

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.22208 OF 2014 (O&M)

DATE OF DECISION: AUGUST 10, 2017

Kamlesh Rani D/o Shri Hira Lal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Harinder Sharma, Advocate for the petitioner.

Mr.Avinit Avasthi, Assistant Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

Challenge in the instant petition is to the order dated 22.10.2014, Annexure P8, passed by the District Education Officer (Secondary Education), Faridkot and in terms of which the petitioner has been reverted from the post of Tailoring Mistress to that of Workshop Attendant.

2. Brief facts, that are not in dispute, may be noticed.
3. Petitioner possesses the qualification of vocational course in the trade of Cutting, Tailoring, Embroidery and Needle work from the Department of Technical Education and Industrial Training, Punjab. Petitioner was appointed as Workshop Attendant under the Education Department, State of Punjab vide order dated 31.8.1993. Vide memo dated 14.1.2009, petitioner was provisionally promoted as Tailoring Mistress (under

Vocational Scheme). On 19.2.2013, the petitioner was served a show cause notice contemplating her reversion from the promotional post of Tailoring Mistress to the post of Workshop Attendant on the ground that under the Statutory Rules governing service, there is no provision for making appointment to the post of Tailoring Mistress by way of promotion. Reply dated 20.2.2013 was submitted by the petitioner to the show cause notice. However, vide impugned order dated 22.10.2014, Annexure P8, petitioner stands reverted from the post of Tailoring Mistress to the post of Workshop Attendant. It is against such brief factual backdrop that the instant writ petition has been filed.

4. Learned counsel appearing for the petitioner has submitted that the promotion of the petitioner in the year 2009 to the post of Tailoring Mistress (under Vocational Scheme) was in conformity with the instructions issued by the State of Punjab dated 23.4.1996 and 14.7.2009. It is argued that even if no channel of promotion was provided under the Statutory Rules to the post of Tailoring Mistress, such provision of promotion could be made by way of issuance of administrative instructions. Learned counsel further contends that in Appendix 'B' to Rule 5 of the Punjab State Education Class-III (School Cadre) Service Rules, 1978, there is a channel of promotion provided to the post of Work Experience Teachers, Vocational Teachers in the trade of Carpentry, Motor Mechanic and Radio Mechanic to the extent of 25% from amongst Workshop Attendants who fulfil the requisite qualifications in the relevant trade. However, no such provision for promotion has been made in respect of the post of Tailoring

Mistress and, as such, the administrative instructions dated 23.4.1996 and 14.7.2009 had been issued with the objective of filling up a lacuna in the Rules. It is vehemently argued that under such circumstances, the promotion of the petitioner to the post of Tailoring Mistress vide order dated 14.1.2009 was legally valid. Learned counsel further submits that the impugned order of reversion has been passed on the strength of letter dated 22.4.2014, Annexure P11, issued by the Department of General Administration (Monitoring Cell), State of Punjab and whereby a decision was taken that all instructions/circulars issued, which are contrary to the Statutory Rules, should not be implemented. It has been submitted that the letter dated 22.4.2014 has been issued towards compliance of the orders passed by this Court in Civil Writ Petition No.4274 of 2011 (**Nanak Chand v. State of Punjab and others**). Precise argument raised is that letter dated 22.4.2014 cannot have retrospective operation and, as such, would not cover promotions that already stood effected prior to the date of issuance of such letter.

5. Even a plea as regards discrimination has been raised by adverting to memo dated 14.1.2009, Annexure P2, and it is submitted that a number of other employees who had also been promoted from the post of Workshop Attendant to Sewing Teachers i.e. Bimla Rani, Jugal Kishore, Shinder Pal Kaur, Urmila Devi and Parbha Singh, are still holding the promotional post and have not been reverted and it is only the petitioner who has been singled out and reverted to the post of Workshop Attendant. Action is stated to be arbitrary and violative of Articles 14 and 16

of the Constitution of India.

6. Per contra, learned State counsel submits that Workshop Attendants like the petitioner are not entitled to be promoted as Tailoring Mistress under the Statutory Rules governing the service and the promotion of the petitioner was on account of inadvertence. It is by adhering to the principles of natural justice and after serving a show cause notice to the petitioner and after considering the reply, impugned order of reversion has been passed. As regards the contention raised on behalf of the petitioner that other similarly situated Workshop Attendants are still continuing on the promotional posts, an additional affidavit dated 13.3.2015 of the District Education Officer (Secondary Education), Faridkot has been filed and it has been clarified that except for Kanta Devi, none of the other named officials as cited by the petitioner were promoted to the post of Sewing Teachers. Smt.Kanta Devi, who had been promoted at District Level from the post of Workshop Attendant to that of Sewing Teacher, has already retired from service w.e.f. 30.6.2016.

7. Learned counsel for the parties have been heard at length.

8. The conditions of service governing the post of Tailoring Mistress are governed by the Punjab State Education Class III (School Cadre) Service Rules, 1978 (hereinafter to be referred to as '1978 Rules'). Rule 5 governs appointment to any post in the service and stipulates that no person shall be appointed unless he possesses necessary qualifications and

experience as laid down in Appendix 'B' attached to the Rules.

The relevant extract of Appendix 'B' governing appointment to the post of Tailoring Mistress is re-produced hereunder:

Ser- ial No.	Designation of posts	Minimum Qualifications and teaching experience	Method of Recruitment	
			Direct appoin- tment	Promotion
1	2	3	4	5
1	xxxx			
2	xxxx			
3	xxxxx			
4	xxxx			
5	xxxx			
6	xxxx			
7	Tailoring Mistress	Matric or Middle or Rattan or Budhimani with three years teachers Training Diploma from the Industries Department of Industrial Training	100.00 %	

9. Appendix 'B' to Rule 5 of the 1978 Rules leaves no manner of doubt that the post of Tailoring Mistress is to be filled up 100% by way of direct appointment. In other words, the method of recruitment by way of promotion to fill up the post of Tailoring Mistress cannot be resorted to.
10. The argument raised by learned counsel representing the petitioner that if the Statutory Rules do not provide an avenue of promotion from the post of Workshop Attendant to Tailoring Mistress, it was open for the State Government to provide such provision by way of issuance of executive instructions, is wholly mis-conceived.
11. The Hon'ble Supreme Court in *Sant Ram Sharma v. State of Rajasthan and others, 1967 SLR 906* had held that till

Statutory Rules are framed by the Government, administrative instructions regarding the principle to be followed regulating promotions of the officers concerned to selection grade posts can be issued. It was, however, clarified that Government cannot amend or supersede Statutory Rules by administrative instructions but if the Rules are silent on any particular point, Government can fill up the gaps and supplement the Rules and issue instructions not inconsistent with the Rules already framed.

12. In the present case, the field as regards mode of recruitment to the post of Tailoring Mistress stands fully covered under the 1978 Rules. Under Appendix 'B' to Rule 5, post of Tailoring Mistress is to be filled up 100% by way of direct appointment. It cannot be said that the Statutory Rules governing the service are silent as regards mode of recruitment to the post of Tailoring Mistress or there is any gap in such regard so as to enable the State Government to issue administrative instructions so as to supplement the Rule. The contention raised by learned counsel that administrative instructions had been issued to fill up the lacuna in the Rules is held to be preposterous.

13. The submission as regards the retrospective application of the instructions dated 22.4.2014, Annexure P11, is without any consequence. Even without the application of the instructions dated 22.4.2014 at Annexure P11, the promotion of the petitioner from the post of Workshop Attendant to that of Tailoring Mistress was de hors the 1978 Rules. The administrative instructions dated 8.7.1995 and 23.4.1996 and on the basis of which, the provisional promotion of the petitioner to the post of

Tailoring Mistress had been directed vide order dated 28.7.2009, cannot come to the aid of the petitioner. These instructions were inconsistent and contrary to the 1978 Rules and sought to make a provision for promotion from amongst Workshop Attendants as opposed to the Rule position providing direct appointment to be the only method of recruitment to the post of Tailoring Mistress.

14. In the light of the factual position furnished on behalf of the State, even the plea of discrimination raised on behalf of the petitioner cannot sustain. Out of the cited officials who were alleged to have been promoted to the post of Tailoring Mistress, State has conceded only as regards one Smt.Kanta Devi and who has also since superannuated. Categorical stand taken on behalf of the State is that as of date, there is no Workshop Attendant occupying the promotional post of Tailoring Mistress. Even otherwise, to substantiate a plea of discrimination, petitioner would have to establish her right in law to hold the promotional post of Tailoring Mistress. There is no such right vested in the petitioner under the 1978 Rules.

15. For the reasons recorded above, this Court does not find any patent infirmity or illegality in the impugned order of reversion dated 22.10.2014, Annexure P8.

16. Writ petition is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

AUGUST 10, 2017
SRM

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	<i>Whether Reportable:</i>	<i>Yes/No</i>