

CWP No. 12928 of 2015

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

CWP No. 12928 of 2015 (O&M)

Date of Decision: 24.10.2017

Sunita Kumari

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Surinder Gandhi, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 6661-CWP-2017

Notice having been issued in this application seeking amendment of the writ petition, with no reply having been filed to the application, it is allowed and the amended writ petition is taken on record.

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By this petition the petitioner seeks that she being a Steno Typist, having been appointed to the said post vide the order Annexure P-1 on 26.10.2006, is entitled to promotion as a Clerk, in terms of the Punjab Civil Services (Promotion of Stenographer and Steno Typists) Rules 1961.

It is further contended that prior to her appointment in the Department of Prosecution, she had been appointed as a Steno Typist in the Haryana State Minor Irrigation & Tubewells Corporation Limited.

Learned counsel for the petitioner has also pointed to the fact that earlier also two Steno Typists were posted as Assistants, vide the order Annexures P-2 and P-3 dated 16.02.1989 and 28.09.1990 respectively.

The stand of the respondents, on the other hand, as submitted by Mr. Hitesh Pandit, learned Additional Advocate General, Haryana, is that even as per the petitioners' appointment letter Annexure P-1, Clause 15 thereof states that her services would be governed by the Haryana State Prosecution "C" (Clerical HQ) Services Rules, 1980, and as per the said rules, a copy of which has been annexed as Annexure P-10 with the petition itself, the channel for promotion of a Steno Typist is not to the post of an Assistant but to the post of a Senior Scale Stenographer, with the Feeder Cadre for the post of an Assistant being that of a Clerk.

As regards the promotions of the two persons, Smt. Sita Verma and Kumari Shakuntla Rani, as per Annexures P-2 and P-3 respectively, it is submitted that firstly it was made against leave vacancies and though Mr. Gandhi has submitted that the said persons continued to work as Assistants on the said posts even till they retired, learned counsel for the respondents submits that even if two persons were wrongly allowed to continue on the said posts against the provisions of statutory rules, that cannot be taken advantage of by the petitioner.

He also refers to a judgment of this Court in **Hem Lata and others** vs. **State of Haryana and others**, (in CWP No. 8784 of 2011), a copy of which has been annexed as Annexure R-1 with the reply.

As regards promotion to the post of a Senior Scale Stenographer, learned State counsel has pointed to the aforesaid rules, to submit that the petitioner not being a 'Ist Class matriculate', and having no higher qualification after that, is not qualified to be so promoted.

In rebuttal, Mr. Gandhi submits that the petitioner having been appointed in the year 2006 with the respondent Department, even if her previous service with the HSMITC is not to be considered, she having been retrenched from the said post, at least one promotion in a career is to be provided for by the respondents, even as per the statutory rules.

Having considered the aforesaid arguments on both sides, though simply on the basis of two persons having been promoted against leave vacancies vide Annexures P-2 and P-3 in the years 1989 and 1990, the petitioner would have no right for promotion to the post of an Assistant, against the provisions of the rules, with the said promotions not having been challenged on time and in fact having been made before the petitioner joined service (with the said two persons already having retired), however, as regards Mr. Gandhis' contention with regard to an avenue of promotion to be given to all employees, it is well settled since long that at least one channel of promotion, if not two, in the entire career of a person should be provided by the State.

In this context, a judgment of the Supreme Court can be cited, in **Dr. Ms. O.Z. Hussain vs. Union of India and others** AIR 1990 SC 311.

Hence, if the basic qualification for promotion to the post of a Senior Scale Stenographer is Matriculation with a 1st division, or Higher Secondary/Intermediate in the IInd division, or graduation or its equivalent, for those who do not possess the said qualifications but otherwise have worked for a sufficiently long period as Steno Typists, a provision should be made in the rules for granting promotion after a specified number of years.

Though Mr. Pandit has argued that in case of non-availability of promotion, an employee is entitled to be granted a higher pay scale under the Assured Career Progression (ACP) Rules, which the petitioner has been provided,

in the opinion of this Court, granting a higher scale in lieu of promotion is applicable where despite promotional channels being available, an employee is not promoted on account of sufficient number of posts not having become vacant from time to time, to which he/she can be promoted.

On the other hand, where no channel of promotion is provided at all, simply granting ACP scales, though may alleviate the financial difficulty of an employee, however, that would not take care of the normal desire for promotion to a higher level in a persons' career, with at least a chance of promotion available on a higher post. Obviously, if no channel of promotion is available at all, an employee has nothing to look forward to in his/her career and as such, stagnation is bound to set in at the outset itself.

Consequently, this petition is disposed of with a direction to the respondents to provide for an avenue of promotion even to those Steno Typists who do not possess the aforesaid qualifications, but have continued for a sufficient number of years on the post.

The number of years which a Steno Typist must complete in that capacity before being eligible for consideration for promotion to the next post of Senior Scale Stenographer, would be considered by the respondents, keeping in view, as per past experience, the number of years it takes for even a Steno Typist with the aforesaid qualification to be promoted to the next post.

Thus, for example, if it takes about 5 to 7 years for a Steno Typist with the requisite qualification provided in the rules, to be promoted to the next rank, the respondents should consider promotion of those Steno Typists who do not possess the aforesaid qualifications, after 10 to 12 years of service as Steno Typists.

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The aforesaid direction be carried out within a period of four months from the date of receipt of a certified copy of this order and if the petitioner thereafter is eligible and comes with the zone of promotion, her case for promotion shall be considered accordingly.

October 24, 2017
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes