

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 18.08.2018****CWP No.20377 of 2015 (O&M)**

Nar Singh & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vivek Sheoran, Advocate, for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Arun Sharma, Advocate, for respondent No.2.

Mr. A.S.Tewatia, Advocate, for respondent No.8.

Ms. Samridhi Sareen, Advocate, for
Mr. Vinod S. Bhardwaj, Advocate,
for respondents No.10, 15 & 18.**RAJIV NARAIN RAINA, J.**

The petitioners are Class IV employees working as Daftries/Peons in the Haryana State Co-operative Agricultural and Rural Development Bank Ltd., Panchkula, Haryana (HSCARDB). They have challenged the order dated 24.02.2015 (Annex P-6) promoting 07 Daftries and 09 Peons to the post of Clerk in the pay scale of Rs.9300-34800/- with G.P. of Rs.3600/- with immediate effect.

These 16 (09+07) promoted Class IV employees possessed the educational qualification of 10+2, while the petitioners are matriculates and base their claim on notification dated 21.05.2014 (Annex P-5) issued by the Chief Secretary to Government of Haryana, which reads as follows:

“I am directed to invite your attention to the State Government letter No.42/164/2008-3GSII, dated 11.10.2013 read with letter No.42/164/2008-3GS-II, dated 08.11.2013 on

the subject cited above and to say that the government has decided that in case of promotion to the post of Clerk from Group-D employees and Restorer etc. the up-gradation of minimum educational qualification i.e. 10+2 as fixed vide letter No.42/164/2008-3GSII, dated 11.10.2013 read with letter No.42/164/2008-3GS-II, dated 08.11.2013 will be made applicable with prospective effect i.e. for those Class IV employees and Restorers, who have been/will be recruited after 08.11.2013.

2. Other terms and conditions regarding SETC will remain unchanged.

3. This may please be brought to the notice of all concerned for compliance.”

Reference to letters dated 11.10.2013 and 08.11.2013 and their perusal is necessary for adjudicating the dispute. However, Mr. Rathee points out that in some of the communications/letters, the date of letter dated '07.11.2013' is mentioned as '08.11.2013', but they are one and same documents. By these two letters, the State Government decided by way of policy to upgrade the minimum educational qualification for the post of Clerk from Daftri/Peons, who possess 10th & 10+2 certificates. The Board of Directors of the respondent No.5 – HSCARDB adopted the policy in its meeting held on 22.11.2013. These policies were modified by the notification dated 21.05.2014, referred to above. It was clarified that up-gradation of minimum educational qualification i.e. 10+2 class as has been prescribed by the letters dated 11.10.2013 and 08.11.2013 will be made applicable prospectively i.e. only those employees, who have been/will be recruited after 08.11.2013 must possess the enhanced qualification. The petitioners were recruited much prior to 08.11.2013, but had not qualified 10+2 examination.

Learned counsel for 5th respondent – HSCARDB has produced a letter dated 16.03.2018 issued by the Additional Chief Secretary to Government of Haryana, Cooperation Department, with a copy to the 5th respondent, requesting the latter to comply with the Government instructions No.42/164/2008/3GS-II dated 21.05.2014 and allow minimum educational qualification as Matriculation in case of employee recruited before 07.11.2013 and 10+2 in case of employee recruited after 07.11.2013 for promotion to the post of Clerk from Group-D employees etc. Copy of the letter dated 16.03.2018 is retained on record as Mark – ‘A’.

On 24.02.2015, the impugned office order was passed by HSCARDB promoting the private respondents (07 Daftries and 09 Peons), who possess educational qualification of 10+2 and above. The petitioners although senior to the private respondents in Group IV cadres and possessing the minimum essential qualification of matriculation have been ignored. In fact, the modification made by letter dated 21.05.2014 has been stated to be intentionally by-passed to accommodate the 07 Daftries and 09 Peons by promotion to the post of Clerk. Many representations and legal notices were sent to the Managing Director, Chairman and Registrar i.e. respondents No.3 to 5 by the aggrieved petitioners seeking implementation of modification dated 21.05.2014 and consequential grant of promotion to them. The reply of the Managing Director dated 15.04.2015 was to the effect that no amendment in the service rules as per the policy/instructions dated 21.05.2014 has been made so far, therefore, they could not be promoted. Aggrieved by this letter, the present petition has been filed.

During the pendency of the writ petition, HSCARDB has made further promotions of 12 Peons, who were 10+2 and above, on 11.03.2016. The letter dated 21.05.2014 was against circumvented, say the petitioners.

The next important milestone in the narration of facts is that the Board of Directors adopted the instructions dated 21.05.2014 in its meeting held on 31.08.2016 paving the way for promotions. The position is that the policy instructions dated 11.10.2013 and 08.11.2013 were adopted by the Board in without delay on 22.11.2013 conferring right prospectively to Daftri/Peons, who possessed the qualification of 10+2 and above, while the policy dated 21.05.2014 was adopted after great delay on 31.08.2016 and in the meanwhile, the impugned promotions have been made of all the persons, who are the private respondents in this petition and non-parties promoted in the second round. This would mean that the stand of the Managing Director in the letter dated 15.04.2015 postponing the right of the petitioners for promotion was denied on the ruse that amendment in the service rules as per the instructions dated 21.05.2014 has not been made so far. With the adoption of the instructions on 31.08.2016, a sea change has been brought about after a time gap of 2 years, 3 months & 10 days from the date of modified policy. Therefore, the way of the petitioners has been cleared and they would have a right of consideration for promotion against available vacancies prior to 08.11.2013 since they were recruited prior thereto.

Now the entire matter has been clinched by the latest policy statement of Haryana Government dated 16.05.2018 and accordingly it goes without saying that a valuable right of consideration has accrued to the petitioners from the due dates, when their juniors were promoted to the higher post of Clerk against vacancies occurring before 08.11.2013. As a

matter of fact, there is nothing in the policy dated 21.05.2014, which actually detracts from the claim of the petitioners that up-gradation of minimum educational qualification i.e. 10+2 as provided by letters dated 11.10.2013 and 08.11.2013 would be applicable with prospective effect. The letter did not speak of retrospective rights of the petitioners being curtailed and, therefore, the modified policy is nothing but a clarification, which relates back to the policy decision dated 21.05.2014 and brings with it the right of consideration for promotion to the petitioners.

A word may be said on the policy dated 11.10.2013, which deals with the subject of (i) change of nomenclature of posts of 'Data Entry Operator', 'Office Associates', 'Clerk-cum-Computer Operator', 'Clerk-cum-Typist' etc. to a uniform nomenclature of 'Clerk'; (ii) Up-gradation of minimum educational qualifications for the post of Clerks, Steno-typists, Junior Scale Stenographers & Sr. Scale Stenographers in the Government Departments; & (iii) Introduction of State Eligibility Test in Computer Appreciation and Application as part of the service requirements for Clerks, Steno-Typists, Junior Scale Stenographers & Sr. Scale Stenographers. The policy upgraded educational qualification from matriculation to 10+2 level for direct recruitment as well as for promotion from Group-D employees and Restorer etc. with a direction to all the Departments to amend their Service Rules accordingly.

The State Government policy dated 08.11.2013 was also on the same subject matter but with modification. The State Government identified 05 Departments i.e. (i) Haryana Civil Secretariat Haryana; (ii) Vidhan Sabha Secretariat, Haryana; (iii) Law & Legislative, Haryana; (iv) Financial Commissioner, Revenue & Disaster Management; and (v) Haryana Public

Service Commission and any other Department where the qualification of Clerk, Steno-Typist, Junior Scale Stenographer & Sr. Scale Stenographer is already higher than other Departments and incumbents are drawing higher pay scale/special pay/grade pay, their minimum educational qualification shall be 10+2 with 1st Division or above, as the case may be. All such Departments shall amend their Service Rules accordingly. The type test stands substituted with State Eligibility Test in Computer Appreciation and Applications (SETC) as a part of service requirements for Clerks etc. The policy notification dated 21.05.2014 refers to the aforesaid two decisions taken in 2013. The first promotion of the private respondents was made by HSCARDB on 24.02.2015 after adoption on 22.11.2013. The Board of Directors of HSCARDB in its meeting held on 22.11.2013 unanimously adopted the State Government letters dated 11.10.2013 and 07.11.2013 for making amendment in the Staff Service Rules of HSCARDB. The Registrar, Cooperative Societies, Haryana, vide memo dated 12.12.2014 had accorded necessary approval for making requisite amendment in Staff Service Rules. The second lot of promotions of employees possessing 10+2 came on 11.03.2016, when 12 Peons were promoted from amongst employees possessing 10+2 and above qualification. It is only after these promotions were made, the Board of Directors adopted instructions dated 21.05.2014 by unfairly and arbitrarily postponing the decision for 2 years, 3 months & 10 days to the disadvantage of the petitioners. This action of the HSCARDB is unfair and reeks of discrimination against the petitioners, who had a vested and accrued right in promotions even based on their matriculation certificate, provided they were recruited before 07.11.2013. After a gap of 4 years, the HSCARDB has promoted Nar Singh (petitioner No.1), Subhash Sharma

(petitioner No.3), Rohtash Sharma, Rohit Sharma (petitioner No.2), all Daftries and Dharam Pal (petitioner No.7), Mohna Ram (petitioner No.9), both Peons, as Clerks by order dated 16.07.2018 prospectively. There is no gainsaying that the mandate of policy instructions of the Government has to be followed in letter and spirit by the respondent – HSCARDB. There can hardly be any doubt that the petitioners have an existing right to be considered for promotion as Clerks from the date their juniors, who possess 10+2 and above qualification, were promoted, that is to say, against old vacancies in the promotional cadre of Clerks arising prior to 08.11.2013 with right to seniority thereupon.

In view of the above, the instant petition is allowed.

The cases of promotion of eligible employees amongst Matriculate Daftries/Peons etc. including the petitioners shall be taken up and those found eligible shall be considered for promotion as Clerks from the due dates against vacancies occurring prior to 08.11.2013, with such consideration taking place preferably within three months from the supply of this order in certified form. Accordingly, the promotion of petitioners 2, 3, 7 & 9 made on 16.07.2018 shall be reviewed on the principle explained above that old vacancies shall abide old rules.

18.08.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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