

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.26078 of 2016.

Date of Decision: March 07, 2017

Balwinder Singh and others

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.Parveen Kumar Garg, Advocate, for the petitioners.

-.-

Surya Kant, J. (Oral)

The petitioners are working as Steno-typists/Junior Scale Stenographers in the Agricultural Department, Government of Punjab. They have challenged the *vires* of Notification dated 15.03.2015 whereby the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (for short, 'the 1994 Rules') have been amended and Rules 14-A and 15-A have been added in the Rules with immediate effect. By virtue of Rule 14-A, it has been prescribed that the posts of Senior Assistants under the Punjab Government shall be filled in only by promotion from amongst the Clerks having working experience of atleast five years and possessing such qualifications as are prescribed in Rule-14-A. Similarly, Rule 15-A has been inserted to provide that the posts of Senior Scale Stenographers shall be filled only by promotion from amongst Junior Scale Stenographers having working experience of atleast one year and possessing the qualifications as prescribed in the said Rule.

[2] The grievance of the petitioners in the instant writ petition is against Rule 14-A as prior thereto, under Rule 5 of the Punjab Civil Services (Promotion of Stenographers and Steno-typists) Rules, 1961 (for short, 'the 1961 Rules'), Junior Scale Stenographers and Steno-typists were eligible alongwith Clerks for promotion to the posts of Assistants also subject to their qualifying the Assistant Grade Examination.

[3] The petitioners have two-fold grievances against the amended Rules. Firstly, they contend that the Junior Scale Stenographers and Steno-typists have been denied promotional avenue to the posts of Senior Assistants in total disregard and in violation of the Division Bench Judgment of this Court dated 11.12.2012 rendered in CWP No.20485 of 2006 (Piara Singh versus State of Punjab and another) and other connected writ-petitions. Secondly, there is only one post of Senior Scale Stenographer in the Department hence their promotional opportunities are minimal and /or have been and/or have been completely jeopardized.

[4] Having heard learned counsel for the petitioners at a considerable length, we do not find any merit in both the contentions. We say so for the reasons that in Piara Singh's case (supra), the State Government vide notification dated 07.06.2001 had notified the Punjab Soil and Water Conservation and Waste Land Development Head Office (Group-C) Ministerial Service Rules, 2001 (for short, 'the 2001 Rules') whereunder the posts of Senior Assistants were decided to be filled by promotion from amongst Clerks only. At that time, 1961 Rules were admittedly in force and under Rules 5 &6 of 1961 Rules, Junior Scale Stenographers and Steno-typists were equally eligible alongwith Clerks for promotion to the posts of Assistants (now re-designated as Senior

Assistants). There was no amendment made in 1961 Rules to take away the right of consideration for promotion from Junior Scale Stenographers/ Steno-typists. Further, this Court found, as a matter of fact, that the writ-petitioners in that case had qualified the Assistant Grade Examination in 1992 and were thus eligible for promotion since then. The new set of Rules introduced in the year 2001, therefore, could not have taken away their eligibility or right of consideration for promotion under the 1961 Rules. This Court thus accepted the claim of Junior Scale Stenographers and Steno-typists for promotion as Senior Assistants in terms of Rule-5 of 1961 Rules.

[5] State of Punjab in exercise of its powers under proviso to Article 309 of the Constitution has formulated the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. Rule 1 (3) of 1994 Rules provides that the same shall apply to all the posts in Group-A, Group-B and Group-C services in connection with the affairs of State of Punjab. Rule 2 (g) of these Rules defines 'Service' to mean any Group-A service, Group-B service or Group-C service constituted in connection with the affairs of the State of Punjab as per scales given in the Appendix. Rules 1(3) and 3(g) of 1994 Rules, read as follows:-

“...1. Short title, commencement and application:-

XX XX XX XX

(3) They shall apply to all the posts in Group-'A', Group-'B' and Group-'C' services in connection with the affairs of State of Punjab.”

2. Definitions:- (1) In these rules, unless the context otherwise requires:-

XX XX XX XX

(g) 'Service' means any Group-'A' service, Group-'B' service or Group-'C' service, constituted in connection with

the affairs of the State of Punjab as per scales given in the Appendix.....”

[6] The Appendix to 1994 Rules classifies the posts in Group-A, Group-B and Group-C on the basis of initial entry in the pay-scales.

[7] It is undeniable that 1994 Rules are applicable to all Government Departments in the State of Punjab wherever there are no separate service rules formulated by the Department. Similarly, where the departmental service rules are silent on an issue, such Rules stand supplemented by the provisions of 1994 Rules.

[8] In the Department of Agriculture to which the petitioners belong, there are no separate service rules to regulate the conditions of service. The service conditions of the petitioners and other employees of Agriculture Department are therefore governed under the 1994 Rules only.

[9] The claim of the petitioners for promotion as Senior Assistants and Rules 5&6 of 1961 Rules has been however, taken away by virtue of Rule 14-A inserted vide the impugned notification dated 15.03.2015 whereunder the posts of Senior Assistants are now to be filled up by promotion from amongst Clerks only having atleast five years' working experience. In the absence of any other contrary rule having force of law, the provisions of 1994 rules have occupied the field and are enforceable to regulate the conditions of services of all the employees of Department of Agriculture.

[10] At this juncture, it is useful to refer to Rule 20 of 1994 rules which is loaded with a non-obstante clause whereby provisions of 1994 rules have got an over-riding effect on any other rules for the time being in force.

Rule 20 reads as follows:-

“...20. **Over-riding effect:-** The provisions of these rules shall have effect notwithstanding anything contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State.....”

[11] It may thus be seen that even if there are other statutory rules under which the employees of Agricultural Department can seek some service benefits, such Rules cannot be enforced if these are contrary to the provisions of 1994 Rules. The claim of petitioners for promotion to the posts of Senior Assistants now has to be determined under Rule 14-A of 1994 Rules and the said rule has an over-riding effect over the provisions of the rules contrary thereto, in view of non-obstante clause inserted in Rule 20 (ibid).

[12] The resultant effect is that the reliance placed on by the petitioners on Rules 5 and 6 of 1961 Rules has lost its strength and the said provision has become totally defunct by virtue of Rule 14-A read with Rule 20 of 1994 Rules.

[13] The second plea taken by the petitioners is also misconceived and misdirected. By virtue of Rule 15-A of 1994 Rules, now post of Senior Scale Stenographer is exclusively meant for promotion from amongst the Junior Scale Stenographers. The post of Senior Scale Stenographer on one hand and that of Senior Assistant on the other, carry the same pay-scale and same pay-band. The petitioners have thus got an alternative promotional avenue of equal status under the 1994 Rules. Incidental fact that there are more posts of Senior Assistants and less of Stenographers, cannot be seen

an incidence of service. It is well settled that chance of promotion is not a condition of service.

[14] In the light of the above discussion, we do not find any merit in this writ petition and the same is accordingly dismissed.

[SURYA KANT]
JUDGE

March 07, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM No.2615 of 2017 in
CWP No.26078 of 2016

- - -

Balwinder Singh and others versus State of Punjab and others

Present : Mr.Parveen Kumar Garg, Advocate,
for the applicant-petitioners.

* * *

For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and the documents (P-11 & P-12) are
taken on record.

CM stands disposed of.

(SURYA KANT)
JUDGE

March 07, 2017
mohinder

(SUDIP AHLUWALIA)
JUDGE