IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9073 of 2015 (O&M)
Date of Decision:- 29.09.2016

Gulzar Singh and others ....Petitioner(s)

vs.

State of Punjab and others ....Respondent(s)

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CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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Present:- Mr. Vaneet Soni, Advocate,
for the petitioners.

Mr. T.N. Sarup, Addl. A.G., Punjab.

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DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of impugned orders dated 14.10.2013 (Annexure P-5) and 5.12.2013 (Annexure P-6) passed by respondent No.2. A further prayer has also been made for a direction to the respondents to promote the petitioners as Senior Assistants as per their seniority from the date their juniors have been promoted as Senior Assistants along with all consequential benefits.

Briefly, the facts of the case, as made out in the petition, are that the petitioners are working as Steno Typists and Junior Scale Stenographers under various departments of respondents No. 1 and 2. They were appointed on different dates and were assigned their seniority

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accordingly. Petitioners were found to be entitled for promotion as Senior Assistants as per their common seniority list and their consent for promotion as Senior Assistants was sought by respondent No.2 in terms of memo dated 17.5.2013 to which, all the petitioners submitted their willingness/consent in writing. Thereafter, the case of the petitioners was placed before the Departmental Promotion Committee (hereinafter referred to as 'the DPC') along with other eligible officials for promotion as Senior Assistants on the basis of common seniority list.

As per the case of the petitioners, they are senior but still they were not promoted in terms of Rule 8 (1) (d) (ii) read with Note (1) of Rule 11 of The Punjab Police Clerical Service (State Service Class III) Rules, 1960 (hereinafter referred to as the '1960 Rules'). Their claim was rejected by the Screening Committee while relying upon clarification dated 21.5.2013 with the remarks that the petitioners were not entitled for promotion as Senior Assistants as they did not fulfill the criteria prescribed under the 1960 Rules.

Learned counsel submits that private respondents, who are junior to the petitioners, were promoted as Senior Assistants vide orders dated 14.10.2013 and 5.12.2013 (Annexures (P-5 & P-6 respectively). Petitioners made representations against these orders but the same have not been decided. Learned counsel for the petitioners also submits that the action of the respondents in promoting junior candidates and ignoring/rejecting the petitioners is totally illegal, unlawful and discriminatory as well. Learned counsel has also relied upon the judgments passed in CWP No. 20485 of 2006 titled as **Piara Singh** vs.

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State of Punjab and another, decided on 11.12.2012, CWP No.12808 of 2004 titled as **Raj Kumar and another** vs. **State of Punjab and another,** decided on 17.11.2012 and **Vishwa Mitter** vs. **State of Punjab,** 1991(3) SCT 276.

Learned State counsel opposes the submissions made by the learned counsel for the petitioners. He submits that the petitioners were not eligible for promotion as Senior Assistants. Their case for promotion was considered by the DPC as per their joint seniority list and they were not promoted as they were not found fulfilling the eligibility condition as required under the 1960 Rules. Learned State counsel also submits that there was an amendment in the Punjab Civil Service (General and Common Conditions of Service) (Second amendment) Rules, 1994 vide notification dated 15.3.2015. According to said Rules, the petitioners were not found fulfilling the eligibility criteria for promotion and, therefore, their claim was rejected. Moreover, the petitioners are not eligible for promotion in view of Rule 8(1) (d) (ii) of 1960 Rules. As per these Rules, the promotion is to be made from amongst the Clerks having 5 years' minimum service and from Junior Scale Stenographers having 5 years' minimum service including minimum one year's experience as Clerk. The case of the petitioners along with other Junior Assistants was considered but they were not considered for promotion as they were not fulfilling the condition mentioned in the Rules regarding having one year minimum experience as a Clerk. Learned State counsel also submits that the claim of the petitioners was rejected by passing a speaking order. All vacancies were to be filled up from amongst the candidates who have qualified the examination.

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As per directions of Hon'ble the Apex Court in CA No.11660-61/1995 and other connected matters decided on 24.08.1999 as also State Government instructions dated 16.6.1995, the posts of Senior Assistants were filled up in the ratio of 70% (exemptee) who completed 18 years regular service and 30% qualified (Asstt. Grade exam qualified). Respondents were promoted as they were found eligible as per their common seniority list and in view of Rule 8(1)(d)(ii) of 1960 Rules.

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

Admittedly, the petitioners are working as Steno Typists and Junior Scale Stenographers. It is not disputed that promotions were to be made after obtaining willingness/consent of the candidates including the petitioners to the post of Senior Assistants. Petitioners also submitted their willingness for promotion and the matter with regard to their promotions was also put up before DPC. Petitioners were not found to be entitled for promotion as they did not fulfill the conditions as prescribed under Rule 8 (1)(d) (ii) of 1960 Rules. Rule 8(d) and Note (1) of Rule 11 of 1960 Rules, which are relevant for resolving the controversy in the case at hand are reproduced as under:

"Rule 8 Method of Recruitment:-

(d) in the case of Assistant Class-I

(i) by direct appointment; or

(ii) by promotion from amongst clerks with 5 years minimum service and junior scale stenographers with 5 years minimum service including one year's minimum

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experience as Clerk;

(iii) by selection from among officials employed in departments of Government other than the Police Department;

Rule 11 Seniority of members of Service:-

xxxx xxxx xxxx

Note:-(1) The posts of clerks, steno typist and Junior Scale Stenographers shall be treated as the 'same class posts' for the purpose of preparing joint seniority list for making promotions to higher posts, their seniority inter-se reckoning from their dates of joining the posts. Whenever, a Steno-Typist is promoted as Junior Scale Stenographer involving the supersession of the some other Steno-typist senior to him, the senior to him the seniority of the promoted official on the joint seniority list vis-a-vis the other clerks and stenographers would remain undisturbed except that the superseded steno-typist to the steno-typists as the case may be, would be brought down on the joint seniority list so as to rank junior to the Steno-typist who has been found suitable for promotion."

The Punjab Civil Services (Promotion of Stenographers and Steno-Typists) Rules, 1961 (hereinafter referred to as the '1961 Rules') which are also relevant for resolving the controversy in hand. Rule 2, 4 (ii) and Rule 5(1) of the 1961 Rules are relevant, which are reproduced as

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under:-

> "**Rule 2** Stenographers and Steno-typist shall be eligible for promotion to the post of Assistant, Head Assistant, Deputy Superintendent or Superintendent as the case may be, in accordance with the provisions hereinafter appearing.
>
> **Rule 4 (2)** The inter-se seniority of such Stenographers vis.-a-vis Clerks shall be determined by the dates of their continuous appointment against the post of Stenographer or Clerk, as the case may be, and if the dates of their appointment be the same, the older shall be senior to the younger.
>
> **Rule 5 (1)** The Junior Scale Stenographers and Steno-typist shall, along with Clerks, be eligible for promotion to the post of Assistant, after they have qualified in the test prescribed for the post of Assistants. On their appointment as Assistants they shall, like other Assistants be eligible for promotion to higher posts on the clerical side on the basis of their seniority in the Assistant Cadre."

The case of the petitioners was considered in the meeting held on 20.8.2013 by making reference of letter dated 21.5.2013 issued by the Department of Home Affairs and Justice wherein it was mentioned that promotion rules have to be considered over and above the notification. The case of the petitioners fulfills the criteria prescribed under Rule 8 (1) (d) (ii)

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of 1960 Rules. Moreover, letter dated 21.5.2013 has already been withdrawn by the Department of Home Affairs and justice in terms of letter dated 26.8.2014. It was clearly mentioned that the promotions had to be made as per Note (I) under Rule 11 of the 1960 Rules.

On earlier occasions also, i.e. from 2006, the Junior Scale Stenographers/Steno-Typists have been promoted as Senior Assistants in the common/joint seniority list of Clerks/Steno-Typists/Junior Assistants and Junior Scale Stenographers keeping in view the provisions of Rule 8 (d) read with Note (1) of Rule 11 of the 1960 Rules. It is not disputed that the petitioners are senior to thirty Junior Assistants, who were promoted as Sr. Assistants vide order dated 14.10.2013. Those Junior Assistants were quite junior to the petitioners in the seniority list and they were promoted over and above the petitioners. It is also not disputed that all the categories of the employees were having common seniority list and they were treated as equal in terms of the Rules 1960 as well as the Rules 1961 and notification dated 16.6.1995. In view of said rules and notification, the condition of passing of test/examination was exempted for promotion to the higher posts. Relevant portion of notification dated 16.6.1995 is reproduced as under :-

> "4. Whereas, it has been under consideration of the Government to grant exemption from qualifying the Senior Assistant Grade Examination, all such Steno-typists and Stenographers who have joint seniority list with Clerks for promotion to the posts of Senior Assistants under the Punjab Civil Services (Promotion of

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Stenographers and Steno Typists) Rules, 1961, and who completed 18 years of regular service a Steno-typist and Stenographers; and

5. Whereas, it is considered that on the principle of equity and justice all persons holding the posts other than Clerks/Sr. Clerks/ Jr. Assistants, by whatever designation called from which they could be appointed by promotion to the post of Senior Assistant as also entitled for exemption from qualifying the Senior Assistant Grade Examination, alongwith Clerks/ Sr. Clerks/ Jr. Assistants, in view of the provisions of Rule-7 of the Punjab State Senior Assistant Grade Examination Rules, 1994.

6. And now, therefore, to give equal treatment to all categories of employees who have common seniority with clerks either under The Punjab Civil Services (Promotion of Stenographers and Steno Typists) Rules, 1961 or under the respective departmental service rules, and are eligible to sit in the test under Rule 7 of the Punjab State Senior Assistant Grade Examination Rules, 1984 for promotion to the post of Senior Assistant....."

The petitioners also gave options/consent in terms of order dated 17.5.2013 as was sought from the employees like the petitioners by the respondent-Department but the cases of the petitioners were not considered and even their juniors have been promoted to the post of Sr. Assistants, according to their entitlement as per Rules of 1960 and 1961 as

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well as notification dated 16.6.1995. As per Rules 1960, the employees, who were having an experience of 5 years on the post of Clerk and the Junior Scale Stenographers having an experience of 5 years including the experience of one year on the post of Clerk were eligible for promotion to the post of Senior Assistant as per said rules.

In view of the facts as mentioned above, it is apparently clear that respondents No.1 and 2, while promoting juniors to the petitioners from the common seniority list, have mainly relied upon provisions of Rule 8(1)(d) (ii) of Rules, 1960 but have ignored the provisions of Note (1) appended with Rule 11 of Rules, 1960 whereas it was to be read with the aforesaid Rule 8 of Rules 1960. Note (1) (appended with Rule 11) of Rules 1960 clearly provides that the post of Clerks, Steno-Typists and Junior Scale Stenographers are to be treated as 'same class of posts' for the purpose of preparing joint seniority list for making promotions to the higher post. Even a detailed and speaking order was passed on 26.8.2014 by respondent No.1 whereby memo. dated 21.5.2013, on the basis of which the private respondents, who were junior to the petitioners, were promoted, was withdrawn and directions were issued to promote the concerned employees in terms of Note (1) under Rule 11 of the Rules, 1960. But still, respondent No.2 did not consider the cases of the petitioners for promotion being senior as per their joint seniority list in terms of Note-I under Rule 11 of Rules 1960. From the said Rule, it is clear that all the categories were to be treated and considered for promotion in view of provisions of Note (I) of Rule 11 of Rules 1960.

Impugned orders dated 14.10.2013 (Annexure P-5) and

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5.12.2013 (Annexure P-6) have been passed without following the principles as mentioned in Note (1) appended to Rule 11 of Rules 1960. Petitioners are admittedly senior to the persons who have already been promoted.

Accordingly, this writ petition deserves to be allowed. The respondents are directed to reconsider the cases of the petitioners in view of Note I with Rule 11 of Rules 1960 and clarification dated 26.8.2014 and pass necessary orders within a period of three months from the date of receipt of certified copy of the order. Petitioners are also entitled for all consequential benefits from the date their juniors have been promoted.

Writ petition stands allowed with the aforesaid directions.

September 29, 2016 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**

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