

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 21.03.2018****CWP No.14943 of 2014**

Usha Mangla

...Petitioner

Vs.

State of Haryana & others

...Respondents

CWP No.16634 of 2014

Rakesh Kumar Bagga

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Yashdeep Nain, Advocate, for the petitioner(s).

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Vikas Singh, Advocate, for respondents No.7 & 8.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the aforementioned two writ petitions, as the cause they espouse and the factual and legal issue involved is common and identical and, therefore, they can be conveniently decided by a single order.

As per office report, respondent No.5 – Kulbhushan has been served notice in CWP No.14943 of 2014. Neither has he appeared in person nor has entered appearance through counsel. Accordingly, he is proceeded against ex parte.

Mr. Yashdeep Nain, learned counsel appearing for the petitioners and Mr. Vikas Singh, learned counsel representing respondents No.7 & 8, state that they have probably retired from service.

State has filed its reply. It is admitted fact that the petitioners and the private respondents belong to the common cadre of Deputy Superintendents. It is also the admitted position that the petitioners are senior to the private respondents in the cadre of Deputy Superintendents. The vacancies in the cadre of Superintendents arose and were filled up on seniority basis from amongst the petitioners after 12.10.2010. While they were serving as Superintendents, they gained the requisite three years experience for promotion to the post of Assistant Employment Officer (AEO). While the petitioners were working as Superintendents, vacancies in the cadre of AEO arose. Instead of considering seniors like the petitioners, the Department promoted the private respondents as AEOs while the petitioners were Superintendents earlier promoted on seniority. The petitioners have approached this Court challenging the promotion orders of the private respondents as AEOs, i.e., Annex P-5 in CWP No.14943 of 2014 and Annex P-6 in CWP No.16634 of 2014.

The bone of contention is that the post of the Assistant Employment Officer (AEO) and the Superintendent carry different pay scales and grade pay. AEO carry higher pay scale to that of Superintendent. The service rules are structured in such a way that the feeder cadre for the posts of AEO and Superintendent is Deputy Superintendent, but the method of promotion has not been provided in the Rules. Meaning thereby, the Rules are silent on this vital aspect. If the Rules are silent, principles of equity, justice, good conscience and fairness-in-action would apply.

Therefore, when the vacancies in the post of AEO arose for filling, the petitioners had a preferential right of being considered and offered promotion before the cases of the juniors could be considered. In this way, they would have to be offered the promotion as AEOs, and if accepted, the petitioners would necessarily have to be reverted to the post of Deputy Superintendents and by the same order or by separate order promoted as AEOs so that the inter se seniority positions are maintained in the higher cadre.

Another factor which appeals to this Court in favour of the petitioners is that the mechanism of reversion and promotion required to be adopted is that there is no avenue for further promotion provided in the Rules from the post of Deputy Superintendent, whereas there is promotion channel provided from the post of AEO to that of DEO in a higher pay scale.

Keeping in view these principles, this Court has no doubt in its mind that the petitioners have been dealt with unfairly. Their rights have been bypassed when their juniors were allowed to steal a march over the petitioners on promotion to the post of AEOs. This unfair advantage given to the private respondents has to be withdrawn to prevent juniors being allowed to continue to be promoted as AEOs in the presence of their seniors, who are the petitioners in these connected petitions.

As a result of the above discussion, both the petitions are allowed. The promotion orders of the private respondents are set aside. The respondents are directed to promote the petitioners as AEOs with effect from the date when the juniors were promoted. This retrospective promotion will be accompanied with all consequential benefits both pecuniary and non-pecuniary. In case, the petitioners have retired, their pay and pension be

fixed accordingly. This exercise shall be completed within eight weeks from the date of receiving of certified copy of this order. Monetary benefits can await payment in the next two months.

The petitioners are also held entitled to the litigation costs of ₹10,000/- each for compelling them to Court.

21.03.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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