

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21094 of 2017

Date of Decision: 16.11.2017

Babu Lal and others

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sunil Kumar Nehra, Advocate,
for the petitioners.

Amol Rattan Singh, J.

CM no.14832 of 2017

The application is allowed and the 6 persons whose names were given in paragraph 5 of the application, being persons directly affected by the outcome of the petition, are ordered to be impleaded as respondents no.6 to 11 in the accompanying petition.

The amended memo of parties is taken on record.

CWP No.21094 of 2017

By this petition, the 5 petitioners herein seek a writ of certiorari quashing the impugned seniority list, Annexure P-2, dated 06.09.2017, on the ground that Ticket Verifiers in the respondent Haryana Roadways, have been wrongly included in the said list as they are not members of the cadre to which the petitioners belong, i.e. Clerks/Steno-Typists in the said Roadways.

A writ of mandamus is also sought by them to not promote any Ticket Verifiers to the next rank in the cadre, i.e. Assistants, Accountants,

Junior Auditors and Manager-cum-Accountants.

2. As per the petitioners, Rule 9 of the Haryana Transport Department (Group-C) Haryana Roadways Service Rules, 1995, stipulates that promotion to the aforesaid posts can only be made from the posts of Junior Scale Stenographers, Steno-Typist, Clerks, Ledger Keepers, Assistant Accountants, Preventive Maintenance Clerks, Cashier/Assistant Cashiers, Computer Counter Clerks and Store-cum-Stock Clerks.

3. Notice having been issued in this petition on 18.09.2017, with promotions to the posts of Assistants, Accountants, Junior Auditors and Manager-cum-Accountants, having been stayed till the next date of hearing by this Court, thereafter, CM nos.14832 and 14833 of 2017 were filed, by the first of which 6 Ticket Verifiers sought to be impleaded as respondents in the petition and by the second, vacation of the stay order was prayed for.

4. As per the persons now respondents impleaded, i.e. Ticket Verifiers, the stay order had been obtained without disclosing that Rule 9 (1) (c) of the aforesaid Rules of 1995 was amended, and Ticket Verifiers had been included as a feeder cadre for the posts of Assistants, Accountants etc. It is also pointed out that a Division Bench of this Court, in its order dated 17.08.1998 passed in CWP no.4982 of 1996, had duly noticed the aforesaid.

5. Today, when the matter came up for hearing on 16.11.2017, upon a query having been made to Mr. I.D.Singla, learned counsel for the petitioners, he has produced in Court a copy of the entire set of the Rules of 1995, to submit that actually there was no sub-clause (iv) in clause (c) of sub-Rule 1 of Rule 9 and as such, the amendment itself was defective and consequently, Ticket Verifiers still do not stand as a feeder cadre for promotion to posts of Assistants/Accountants etc., in the 1995 Rules.

6. Mr. Nehra, learned counsel for respondents no.6 to 11 (Ticket Verifiers), on the other hand, first points to the notification (Annexure A-2 with CM no.14833 of 2017), dated 09.10.1997, by which the amendment was made, and submits that though undoubtedly there was no sub-clause (iv) as aforesaid however, that is only a clerical error in the notification which has duly been dealt with by the Division Bench in its order dated 17.08.1998, passed in the aforesaid CWP no.4982 of 1996, a copy of which has been annexed as Annexure A-3 with the same CM application.

7. A perusal of the aforesaid order shows that after reproducing the amendment, it was observed by the Division Bench as follows:-

“However, we find that while issuing the notification amending the Rules, Rule 2 of the amended rules, which has already been quoted above, there seems to be some obvious clerical error which is on the face of the record in as much as there is no sub clause (iv) of clause (c) of Rule 9 (i)(c). There is no sub rule 9 (i). In fact rule 2 of the amending rule should read as under:-

“In rule 9, in sub rule (I) in clause (c) in sub clause (i) in Ministerial staff of the Haryana Transport Department (Group C) Haryana Roadways Service Rules 1995, (hereinafter called the said rules), after the words “Store-cum-Stock Clerk”, the sign and words “Ticket Verifier shall be inserted”.

The error pointed out above is further obvious from rule 3(i) of the amending rule wherein the intention has been further made clear by adding words “Ticket Verifier” in appendix 'B' serial no.3 in clause (4) in clause (ii).

Consequently, the respondents are directed to issue necessary notification to straighten the record regarding the amendment of the rules. The petition stands disposed of accordingly.”

(Emphasis applied by this Court)

Hence, he submits that the Division Bench having found it only to be a clerical error, with the intention of the Government made absolutely clear that the post of Ticket Verifiers is supposed to be added within the feeder cadre for promotion to the aforesaid posts, the petitioners cannot be allowed to take advantage of such a clerical mistake, even if it has not been 'formally' corrected in the Rules.

8. In the reply filed on behalf of the Government, i.e. respondents no.1 and 2, the aforesaid decision has been reiterated, thereby there being no room for doubt as to the intention of the Government right from 1997.

Further, in fact, it has been stated in the written statement that another notification dated 07.12.1999 (Annexure R-2 with the reply) was issued, by which the post of Ticket Verifiers as a feeder cadre for promotion to the posts of Clerks, was removed from sub-clause (i) of clause (h) of Rule 9 (1) of the 1995 Rules.

Hence, in short, whereas earlier Ticket Verifiers were a feeder cadre for the post of Clerks, vide the amendment dated 07.12.1999 they were removed as such feeder cadre, they (Ticket Verifiers) already having been included as a feeder cadre, alongwith the Clerks, to the posts of Assistants/Accountants etc. Obviously, while issuing the notification dated 09.10.1997, a commensurate amendment was required to be made in sub clause (i) of clause (h) of Rule 9 (1), which was missed by the Government at that time and therefore, that mistake was rectified vide the notification dated 07.12.1999.

9. It also needs to be noticed that it is nobodys' case that the aforesaid amendments ever stood challenged by the petitioners or similarly placed persons at any point of time, with any success.

10. In the opinion of this Court, the intention of the amending authority (Government) having been made absolutely clear, as can be seen from Rule 3 (i) of the notification dated 09.10.1997, with the respondents having included the post of Ticket Verifiers in the seniority list of the ministerial staff, there would be no reason to deny the Ticket Verifiers, i.e. respondents no.6 to 11 and others on that post, the benefit of the intention of the amending authority.

Clause 3 (i) to (iv) of the aforesaid notification dated 09.01.1997, reads as follows:-

“3. In the said rules, in Appendix B, in ministerial staff,-

- (i) Against serial number 3, in column 4, in clause (ii) for the words “Store-cum-Store Clerk”, the sign and words “Store-cum-Stock Clerk,” “Ticket Verifier” shall be substituted:
- (ii) Against serial number 4, in column 4 in clause (iii) after the words “Store-cum-Stock Clerk”, the sign and words, “ Ticket Verifier” shall be added:
- (iii) Against serial number 5, in column 4 in clause (ii) after the words “Store-cum-Stock Clerk”, the sign and words, “ Ticket Verifier” shall be added: and
- (iv) Against serial number 6 in column 4, in clause (ii), after the words “Store-cum-Stock Clerk”, the sign and words “ Ticket Verifier” shall be added.”

11. Hence, it is very obvious that the intention of the Government was to include the post of Ticket Verifiers in the ministerial cadre, alongwith the petitioners.

12. Consequently, finding no merit in this petition, it is dismissed, with this Court refraining from imposing any costs on the petitioners. The interim order dated 18.09.2017 stands hereby vacated.

The Government is now directed to immediately, within a period of 2 months from the date of receipt of a certified copy of this order, correct the clerical error in the notification dated 09.10.1997, by substituting the numeral '(iv)' with the numeral '(ii)', by way of a proper gazette notification issued in that regard.

(AMOL RATTAN SINGH)
JUDGE

November 16, 2017
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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |