

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

CWP No.19321 of 2015

Date of Decision:30.03.2017

Pardeep Kumar and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Kuldeep Sheoran, Advocate for the petitioners.

Mr. Sushil Gautam, D.A.G. Haryana.

Mrs. Anju Arora, Advocate for respondents no.4 to 8.

P.B. BAJANTHRI J. (Oral)

The petitioners have questioned the order dated 8.9.2015 (Annexure P-6) by which the petitioners have been reverted from the post of Clerks to Class-IV post.

The petitioners while working as Class-IV posts were promoted with reference to the rules of recruitment called the Haryana Development and Panchayat Department (Group-C) Field Offices Service Rules 2012 (For short "2012 Rules") read with amended Rules 2013 issued on 8.11.2013. For the purpose of promotion to the post of Clerks from Class-IV post, certain amendment have been brought on 8.11.2013 to the extent of prescription of Education Qualification etc.

In view of the aforesaid amendment, the petitioners are stated to be eligible for the post of clerk. Consequently, official respondents proceeded to promote the petitioners on 30.12.2013. On 21.5.2014, the Chief Secretary to Government of Haryana issued certain instructions relating to eligibility nomenclature of the various posts up-gradation of

minimum educational qualification for the posts and further introduction of State eligibility test in Computer Appreciation and Applications etc. In that communication, it is mentioned that in the case of promotion to the post of Clerk from Class-IV employees and restorer etc. upgradation of minimum education qualification i.e. 10 + 2 as fixed vide letter dated 11.10.2013 read with 7.11.2013 letter would be made application with prospective effect i.e. for Class-IV employees and restorer who have been/shall be recruited after 7.11.2013. Due to the said instruction by the Chief Secretary, Director, Development and Panchayat Department issued a show cause notice to the petitioners stating that why they should not be reverted to the post of Group-D from Group-C. In this regard, petitioners have submitted their explanation to the show cause notice in which they have specifically contended that amended rules issued on 8.11.2013 holds the field and the communication of the Chief Secretary dated 21.5.2014 would not over ride amended Rules 2013. While considering the petitioners' explanation to the show cause notice, the Director, Development and Panchayat Department has not taken note of the said contention. He has merely stated as under:

“In reference of above notice reply has been submitted by these employees. After examining the reply of the employees, the same was found unsatisfactory and in view of natural justice opportunity of personal hearing was granted on 13.8.2015. During the course of personal hearing, only arguments were made but no solid argument/fact was presented. In this manner, no force was found in the argument presented.”

Thus, there is no consideration in respect of explanation to the show cause notice and so also when the amended Rules 2013 issued on 8.11.2013 while fixing the educational qualification for the post of clerk and

no cut of date has been stated in the Amended Rules, 2013. Therefore, Annexure P-3 communication cannot be interpreted with reference to 2013 Rules. These issues are required to be considered by the Director while examining the petitioners' explanation. The same has not been taken note of.

Accordingly, Annexure P-6 dated 8.9.2015 is set aside reserving liberty to the Director to re-consider the petitioners' explanation and pass suitable order. While doing so each of the contentions urged in the explanation in particularly para-7 be considered and pass a fresh order.

Petition stands allowed.

At this stage, learned counsel for the private respondents submitted that they were senior to the petitioners. Therefore, they are also entitled to be promoted to the post of Clerk.

In this regard, if the private respondents submits any application or representation, the competent authority shall consider the same in accordance with law.

30.03.2017

rajeev

Whether speaking/reasoned

Yes/No

(P.B. Bajanthri)
Judge

Whether reportable

Yes/No