefore, recommend that the Stenographers may be permitted to switch over to ministerial/supervisory cadre after they have completed a minimum period of service as determined by the High Court, subject to the condition that the option once exercise shall not be revoked.”

It appears that on the basis of such recommendations, the cadre of some of the Stenographers working in the Chandigarh District Courts was changed on 19.05.2009. Such change was challenged in CWP No.8630 of 2009 titled Swaran Lata and others v. Punjab and Haryana High Court and others. The said writ petition was allowed on 04.03.2010 holding the minimum period of service required to be completed by Stenographers in their cadre for permitting switch over to the Ministerial/Supervisory cadre has not been determined by the High Court. The Court set aside the order of switch over of the Stenographers to the Ministerial cadre but issued the following directions:-

“The Punjab and Haryana High Court-respondent No. 1 has chosen not to file reply to the present writ petition. However, it has been brought to the notice of the Court that the matter with regard to the determination of the minimum completed period of service in the Stenographers cadre for permitting to switch over to the Ministerial/Supervisory cadre, is pending consideration with respondent No. 1.....

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A perusal of the above indicates that the Hon'ble Supreme Court has directed that the High Court on the Judicial/Administrative side will ensure implementation of the recommendation of the Shetty Commission within a reasonable period of one year. Despite the recommendation of the Shetty Commission, which has been reproduced above, permitting Stenographers to switch over to the Ministerial/Supervisory cadre, the right which has accrued to the Stenographers on the acceptance of the recommendation by the States of Haryana, Punjab and Union Territory of Chandigarh, they have been deprived of the fruit due to non-determination of the completed minimum period of service in the cadre of Stenographers.

In the light of the order dated 07.10.2009 passed by the Hon'ble Supreme Court, a direction is issued to the Registrar General to personally pursue the matter to ensure that expeditious decision can be taken with regard to the minimum period of completed service in the cadre of Stenographers for permitting switch over to the Ministerial/Supervisory cadre so that the staff of the subordinate Courts are not forced to file writ petitions in this Court for implementation of the recommendations of the Shetty Commission.”

The said order was challenged in LPA No.509 of 2010 titled Sunil Kumar Khullar and others v. Punjab and Haryana High Court and others, in which the following order was passed on 04.12.2014:-

“After hearing learned counsel for the parties, we direct the Finance Secretary, Union Territory, Chandigarh, to file a detailed affidavit that why till date the draft service Rules i.e. Punjab/Haryana/U.T.Chandigarh Subordinate Courts Establishments (Recruitment and General conditions of Services of Group A,B and C) Rules, 2010 and Punjab/Haryana/U.T. Chandigarh Subordinate Courts Establishment (Recruitment and General Conditions of Service of Group D) Rules, 2010, approved by the Full Court of this Court and send to the Union Territory, Chandigarh, for approval and notification has not been notified. The said affidavit be filed within a period of seven days.”

It is thereafter, the amendment of the Rules was notified on 30.07.2015 whereby Stenographers after rendering 10 years of service were permitted to switch over to Ministerial/Supervisory cadre. Such switch over is disputed by the petitioner in the present writ petition.

Learned counsel for the petitioner referred to an order of Hon'ble Supreme Court passed in Virendra Krishna Mishra v. Union of India and others, 2015(2) SCC 712 to contend that discriminatory treatment is accorded to the petitioner and the other officials falling in the clerical cadre, as their chances of promotion would be seriously affected if the Stenographers are permitted to switch over and to compete with the clerical cadre. It is contended that Stenographers have a complete separate channel of promotion and therefore, they are not a deprived class which may entitle them for switch over to the Ministerial/Supervisory cadre.

We do not find any merit in the argument raised. The Shetty Commission has categorically reported that Stenographers in the Subordinate Courts should be permitted to switch over to the Ministerial/Supervisory Cadre after they have completed minimum period of service as determined by the High Court. Such recommendations of the Shetty Commission have been accepted by the Hon'ble Supreme Court in a judgment reported as All India Judges Association and others (3) vs. Union of India and others, (2002) 4 SCC 247. The recommendations of the Shetty Commission have been accepted, when the Court held to the following effect:-

“36. There are a number of other allowances which have been referred to by the Shetty Commission, some of which have not been accepted by the

Central Government. For example, allowance of Rs 2500 to be paid to enable the engagement of a servant by a judicial officer. We do not think such a suggestion made by the Shetty Commission to be appropriate and the Central Government has rightly not accepted the same. Another suggestion which has been made by the Shetty Commission is that 50 per cent of the electricity and water charges of the residences of the judicial officers should be reimbursed by the Government. There is merit in this suggestion subject to a cap being placed so that the 50 per cent expense does not become very exorbitant. This allowance should be paid, inasmuch as judicial officers do and are required to work at their residence in discharge of their judicial duties. Therefore, it will not be inappropriate that 50 per cent of the electricity and water charges should be borne by the State Government.

37. Subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted.”

Once the Shetty Commission has recommended the switch over option to the category of Stenographers, after determination of minimum period of service to be determined by the High Court, the Rules as amended on 30.07.2015 is only to give effect to the mandate of the Supreme Court judgment. Such amendment in the Rules cannot be said to be illegal or arbitrary only on the ground that chances of promotion of the petitioner shall be jeopardized. It is well settled that chances of promotion, are not the conditions of service. Therefore, even if chances for promotion stands reduced, the Rule does not become illegal. Reference may be made to Dhole Govind Sahebrao v. Union of India, (2015) 6 SCC 727, wherein the Court said to the following effect:-

“39. It is apparent from a collective perusal of the conclusions recorded in the judgments extracted in the foregoing paragraphs, that chances of promotion do not constitute a condition of service. In that view of the matter, it is inevitable to hold that the High Court erred in recording its eventual determination on the basis of the fact that the promulgation of the 2003 TA Rules and the 2003 STA Rules was discriminatory and arbitrary with regard to the fixation of the inter se

seniority, since the same seriously prejudiced the chances of promotion of the erstwhile members of the Ministerial Cadre, namely, those members of the original Ministerial Cadre, who had not opted for appointment/absorption into the cadre of Data Entry Operators, with reference to and in comparison with, those members of the original Ministerial Cadre who had opted for appointment/absorption into the cadre of Data Entry Operators.

40. As a proposition of law it is imperative for us to record that chances of promotion do not constitute conditions of service, and as such, mere alteration of chances of promotion, would not per se call for judicial interference. The above general proposition would not be applicable in case the chances of promotion are altered arbitrarily, or on the basis of considerations which are shown to be perverse or mala fide.”

Reference of the petitioner to the judgment in Virendra Krishna Mishra's case (supra) is not tenable. In the aforesaid case, there was parity of three posts i.e. Information Officer, Tourist Information Officer and Deputy Resident Commissioner in the matter of pay scales and source of feeder cadre for appointment. Only one post i.e. of Deputy Resident Commissioner was de-cadred. The Hon'ble Supreme Court found that picking up one post is illegal and arbitrary without any justification.

In the present case, Stenographers form a category and were permitted to switch over by the Hon'ble Supreme Court. Within this Court also, the writ petition filed by few of the similarly situated employees such as the petitioner has been dealt with a direction to prescribe minimum period of service after which an employees of the Stenographer line can be permitted to switch over to the ministerial cadre. It is in pursuance of such direction, the Rule has been notified. The Rule has been notified in terms of the recommendation of the Shetty Commission as approved by the

Hon'ble Supreme Court and by this Court. Therefore, we do not find that the petitioner can be permitted to dispute the amendment in the Rules.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

JANUARY 8, 2016
'D. Gulati'

(SNEH PRASHAR)
JUDGE