

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

CWP No.21392 of 2014 (O&M)

Date of Decision: August 10, 2017

Pardeep Narang and others

....Petitioners

vs.

State of Punjab and others

....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Gagneshwar Walia, Advocate
for the petitioners.

Mr. T.P.S. Chawla, DAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

Pleadings on record indicate that the petitioners herein are working against the different Class-IV posts i.e. Chowkidar, Mali, Water Men and Peon under the Punjab State Education Department on regular basis. The petitioners have a service period ranging from 12 to 24 years.

The precise prayer raised in the petition is to promote the petitioners from Class-IV to Class-III posts in terms of the relevant Statutory Rules i.e. the Punjab Education Department (Subordinate Officers) Clerical Service Rules 1941.

In the written statement filed to the writ petition, the factum of the present petitioners working as regular Class-IV employees under the Education Department and since long is not disputed. However, it is stated that under the Statutory Rules of 1941,

there does not exist any provision, under which a Class-IV employee can be promoted to a Class-III post (now classified as Group C service).

Counsel appearing for the petitioners does not rebut such factual position. He however submits that executive instructions have been issued from time to time and under which, the claim of the petitioners could be considered for promotion to a Class-III post.

Even as regards executive instructions, the position has been clarified in the written statement.

Learned State counsel, by adverting to the averments made in Para 2 of the preliminary submissions contained in the written statement, submits that on the strength of various executive instructions, it had been decided to fill up the posts of 10% Senior Library Attendants, 20% posts of Library Restorers, 10% posts of School Librarians and 15% posts of Clerks from amongst Class-IV employees upon fulfilling requisite qualifications and other parameters laid down in the instructions. Subsequently, in **CWP No.4274 of 2011 (Nanak Chand vs. State of Punjab and others)** decided on 24.04.2014, a view was taken that the executive instructions cannot run contrary to the statutory rules. Based on the decision in **Nanak Chand's case (Supra)**, the State Government vide memo dated 22.04.2014, withdrew executive instructions and in which, a quota had been provided to consider Class-IV employees for promotion to the post of Class-III posts.

In the written statement, it has also been asserted that no

junior to the petitioners herein has been promoted to the post of Class-III. Even such assertion has not met with any rebuttal at the hands of counsel representing the petitioners.

In view of the above, the prayer raised in the instant petition to issue a writ of mandamus to direct the respondent-authorities to promote the petitioners from Class-IV to Class-III posts, cannot be accepted.

There is however one aspect that would require to be dealt with. The Hon'ble Supreme Court of India in **Dr. Ms. O.Z. Hussain vs. Union of India and others 1990(1) SLR 297** had dealt with a grievance put forth that Group A Scientists of the Ministry of Health and Family Welfare and who are members of the National Council of Bio Medical Scientist, are being discriminated against, as they have not been given any promotional benefits as such, there is a large scale stagnation in the service. While issuing directions to the Ministry of Health and Family Welfare of the Union of India to frame a set of appropriate Rules providing suitable promotion avenues for the A Group Scientists in the Non-Medical Wing of the Establishment of Director General of Health Service, it was observed that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion was held to be a normal incidence of service.

Adverting back to the facts of the present case, the petitioners herein have served against Class-IV posts for periods upto 24 years approximately. Under the Statutory Rules governing

the service, there is no promotional avenue available to the petitioners. The respondent-Department, apparently is alive to the situation. In Para 3 of the preliminary submissions of the written statement, it has been stated that avenue for promotion of Class-IV employees is in the process of being included in the relevant departmental service rules and which at present are at the draft stage.

The written statement was filed way back in the year 2015. No progress thereafter has been made.

Under such circumstances, while declining to interfere in the present petition and dismissing the same, it is observed that the Competent Authority/appropriate Authority under the State Government would make an endeavour to provide for a promotional avenue even to such Class-IV employees of the Education Department like the petitioners and in furtherance of the stand taken by the State itself in the written statement.

Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

10.08.2017
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***Whether speaking/reasoned* : Yes/No**
***Whether reportable* : Yes/No**