

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.12116 of 2010
Date of Decision: 24.04.2017

Sukhwinder Kaur

...Petitioner

Versus

Additional Registrar (I) Cooperative Societies, Punjab, Chandigarh and
others.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Sanjay Tangri, Advocate
for the petitioner.

Mr. Vikas Singh, Advocate
for respondent No.2.

Mr. Harith Sharma, Advocate
for respondent No.3.

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JASWANT SINGH, J. (Oral)

Petitioner–Sukhwinder Kaur, on the demise of her husband late Kamaljit Singh while working as Manufacturing Chemist with the Gurdaspur Cooperative Sugar Mills Ltd., was adjusted as Computer Operator on contractual basis at DC Rates vide order dated 09.08.2007 (Annexure P-1), however, keeping in view, her qualifications of being a graduate with knowledge of Computer Typing, she was appointed to the

post of Punjabi Typist on compassionate grounds in the Clerical-III Grade in the pay scale of Rs.3560-5410 vide appointment letter dated 15.10.2008 (Annexure P-2). It is not disputed that as per Appendix 'A' attached to the Punjab State Cooperative Sugar Mills (Service) Rules 1991 (hereinafter to be referred as the 1991 Rules), the prescribed qualifications for the post of Punjabi Typist Grade III are graduate with 30 Words Per Minute speed in typing and the petitioner fulfilled the laid down qualifications.

On the other hand, Surinder Kaur–respondent No.3 was appointed as a Peon on compassionate ground in the year 1987 on the demise of her husband late Gurmej Singh, who was working with the Gurdaspur Cooperative Sugar Mills Ltd.. She admittedly possesses only a matriculation certificate and could, accordingly, be appointed on the post of Peon as per the prescribed qualifications in Appendix 'A' attached to the aforesaid 1991 Rules.

Surinder Kaur–respondent No.3 filed a petition in February, 2009, under Rule 28 read with Rule 45 of the Punjab Cooperative Society Rules, 1963 for directing the Sugar Mill to promote her from the post of Peon to the post of Punjabi Typist by filling up the post of Punjabi Typist by way of promotion instead of direct recruitment. The said petition was allowed vide impugned order dated 30.04.2010 (Annexure P-3) passed by the Additional Registrar, Cooperative Societies, Punjab. In compliance of order Annexure P-3, order dated 19.06.2010 (Annexure P-4) came about to be passed whereby services of Sukhwinder Kaur as Punjabi Typist, were ordered to be terminated. Hence, the present petition.

This Court vide order dated 13.07.2010, while issuing notice of motion for 06.09.2010, stayed the operation of the impugned order dated

19.06.2010 (Annexure P-4). In addition, the Sugar Mill was directed to consider the claim of Surinder Kaur–respondent No.3 for promotion to the post of Clerk/Punjabi Typist or any other equivalent post and submit a compliance report.

After hearing learned counsel for the parties, it is not in dispute that for the post of Punjabi Typist, the statutorily prescribed qualifications for promotion are matriculation certificate with three years experience on the post of Clerk, having typing speed of 40 Words Per Minute in Punjabi. It cannot be disputed that there is no separate quota prescribed for promotion or by direct recruitment or by transfer, however, an embargo has been laid down whereby not more than 3/4th of the posts in each cadre can be filled up by promotion or transfer. It is also conceded that it would be for the employer to choose a source of recruitment provided the restriction of 3/4th of the posts in the promotion quota is not violated. Meaning thereby, there is no embargo for filling up the posts by way of direct recruitment at any time even beyond the 1/4th quota. Therefore, even if Surinder Kaur–respondent No.3 is to be treated as eligible for promotion to the post of Punjabi Typist, although, she was never substantively appointed as a Clerk, even then, filling up the post by appointing Sukhwinder Kaur on compassionate grounds to the post of Punjabi Typist, did not provide any cause of action to Surinder Kaur for making out a case for filling up the post by promotion, much less, leading to termination of services of Sukhwinder Kaur vide impugned order Annexure P-4.

In view of the aforesaid, the present petition is allowed. The impugned orders Annexures P-3 and P-4 are quashed. The petitioner is entitled to all consequential benefits. However, the respondent – Sugar Mill

would be free to promote Surinder Kaur–respondent No.3 in view of her fulfilling the prescribed qualifications, in view of her seniority and fulfilling promotion criteria.

24.04.2017
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(Jaswant Singh)
Judge

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