

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

CWP No.6759 of 1995 (O&M)

Date of Decision:17.02.2017

Jagdish Rai and another

... Petitioners

Vs.

The Haryana Vidhan Sabha Secretariat, Chandigarh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Aman Chaudhary, Advocate for the petitioners.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

Ms. Neha Jain, Advocate for respondent No.4.

P.B. BAJANTHRI J. (Oral)

C.M. No.2212 of 2017

The application is allowed as prayed for. Accompanying Affidavit alongwith Annexures R-1/4 is taken on record.

Main case

In the instant petition, the petitioners have questioned the validity of order dated 20.4.1995 by which respondents No.3 and 4 were promoted to the post of Private Secretary. They also sought for direction to the official respondents to consider the claim of the petitioners for promotion to the posts of Private Secretaries.

The petitioners were appointed to the post of Reporters on 18.1.1978 and 21.3.1977 respectively. Respondents No.3 and 4 were appointed as Personal Assistants on 22.10.1984 and 17.7.1991 respectively.

Learned counsel for the petitioners submitted that having regard to the length of service read with rules of recruitment governing the post of Private Secretary, both the petitioners are eligible for promotion to

the post of Private Secretary which is one of the source cadre for promotion to the Private Secretary. It was further contended by the learned counsel for the petitioners that method of recruitment to the post of Private Secretary is seniority-cum-merit which is not disputed by the respondents. Learned counsel for the petitioners submitted that Appendix “B” to the Haryana Vidhan Sabha Secretariat Service Rules, 1981 (for short “1981 Rules”) provides method of recruitment for filling up various posts. For the purpose of filling up the post of Private Secretary by way of promotion, column No.1 to 5 reads as under:

1	2	3	4	5
8	Private Secretary		Three years' experience as Personal Assistant or eight years as Senior Scale Stenographer/ Reporter	All the Supdts., Editor of Debates and Private Secretaries shall have a common seniority on the basis of the length of service in their respective posts for purpose of promotion to the post of Superintendent, there shall be no common inter-se seniority amongst the Reporters, Deputy Superintendent & Senior Translators and promotion to the posts of Superintendents of different divisions shall be made strictly from the members of the respective divisions viz. General Division, Reporting Division and Translation Division i.e. only Senior Translators would be promoted against the post of Superintendent Translation. Only Reporters will be promoted on the post of Editor of Debates and Superintendent Publication and only person belonging to the General division would be promoted on the posts of Superintendents in the General Division.

It was further contended that the official respondents have not prepared common seniority list consists of Personal Assistant, Senior Scale Stenographer and Reporter for the purpose of promotion to the post of Private Secretary having regard to the aforesaid provision. It was further contended that the method of recruitment to the post of Private Secretary is seniority-cum-merit. The official respondents have taken a stand that

eligible and suitable candidates are required to be considered for the purpose of promotion to the post of Private Secretary and they have ignored the fact of seniority-cum-merit is the criteria. He has also pointed out from the affidavit filed by the official respondents at page 13 how the official respondents have considered the claim of the petitioners as well as respondents. It is evident that they have not considered the method of seniority-cum-merit and even they have stated that all along in the past the post of Private Secretary is being filled up among the Personal Assistant. Therefore, promotion of respondents No.3 and 4 are liable to be set aside. Consequently, a direction be issued to the official respondents to consider petitioners' claim for promotion to the cadre of Private Secretary from the date of respondents No.3 and 4's promotion.

Per contra, learned State counsel submitted that while considering the names of respondents No.3 and 4, the names of the petitioners and their eligibility have been taken note of and it has been considered as stated in the affidavit at page 13 which reads as under:

“A brief summary of service record for the last ten years of Smt. Saroj Sharma, Senior P.A., Sarvshri Subhash Chander, P.A.; S.K. Bhandari, Chief Reporter; Shambhu Nath, Hindi Reporter; Jagdish Rai, English Reporter; and S.N. Kadian, English Reporter is placed below. A perusal of the above record has revealed that all these officials possess 100% 'Good' or better than 'Good' ACRs.

Since the post of Private Secretary, in the past, has been filled up by promoting PAs in accordance with the provisions of the rules, it is proposed that Smt. Saroj Sharma, Senior P.A., who is senior most amongst the Sr. PA/PAs and has about 14 years experience of working with the officers/ Hon'ble Deputy Speaker as Senior Scale Stenographer/P.A./Senior P.A., may be considered for promotion to the post of Private Secretary as

she fulfils the requirement of the Service Rules. In case, this proposal is agreed to the proposal for filling up the resultant post of Senior P.A. Will be examined separately later on.

Besides above, it may be mentioned that consequent upon the promotion of Shri Ram Narain Yadav, a substantive Secretary to Speaker to the post of Deputy Secretary, the post of Secretary to Speaker has fallen vacant with effect from 3rd January, 1995. The said post could not be filled up as the same has not been included in the Haryana Vidhan Sabha Secretariat Service Rules. However, a proposal for including the said post in the ibid rules prescribe qualification/experience for filling of the said post is pending with the Government for sufficient long time. In the administrative interest, to fill up the said post on the basis of proposed qualifications/experience, an advice has been sought from the Government which is also still awaited. If the authorities agree, an additional appointment in the cadre of Private Secretary may, therefore, be made against the unfilled higher vacancy of Secretary to Speaker in accordance with Note 2 of Rule 6.2 of Punjab Financial rules, which is reproduced as under, so that on Private Secretary could be appointed/promoted on temporary basis:-

6.2 ... There is however, no objection to excess appointments being made in a lower unit or cadre against an equal or greater number of vacancies left unfilled in the higher grade. This liberty may not be used for the purpose of increasing the numerical strength of an office, for each vacancy in higher unit or cadre only one extra post in a lower unit or cadre is admissible.

Note 1:- X X X

Note 2:- The excess appointment in the lower grade, which is to be adjusted against a vacancy left unfilled in the higher grade in a Gazetted capacity may be of a Gazetted or a non-Gazetted nature.”

If the above proposal is agreed to, the name of Shri Subhash

Chander, P.A., who is next to Smt. Saroj Sharma, Senior P.A.. in the seniority, may be considered for appointment/promotion as Private Secretary in the scale of pay of Rs.2000-3500 plus Rs.200/- as special pay, on temporary basis, for the present, against the unfilled higher vacancy of Secretary to Speaker in accordance with the provisions of the rule, referred to above. The ACRS of Shri Subhash Chander, P.A. For the period from 1988-89 to 1993-94 have also been seen and it has been found that there is one 'Good' report, two 'Very Good' reports and four 'Outstanding' reports in addition to one 'appreciation letter' issued on 4th July, 1991, as is evident from the summary of the ACRs placed below. In case, this proposal is approved and Shri Subhash Chander, P.A. is promoted as Private Secretary, the proposal to fill up the resultant vacancy of P.A. will be examined and put up separately later on.

Sd/-

J.S. 20.4.95”

It was further submitted that seniority in a cadre is required to be taken into consideration. In the present case, respondents No.3 and 4 are from Personal Assistant cadre and for the purpose of promotion to the post of Private Secretary, first source of cadre is Personal Assistant. Therefore, Personal Assistants are required to be considered for promotion to the post of Private Secretary. It was further contended that the petitioners have other avenue of promotion other than the Private Secretary and they have attained the age of superannuation and retired from service during the pendency of litigation. Therefore, this Court may taken note of equity in favour of respondents No.3 and 4 also.

None appears on behalf of respondent No.3 and it is brought to the notice of this Court by the counsel for respondent No.4 and respondent No.4 that respondent No.3 is stated to have died. Therefore, the petition has become abated insofar as respondent No.3 is concerned.

Learned counsel respondent No.4 vehemently contended that selection and appointment of respondent No.4 is in terms of rules governing the post of Private Secretary. Seniority is required to be taken with reference to a particular cadre and not combined seniority list. Therefore, the contention of the petitioners that combined seniority list to be maintained is not maintainable. Further consideration the names of respondents No.3 and 4 to the post of Private Secretary is with reference to seniority maintained by the department insofar as Personal Assistant cadre and Rule 11 of the Seniority which is very specific that each cadre seniority list is required to be prepared. Therefore, there is no infirmity in the order of promotion of respondents No.3 and 4 dated 20.4.1995.

Heard learned counsel for the parties.

Method of recruitment to the post of Private Secretary under Rules 1981 prescribes that three years of experience as a Personal Assistant or 8 years as a Senior Scale Stenographer/Reporter and Appendix "B" to Rules 1981 which stipulates that common seniority list is to be prepared for the purpose of promotion to the post of Private Secretary. Having regard to the above provision of law. The respondents are required to prepare a common seniority list of Personal Assistant, Senior Scale Stenographer and Reporter. The official respondents have not resorted to prepare common seniority list from 1981 to 1995. Further the official respondents are promoting only Personal Assistant to the post of Private Secretary between the year 1981 to 1995. In other words, it is evident that Personal Assistants are in good books with the Speaker/Deputy Speaker so as to consider their names only. Admittedly, the persons who are promoted to the post of Private Secretary from 1981 to 1995 are only from the source cadre of

Personal Assistants. The official respondents have ignored the claim of the Senior Scale Stenographer and Reporter. During the period from 1981 to 1995, not even a Senior Scale Stenographer or Reporter were promoted. On this issue, learned State counsel submitted that reporters have other avenue of promotion. Therefore, their names need not be considered. This contention is irrelevant for the present case. Further it was submitted if there are no Personal Assistant, in such an event, Senior Scale Stenographer is promoted and if no Senior Scale Stenographer is available then Reporter. In that method, the post of Private Secretary is required to be filled up having regard to the language employed in the Rules. This argument is an after thought for the reasons that petitioners name was also considered as is evident from affidavit. Rules does not specify that if Personal Assistants are not available then Senior Scale Stenographer and if Senior Scale Stenographer are not available then Reporter. Therefore, the submission of the learned State counsel is hereby rejected. Moreover, perusal of consideration of the petitioners' names on par with respondents No.3 and 4 alongwith the affidavit at page Nos.10 to 15, it is evident that the respondents have totally ignored the rules of recruitment to the post of Private Secretary which is seniority-cum-merit. Whereas all along while considering the names of respondents No.3 and 4 for promotion to the post of Private Secretary, the respondents are of the view that best eligible and suitable candidate is required to be taken into consideration. In other words, best and eligible from Personal Assistant cadre has been chosen all along from 1981 to 1995. The stand of the State and respondent No.4 is highly arbitrary and contrary to rules of recruitment.

On the question of equity, Supreme Court in the case of Dr.

M.S. Patil v. **Gulbarga University and others**; (2010) 10 SCC 63 held that if an illegal order is questioned before the Court, question of equity do not arise and it was further held that selection and appointment can be set aside even after decade if there are serious lacuna in the process of selection and appointment.

In view of these facts and circumstances, promotion of respondent No.4 to the post of Private Secretary dated 20.4.1995 is set aside. The respondents are directed to re-consider the names of the petitioners from the date of promotion of respondent No.4 and if they are otherwise eligible, they be promoted from 20.4.1995 and extend all service and monetary benefits irrespective of the fact that the petitioners have attained the age of superannuation and retired from service during pendency of this petition. The official respondents are directed to re-consider the names of the petitioners within a period of four months from today.

Petition stands allowed.

17.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No