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

CWP No.9220 of 2017

Date of Decision :02.05.2017

Naresh Kumar and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR JUSTICE AJAY TEWARI

Present : Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Sushil Jain, Advocate and
Mr. Abhay Nanda, Advocate
for the petitioners.

AJAY TEWARI, J. (Oral)

By this petition the petitioners claim that they have to be governed by the old pension scheme and not by the new pension scheme.

The petitioners had applied for the post of Gram Sachiv which had been advertised in the year 1992, 1993 and 1997 respectively. They were selected but appointment letters were not issued to them resulting into filing of various writ petitions i.e. CWP No. 16376 of 1999 and other connected cases. Those petitions were admitted. During the pendency of those petitions many unrelated and related developments took place. The stand of the State for justifying non issuance of appointment letters to the petitioners was that in the meantime the State had abolished Octroi and had proposed that the persons who had been rendered surplus in the Municipal

Committees would be adjusted against the posts which had been advertised

when the petitioners had applied. After filing that written statement the Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act') was amended in 2003 abolishing the posts of Gram Sachiv and introducing the post of Gram Vikas Sahayak. Thereafter again the Act was amended by amending Act No. 7 of 2006 which came into force w.e.f 17.01.2006 whereby the posts of Gram Sachiv were re-introduced. Pursuant to the amendment of 2006 those persons who had been appointed as Gram Vikas Sahayaks were relieved and they also filed writ petitions which were decided alongwith CWP No. 16376 of 1999. As regards the petitions filed by the Gram Vikas Sahayaks, the learned Judge dismissed them. However, as regards the petitions filed by the persons like the petitioners who had been selected in the year 1999 the learned Judge held as follows:-

“It may be that in the year 1999, persons selected by the Haryana Subordinate Services Selection Board as Gram Sachivs could not be appointed as Haryana State had abolished Octroi w.e.f. 1.11.1999 and had proposed to absorb the surplus staff working for the Octroi in various Municipal Committees, still it is a fact that various writ petitions had been filed in the years 1999 and 2000, which remained pending till this date and by this time, more than 600 posts of Gram Sachivs are available and are to be filled by way of new selection by the Haryana Subordinate Services Selection Board. It cannot at all be said that Gram Sachivs selected by way of duly conducted process in the year 1999, were at fault, in any way. A large number of them had filed writ petitions in this Court, which have remained pending and now time has come when the respondent-State have again proposed to fill up the posts now available, which are more in number than the persons so selected in the year 1999.

process for the posts of Gram Sachivs in the year 1999, is concerned.

In the facts and circumstances of the case, it would be appropriate that the candidates selected for the posts of Gram Sachivs in the year 1999 be first absorbed now against available vacancies and then the remaining available posts be filled by further selection process.

The contention of the State Counsel that during this time many more persons would have become eligible and many of the selected candidates might have become over-age, cannot be given much weight as the persons already selected were not at fault and if many new persons have become eligible, they can always compete for the remaining posts.

From the above discussion, the civil writ petitions filed by the persons, who were working as Gram Vikas Sahayaks and have been relieved in view of the amending Act of 2006, are dismissed.

The writ petitions filed by the candidates selected as Gram Sachivs in the year 1999 are allowed and it is directed that candidates selected for the posts of Gram Sachivs in the year 1999, be first absorbed as Gram Sachivs and then the remaining available posts be filled by further selection process. The appointment letters to these persons shall be issued as per select list prepared by the Haryana Subordinate Services Selection Board in the year 1999. They shall get pay only from the date they join on the post of Gram Sachivs and shall have no claim of the back seniority or pay. Needful be done within a period of three months.

The respondents-State may further start selection process of the posts of Gram Sachivs, but that shall be for the remaining vacant posts, after absorbing the persons selected in the year 1999.”

The contention of the learned Senior Counsel is that the

petitioners were selectees of the year 1999 and had the State not delayed their appointment they would have been appointed in the year 1999 and would have been entitled to the old pension scheme and these posts would not have been filled up by absorbing service employees of the Municipal Corporation/ Committees. However, this argument, in my opinion, misses the point that the learned Judge specifically mentioned that the petitioners would be entitled to get pay only from the date they joined and would have no claim of back seniority or pay. This has been countered by the learned Senior Counsel by stating that even if the petitioners were not entitled to pay or seniority, this would not take away their rights for the old pension scheme. As per him seniority is not a number but only reflects the relationship between different employees in the sense that one employee is senior to the other and therefore even when the Court declined the benefit of seniority and wages it would mean that all other benefits would be available to the petitioners and for all other benefits they would be deemed to have been appointed in the year 1999.

I am afraid this argument cannot be accepted because if it is accepted it would raise many anomalous issues. The petitioners would then claim ACP and those persons who were otherwise appointed after 01.01.2006 in routine and were senior to the petitioners would end up getting not only less pay but being covered by the new pension scheme while their juniors like the petitioners would cover under the old pension scheme. It is not a case where the Court had categorically held that the petitioners were illegally deprived of the jobs in 1999. The Court had recognized that the posts for which the petitioners had competed were to be

noticed that there were 600 posts which had become available upto the year 2006 after the re-introduction of the posts of Gram Sachiv. The matter can also be looked at from another angle. If the amending Act of 2006 had not come into the force and the posts of Gram Sachiv had not been re-introduced, the petitioners would have had no claim.

Learned Senior Counsel has stated that even in the judgment (Annexure P-3) the Court had noticed that on 18.02.2000 90 posts of Gram Sachiv were lying vacant. That may be so but this Court in the judgment (Annexure P-3) had not appointed the petitioners against those 90 posts but has appointed the petitioners against 600 posts of Gram Sachiv which were lying vacant at the time when the writ petition was decided, after the reintroduction of the posts of Gram Sachiv. In the circumstances, the petitioners cannot claim that for the purpose of pension they had been appointees of 1999 or, in any case appointees prior to 01.01.2006 so as to get outside the ambit of new pension schemes of 2008. Even the argument that their legal notice was rejected by a one-word order has paled into insignificance because of the many-worded order of this court.

Consequently, the petition is dismissed.

Since the main case has been decided the pending civil miscellaneous application, if any, also stands disposed of.

May 02, 2017
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No