

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

CWP No. 15232 of 1995

Date of Decision: 11.09.2018

Smt. Manorama Rana

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Ms. Nupur Choudhary, Advocate for the petitioner.
Ms. Shruti Jain Goyal, DAG Haryana.
Mr. J.S. Maanipur, Advocate for respondent No. 3.

RAJIV NARAIN RAINA, J.

1. In the present petition filed under Art. 226 of the Constitution, the petitioner has sought a writ of mandamus directing the respondents to consider her case for promotion as Deputy Labour Commissioner w.e.f. the date junior members of service had been promoted to the said higher post. It has also been prayed that since the qualifications, pay scales, powers and functions of both the posts are “almost the same”, the respondents be directed to treat the post of Welfare Officer (Women) equivalent to the post of Labour and Conciliation Officer for all intents and purposes including consideration for promotion.

2. The foundation of the case of the petitioner is that since the qualifications required, the pay scales and the nature of duties and responsibilities of the posts of Welfare Officer (Women) and Labour-Cum-Conciliation Officer are almost identical and, therefore, the same should be considered as a feeder post for promotion to the post of

Deputy Labour Commissioner on par with the post of Labour-Cum-Conciliation Officer. The next premise to claim relief is the arbitrariness in the action of the respondents in making promotions under the Draft Rules of 1991, namely, the Haryana Labour Department (Group A) Service Rules, 1991 or the Punjab Labour Services (Class I & II) Rules, 1995 (hereafter “1955 Rules”) as per their suitability. It has therefore been contended that under Rule 9 (1)(b) of the Draft Rules of 1991, a regular channel of promotion has been created for the post of Welfare Officer (Women) to the post of Deputy Labour Commissioner and therefore she is entitled for promotion under the draft rules from the date Kamal Singh Yadav or other persons, who were junior to her (as regards the length of service) have been promoted as Deputy Labour Commissioners from the post of Welfare-cum-Conciliation Officer.

3. Facts of the case as borne out in the Written Statement are as follows. In the year 1975–76, about 4000 female workers were serving in various industries in the State of Haryana. In order to sensitize these women workers regarding their rights under various welfare legislations such as Maternity Benefit Act, Factories Act, restrictions from working in dangerous operations, regulations regarding working hours and special provisions of leave etc, the post of Welfare Officer (Women) was created in the year 1987.

4. Accordingly, requisition was sent to the Haryana Public Service Commission to fill up the post of Lady Welfare Officer

(subsequently changed to Welfare Officer (Women). It was specifically made clear in column 3(d) and 12 that the post in question was a newly created post and that there were no published rules pertaining to the post and that there was no assured prospects of promotion to the higher post or to the higher time scale.

5. The petitioner applied in pursuance to the advertisement issued by the commission and was appointed as Welfare Officer (Women) vide order dated 02.09.1987 and she joined as such w.e.f. 03.09.1987.

6. That on the re-organization of erstwhile State of Punjab, the State of Haryana adopted the Punjab Labour Services (Class I and II) Rules, 1955. Under the said Rules (Rule 4), the post of Deputy Labour Commissioner, a Group A post was to be filled up from the post of Assistant Labour Commissioner and Labour Officer-cum-Conciliation Officer, with 3 years' experience of working of the labour laws along with other qualifications.

7. Since, the post of Lady Welfare Officer was created in the year 1987, the same was required to be included in the 1955 Rules, being a Group- II Post. Subsequently, the Rules governing Group B Services, namely, the Haryana Labour Department (Group B) Service Rules, 1987 were finalized and published w.e.f. 12.1.1988 wherein the post of Welfare Officer (Women) was included.

8. Thereafter, the statutory Rules for Group-A Services, namely, the Haryana Labour Department Group 'A' Service Rules,

1996 (herein after called “1996 Rules”) were notified by the State Government on 04.10.1996. Under these rules (Rule 9 (1) II (f), the post of Welfare Officer (Women) was included as a feeder post, amongst the posts of Labour Officer-cum-Conciliation Officer, Statistical Officer, Labour Welfare Officer, for promotion to the post of Deputy Labour Commissioner.

9. As regards the contention of the petitioner that the post of Welfare Officer (Women) was equivalent to the post of Labour-cum-Conciliation Officer in all respects, it is submitted that the pay scales and qualifications of Labour-cum-Conciliation Officer and that of Welfare Officer (Women) are similar but the duties of both these posts are entirely different because the Labour-cum-Conciliation Officers act as quasi-judicial authorities under various labour laws such as the Minimum Wages Act, 1948, Workmen’s Compensation Act, 1923, Payment of Wages Act, 1936, Payment of Gratuity Act, 1972 etc to name a few enactments including as Conciliation Officers under the Industrial Disputes Act, 1947 whereas no such quasi-judicial powers are vested in the Welfare Officer (Women). The said post was created with the sole objective of protecting the interest of women workers employed in various industries and to safeguard their interests under the various legislations meant for women welfare. Moreover, the post of Welfare Officer (Women) was incorporated for the first time under the 1987 Rules and was included as a feeder post to the post of Deputy Labour Commissioner under the 1996 Rules whereas the post of

Labour-cum-Conciliation Officer did exist under the 1955 Rules and was the one of the feeder post for promotion to the post of Deputy Labour Commissioner.

10. The representation of the petitioner dated 01.07.1994 was considered while making promotion of Sh. K.S.Yadav by the order dated 07.02.1995 but her claim was ignored as there was no provision in the 1955 Rules for promotion from the post of Welfare Officer (Women) to the post of Deputy Labour Commissioner. Sh. K.S.Yadav was promoted as Deputy Labour Commissioner vide order dated 07.02.1995 in accordance with the 1955 Rules as a regular channel of his promotion from the post of Labour-cum-Conciliation Officer. The petitioner claims herself to be senior only on the basis of length of service, being completely silent on the fact that petitioner's post came into existence in the year 1987 with no channel of promotion prescribed till the promulgation of the 1996 Rules whereas other persons whose reference has been made in the Writ Petition, were working on the post of Labour-Cum-Conciliation Officer, having a regular channel of promotion to the post of Deputy Labour Commissioner under the 1955 Rules as well as the 1996 Rules, therefore, no question arises, of the Petitioner being senior to such persons.

11. It is pertinent to notice that the 1955 Rules governed the appointments and conditions of services of both group A and B services. The state government notified the separate rest set of Rules governing Group-B services in the year 1987 and, thereafter, for

Group-A services separate rules were notified in the year 1996. Therefore, for the purpose of promotion to Group-A services, the 1955 Rules held the field till 03.01.1996 the date of coming into force of these Rules and under the said Rules, neither the post of Welfare Officer (Women) was included nor they were amended at any point of time (prior to framing of 1987 Rules) to encadre the said post.

12. One Statistical Officer, Sh. Hira Lal Gupta filed CWP No. 3553 of 1993 in which he alleged that the department had been making promotions for Group-A posts sometime under the 1955 rules and sometimes under Draft Rules. In the said case, the post of Statistical Officer was created sometime between 1955 to 1966 thus necessitating amendment of the 1955 Rules. However, as a matter of fact no amendment was carried out in the 1955 Rules and the State of Haryana notified the 1987 Rules on 1.1.1988. The claim of the petitioner therein was that though the government approved Class-A Rules in the year 1979 but the same were not notified, however, the Government had been acting on those Draft Rules. Therefore, even if they are not notified the same can be taken as executive instructions and the petitioner was directed to be accordingly promoted to the post of Deputy Labour Commissioner on the basis of the Draft Rules. In the said matter, the State Government filed an affidavit stating that all the vacancies of Group-A posts are being filled in accordance with the provisions as laid down in Class-I Service Rules, 1955 and that the draft rules will be finally notified after getting the approval of the

Council of Ministers, which is the final authority. It was further stated that all the promotions to the class I post had been made under the class I rules, 1955 and that in the 1955 Rules, and there is no provision for promoting Statistical Officer to the post of Deputy Labour Commissioner. Therefore the petitioner cannot be considered for promotion to the post of Deputy Labour Commissioner. Relying upon the stand of the government, this court dismissed the writ petition on May 20, 1994 and held that the Draft Rules cannot be equated with administrative instructions in view of the law laid down in the case of Jitender Kumar Verma versus State of Haryana and others reported in 1985 (1) SLR 41.

13. Therefore, the petitioner has no rule based right to claim promotion to the post of Deputy Labour Commissioner under the 1955 Rules since the same are inapplicable to the case of the petitioner. Her case for promotion was duly considered at the appropriate stage under the 1996 Rules and she was promoted as Deputy Labour Commissioner in consonance with the provisions of the statutory service Rules. She has long since retired from service. So have the 3rd & 4th respondents.

14. As there is no merit found in the case, the petition is dismissed for the reasons stated above.

(RAJIV NARAIN RAINA)
JUDGE

11.09.2018

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