

CWP Nos. 25747, 27383 of 2015,  
4833, 6875, 17457, 11700 of 2016,  
5471, 9768, 14504, 15825 of 2018

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP Nos. 25747, 27383 of 2015,  
4833, 6875, 17457, 11700 of 2016,  
5471, 9768, 14504, 15825 of 2018

Date of decision : July 17, 2018

\* \* \* \* \*

Satish Kumar and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

\* \* \* \* \*

**BEFORE: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. Jai Bhagwan Sharma, Advocate for the petitioners  
(in all the cases except CWP Nos. 4833 & 11700 of 2016).

Mr. Suresh Ahlawat, Advocate for the petitioner.  
(in CWP No. 4833 of 2016).

Mr. Ravinder Singh Dhull, Advocate for the petitioner.  
(in CWP No. 11700 of 2016).

Mr. Gaurav Jindal, Addl. A.G., Haryana.

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**RITU BAHRI, J.**

These cases, being a bunch of 10 writ petitions, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being extracted from CWP No. 25747 of 2015.

The petitioners are seeking writ of mandamus directing the

respondents to grant deemed date of appointment to the petitioners as that has been given to other appointed candidates in pursuance of the selection list dated 15.10.1989 prepared by Haryana Staff Selection Commission and grant the benefit of seniority and notional pay fixation at par with the candidates/employees with all consequential benefits who joined their services prior to the petitioners and being junior to the petitioners as per the merit list.

Briefly stated, the facts of the case are that the State of Haryana issued advertisement No.4 of 1987 dated 22.07.1987 inviting the applications for the recruitment for the post of Clerks in various departments. A total number of 5373 candidates were shown to be selected by the selection board. The petitioners were not permitted to join on the said posts despite being successful. Various writ petitions were filed. CWP No.8187 of 1990 titled, 'Sudesh Kumari vs. State of Haryana' was allowed by this Court by giving directions to the respondents that whenever a requisition is received from any department for filling the posts of Clerks, all persons who are higher in merit as compared to the last person who might have been appointed, the selection list prepared on 15.10.1989 would not lapse irrespective of any circumstances to the contrary issued by the State of Haryana. The respondent-State was also directed to fill up the posts among the candidates who are higher in merit as per the selection list dated 15.10.1989.

Another writ petition was filed before this Court seeking the quashing of a waiting list of clerks out of the select list dated 15.10.1989.

This matter was referred to the Full Bench and while disagreeing with the

directions in Sudesh Kumari's case, it was held that the selection list is not in conformity with law and the selected candidates do not have an indefeasible right to be appointed to the post for which they have been selected. The validity of a waiting list is one year and if a candidate is not appointed, the State shall consider the claim and appoint him. All vacancies arising from 15.10.1990 onwards shall be re-advertised and recruitment against those vacancies shall be made from amongst the selected candidates. After this Full Bench Judgment, no recommendation was made by the selection board out of the selection list dated 15.10.1989. The respondent State issued another advertisement No.9 of 1995 dated 19.11.1995 to fill up the available post of Clerks. The judgment of Full Bench was challenged before Hon'ble the Supreme Court. The issue was finally pronounced upon by the Apex Court in **Roshni Devi vs. State of Haryana and others 1998 (8) SCC 59** by the issuance of the following directions:-

*“We issue the following directions in substitution of the directions made by the High Court in the impugned judgment :-*

**(1)** *The appointments already made from out of the list prepared on 15-10-1989 will not be annulled.*

**(2)** *The last person who is stated to have been appointed being at serial no.4645, persons occupying higher position than him could be considered for appointment to the post of clerk if there exists any vacancy for them.*

**(3)** *The vacancy in this context would mean the vacancies which were available in the State of Haryana prior to the advertisement issued for selecting persons for the said post for the year 1995. It is to be made clear that if no vacancies exist on the aforesaid date*

*then no further appointment would be made from out of the list prepared on 15.10.1989 notwithstanding the directions of the Punjab and Haryana High Court in Sudesh Kumari's case.*

**(4)** *If vacancies did exist on the date as aforementioned then the appointments from out of the list prepared on 15.10.1989 could be made strictly on the basis of their merit position in the list.*

**(5)** *We strongly deprecate the practice of selecting and preparing an unusual large list compared to the vacancy position and the State Government should either amend the Recruitment Rules in that respect and till then should issue positive administrative instructions giving the right to the Selection Board to select only some persons in excess than the requisition for which the Board is going to select people.*

**(6)** *We also do not approve of the inaction on the part of the State Govt. in not assailing the judgment of the Punjab and Haryana High Court in Sudesh Kumari's case and now coming up before us making submissions that the judgment is practically incapable of being implemented. ”*

The grievance of the petitioners is that despite the above said directions, the said judgment was not complied with leading to the filing of Contempt Petitions before the Apex Court. In these Contempt Petitions, the then Chief Secretary to the Government of Haryana filed an affidavit stating therein that as many as 145 vacancies pertaining to the period between 15.10.1989 to 18.11.1995 were ascertained. These vacancies were intimated to the Board and it was further stated in the said affidavit that 92 candidates were recommended for appointment as clerks in various

departments against the select list dated 15.10.1989. An additional affidavit was also filed by the State before Hon'ble the Supreme court identifying 145 vacancies as per the respective categories and total 20 number of posts are shown against BC category. After the judgment of Hon'ble the Supreme Court, the petitioners were offered appointment in the month of September 1999 and they joined the services in the month of October 1999. The seniority list was circulated on 15.3.2007 wherein petitioners have been shown at Sr. No. 381, 375 and 376 respectively whereas the candidates who were lower in the merit and were appointed in the year 1990 from the same select list were shown higher in the seniority list.

The dispute of seniority was examined by this Court in CWP No. 7061 of 2009 titled, 'Satyavir Singh vs. State of Haryana and others' and the same was decided vide judgment dated 24.9.2009 (Annexure P-2) with the direction to the respondents to re fix the seniority of the petitioner in terms of Rule 12 of the **Haryana Treasury Establishment Subordinate Group -C Rules 1980**. As per this Rule, there was a proviso which provided that seniority has to be determined on the basis of the merit determined by the Haryana Staff Selection Board. A similar controversy was decided in a judgment passed in CWP No.7703 of 2009 (Bir Singh and others vs. State of Haryana and others) on 7.9.2011 (Annexure P-3). Writ petition was allowed granting notional fixation of pay to the petitioners from the date they were assigned seniority and no arrears were to be paid from the date of seniority till the date of appointment.

On notice, the respondents have taken a stand in the written statement that writ petition is liable to be dismissed for non joinder of

Haryana Staff Selection Commission as a necessary party.

Counsel for the petitioners has referred to a latest judgment in the case of ***Dharam Singh vs. State of Haryana and others, (CWP NO. 24527 of 2013)*** decided on **30.9.2015**, whereby a bunch of writ petitions of similarly situated employees were decided. In this case, the petitioners were granted the benefit of notional fixation of pay and seniority as well as the benefit of Old Pension Scheme. A perusal of this judgment shows vide letter dated 30.3.2015, the Chief Secretary to Government of Haryana (in General Services-I Branch) had advised the General Administration Department to grant the benefit of deemed date of appointment, seniority, notional fixation of pay to Sh. Raj Kumar from the date his juniors in rank were appointed in the Department. It was further advised to take up the matter with Finance Department for opening of GPF account and benefit of old pension Scheme. In pursuance to this advice, the Education department in the State of Haryana has granted deemed date of appointment to all the Clerks who were appointed in the year 2013 w.e.f the date persons lesser in merit to them have been appointed. They have also been granted seniority over and above them and their notional pay has been fixed from the date a Clerk lesser in merit to them was appointed. This benefit was given vide order dated 15.6.2015 (Mark B). The Chief Secretary, Haryana has taken a conscious decision to give benefits to those persons who were appointed lower in merit with respect to selections made in the year 1987. The petitioners in the present case have been appointed on 1.10.1999 and have been denied, the benefit of seniority and notional pay fixation for almost 20 years.

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In view of the judgment in *Dharam Singh's case (supra)*, this bunch of 10 writ petitions is allowed with a direction to the respondents to re fix the seniority of the petitioners as per the judgment in the case of CWP No. 7061 of 2009 (Satyavir Singh vs. State of Haryana and others) decided on 24.9.2009.

The necessary formalities as per applicable procedure and rules, be completed within four months from the date of receipt of a certified copy of this order.

The writ petitions stand allowed in the above terms.

July 17, 2018  
*ritu*

( RITU BAHRI )  
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No