

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

CWP No.11739 of 2015 (O&M)

Date of Decision:08.08.2017

Rajesh Kumar Khatana and another

... Petitioners

Vs.

The Registrar (General), Punjab and Haryana High Court, Chandigarh and

others

... Respondents

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

Present : Mr. Rajesh Bhateheja, Advocate for the petitioners.

Mr. Vikas Suri, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioners have questioned the communication dated 28.4.2015 by which 1st respondent has declined the petitioners' grievance relating to adjusting them in the cadre of Stenographer Grade-I in Sessions Division, Gurgaon. They further sought for a direction to respondents No.1 to 3 to adjust the petitioners in the Sessions Division, Gurgaon, as per the option exercised by them vide Annexures P-6 and P-7 respectively.

1st petitioner is stated to have no claim in the present petition for the reasons that during pendency of this petition he is stated to have taken voluntarily retirement. Thus, 2nd petitioner's claim is required to be examined in the present petition. 2nd petitioner was appointed as a Steno Typist on 25.9.1997 in the Sessions Division, Gurgaon. Sessions Division, Gurgaon, consists of sub divisions like Nuh, Mewat and Ferozepur Zirka.

On 15.5.2013, the State Government issued a notification bifurcating

Sessions Division, Gurgaon and Nuh. Thereafter on 24.10.2013 by another notification modified the notification dated 15.5.2013 for the word “Nuh” wherever carrying, the word “Nuh at Mewat” would be substituted. In view of creation of Sessions Division Nuh at Mewat, employees are required to be posted or adjusted in the newly created Sessions Division, Nuh at Mewat. In this regard, respondents are stated to have created Sessions Division Nuh at Mewat. Thereafter on 24.8.2013, respondents have notified for exercising options from the employees of the Sessions Division, Gurgaon and Sessions Division Nuh at Mewat. 2nd petitioner is stated to have been posted on 23.4.2010 at Nuh as on that date Sessions Division Gurgaon was not bifurcated. In other words, 2nd petitioner was under the administrative control of Sessions Division, Gurgaon. 2nd petitioner while working at Nuh had exercised option as sought by the official respondents while opting to Sessions Division, Gurgaon. Similarly 5 more employees who were working at newly Sessions Division Nuh at Mewat opted for Sessions Division Gurgaon. The respondents were facing difficulty in implementing the option exercised by the employees on the score that senior persons have opted from Sessions Division Nuh at Mewat to Sessions Division Gurgaon and only retaining juniors in the cadre of Stenographer Grade-II at Nuh, would be difficult in running the administration of newly created Sessions Division Nuh at Mewat. Thus, official respondents have not implemented the option exercised by respective employees. In other words, persons who are already working prior to 15.5.2013 were continued at their respective Sessions Division like 2nd petitioner and others. In this regard, 2nd petitioner is stated to have submitted representation for implementation of the option dated 24.8.2013. 1st respondent declined to accept the petitioner's claim for

adjusting or retaining in Sessions Division Gurgaon. Hence, the present petition.

Learned counsel for the petitioners submitted that 2nd petitioner was appointed in the Sessions Division Gurgaon. Nuh was a sub division of Sessions Division Gurgaon as and when he was posted in the year 2010. Therefore, no issue in respect of posting the petitioner at Nuh before bifurcation. After bifurcation petitioner had a right to continue at Sessions Division Gurgaon or newly created Sessions Division Nuh at Mewat. In this regard, official respondents themselves sought for option from the employees either to choose Sessions Division Gurgaon or Sessions Division Nuh at Mewat. 2nd petitioner and some of the employees opted for Sessions Division Gurgaon. In not considering, petitioner's claim to continue him in Sessions Division Gurgaon would be arbitrary and illegal. It was submitted that at Sessions Division, Gurgaon, he was at serial no.6 in the seniority list of Stenographer Grade-II whereas number of posts of Stenographer Grade-II in the Sessions Division prior to bifurcation was 49 posts. Among them 26 posts were filled up and rest of the posts were vacant. After bifurcation of Sessions Division Gurgaon into Sessions Division Nuh at Mewat, 19 posts were retained/maintained in the Sessions Division Gurgaon. Whereas 7 posts of Stenographer Grade-II were continued at Sessions Division Nuh at Mewat. It was submitted that petitioner is within the 19 persons in the Sessions Division Gurgaon and he stands at serial no.6. Therefore, persons who are at serial Nos.7 to 19, even though, they were juniors to the petitioner, they have been continued at Sessions Division Gurgaon. Whereas the petitioner has not been accommodated at Sessions Division Gurgaon only for the reasons that before bifurcation he was posted at Nuh. Further it

was submitted that non implementation of option which was sought by the official respondents would be highly arbitrary and illegal for the reasons that persons who are seniors were continued at Nuh merely because they were posted prior to bifurcation of Sessions Division Gurgaon. Such view of the respondents is violative of Article 14 and 16 of the Constitution and it would be arbitrary. Therefore, declining the petitioner's claim to retain his in Sessions Division Gurgaon by retaining juniors to the petitioners at Sessions Division Gurgaon would be arbitrary. Accordingly, decision of the official respondents dated 28.4.2015 is liable to be set aside.

Per contra, learned counsel for the respondents submitted that bifurcation of Sessions Division, Gurgaon into Sessions Division Nuh at Mewat is in the public interest. Newly created Session Division Nuh at Mewat is to be administered with some seniors Stenographer Grade-II. Sessions Division Nuh at Mewat cannot be administered with only juniors Stenographer Grade-II. Since the petitioner was one of the senior Stenographer Grade-II, therefore, he has been retained at Nuh. Therefore, there is no infirmity in declining the petitioner's claim for retaining him at Sessions Division Gurgaon. It was further submitted that though options have been sought from the employees, the same has not been implemented in the administrative interest. It was further pointed out that condition No.9 of the letter of appointment of the petitioner is specific that you can be transferred any where in this Sessions Division and you will not claim for being posted at a particular station of your choice. The said condition is binding on the petitioner. Therefore, the petitioners have not made out a case so as to interfere with the decision of the respondents taken on 28.4.2015.

Heard learned counsel for the parties.

Crux of the matter is whether 2nd petitioner has a lien in Sessions Division Gurgaon after bifurcation of Sessions Division Gurgaon into Sessions Division Nuh at Mewat or not?

Undisputed facts are that 2nd petitioner was appointed as Steno Typist and he was promoted to the post of Stenographer Grade-II. While working as Stenographer Grade-II, he was posted at Nuh on 23.4.2010 (prior to bifurcation). On 15.5.2013, there was bifurcation of the then Sessions Division, Gurgaon into Sessions Division Gurgaon and Nuh at Mewat. For the purpose of running administration at Sessions Division Nuh at Mewat which is newly Sessions Division, employees are to be accommodated among the employees of the then Sessions Division Gurgaon. The respondents have sought for option from the employees. Petitioners and five others exercised their options while they were working at Nuh to Sessions Division Gurgaon. The same was not acted upon by the official respondents either to accept or reject their option. On the other hand, they proceeded to continue with the existing employees at Sessions Division Gurgaon and Sessions Division Nuh at Mewat. The contention of the respondents is that in the interest of administration, respondents have continued the petitioner at Nuh since he is one of the senior Stenographer Grade-II. His presence is required at newly created Sessions Division. In other words, experienced Stenographer Grade-II are required to run the newly created Sessions Division Nuh at Mewat. It is to be noted that on the ground of administration, petitioner's right cannot be taken away for the reasons that petitioner had a lien over the Sessions Division Gurgaon where he was initially appointed. Rightly the official respondents have sought for

exercising option. The same has been stalled on the ground of administration. The petitioner had a lien in the Sessions Division, Gurgaon for which the respondents were required to consider. Petitioner is being one of the Senior Stenographer Grade-II who stands at serial no.6 at Sessions Division Gurgaon, therefore, retaining juniors to the petitioners from serial nos.7 to 9 would be violative of Articles 14 and 16 of the Constitution. In other words, retaining juniors at Sessions Division, Gurgaon and posting senior like 2nd petitioner at Nuh. At the best, the respondents could have made an arrangement of deputing employee on other duties or on deputation for the purpose of running newly created Sessions Division Nuh at Mewat for some time and not asking permanently the 2nd petitioner to work at Nuh despite he having seniority in the Sessions Division Gurgaon. In other words, the respondents should have implemented the exercising option with reference to seniority in the undivided Sessions Division Gurgaon. Respondents are relying on condition no.9 in the order of appointment of the 2nd petitioner which reads as under:

“9. You can be transferred anywhere in this Sessions Division and you will not claim for being posted at a particular station of your choice.”

This clause is not applicable to the present case in view of the new development that bifurcation of Sessions Division Gurgaon into Sessions Division Nuh at Mewat on 15.5.2013. Condition is crystal clear that an employee can be transferred anywhere in this Sessions Division and he will not claim for being posted at a particular station of his choice. This clause is not applicable in view of bifurcation of Sessions Division Gurgaon into Sessions Division Nuh at Mewat. This clause is applicable if the petitioner's lien retained at Sessions Division, Gurgaon. He can be posted

any where of the sub divisions or he may be continued at Sessions Division,

Gurgaon. Thus, there cannot be a option that he be posted at particular station of his choice. In other words within Sessions Division of Gurgaon, he can be posted and not outside Sessions Division of Gurgaon. Therefore, above condition of the respondents that there would be a violation of condition No.9 of the appointment order issued to the petitioner vide Annexure P-2 is rejected. Accordingly, communication dated 28.4.2015 is quashed.

In view of the above discussion, concerned respondents are hereby directed to implement the option exercised by 2nd petitioner with reference to his seniority in the Sessions Division Gurgaon since option must have been received more than the number of posts in a particular Sessions Division. In that event, in order to streamline, the respondents are required to follow the entry into service in the Sessions Division Gurgaon. If entry into service is taken into consideration 2nd petitioner is at serial No.6 of Stenographer Grade-II in the undivided Sessions Division Gurgaon. Therefore, he is entitled to accommodate within the 19 posts which are available after bifurcation of the Sessions Division Gurgaon. Concerned respondent is hereby directed to re-consider the 2nd petitioner's claim in respect of retaining his lien at Sessions Division Gurgaon with reference to option read with the seniority. The above exercise shall be completed within a period of three months from today.

At this stage, learned counsel for the respondents submitted that during pendency of this petition, petitioner is stated to be promoted to the post of Stenographer Grade-I at newly created Sessions Division Nuh at Mewat. If he is ready to give up the promotion to Stenographer Grade-I at Sessions Division Nuh at Mewat, in that event, order cannot be

implemented. Further 2nd petitioner will have seniority in the cadre of Stenographer Grade-II where his name was incorporated prior to 15.5.2013 at serial no.6. Assuming that 2nd petitioner may or may not get Stenographer Grade-I promotion in the Sessions Division Gurgaon and so also his date of promotion and seniority in the cadre of Stenographer Grade-I may vary.

In this regard, official respondents may highlight and give a notice to 2nd petitioner whether in view of the later development that he had been promoted to the post of Stenographer Grade-I, he will pursue the matter retaining his lien at Sessions Division Gurgaon or not? If he gives a consent, in that event, the above order be implemented to retain his lein at Sessions Division Gurgaon.

Petition stands allowed accordingly.

08.08.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**