

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 10615 of 1992
DATE OF DECISION : 02.05.2019

Partap Singh and another

...Petitioners

versus

Punjab School Education Board and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S.S. Brar, Advocate
for the petitioners

Mr. Abhay Pal Singh, AAG, Punjab

Mr. T.S. Chauhan, Advocate
for respondents No. 7 to 11.

ARUN MONGA, J.

1. Petitioners, inter-alia, seek issuance of directions to the respondent-Punjab School Education Board (hereinafter referred to as 'the Board'), to consider them for promotion to the post of Clerk against quota for Class IV on seniority-cum-merit basis as per applicable Rules with effect from the date their juniors, respondents No.2 to 11 have been promoted with all consequential benefits.

2. The facts of the case briefly are that petitioner No. 1 and No. 2 had joined the respondent-Board as Sahayak Karamchary (Peon) in the year 1974 and 1981, respectively. As per Rule 13 of the Punjab School Education Board Calendar, 1988, Volume-I (framed under the Punjab School Education Board Act, 1969), the post of Clerk was to be filled up 90% by way of direct recruitment and 10% by way of promotion from amongst the Class IV employees. The minimum qualifications for promotion, as

provided under the Rule, were (i) Matriculation (ii) Proficiency in Punjabi Type-writing of the standard as prescribed by the Subordinate Service Selection Committee for this post and (iii) Atleast 5 years satisfactory service as Class IV employee. Quota of promotees was enhanced to 25% from the existing 10% vide Item No.16 of the minutes of Board meeting held on 06.02.1992.

3. It is the case of the petitioners that as per the seniority list (Annexure P-1), petitioners No. 1 and 2 were at serial No. 7 and 106 respectively. As the persons at serial No. 1 to 6 did not possess the requisite qualification of Matriculation, as required by Rule 13, *ibid*. Therefore, they were not eligible for promotion. Petitioner No. 1 on acquiring Matriculation certificate in 1988 became eligible for promotion being the senior-most eligible candidate as per the seniority list. Petitioner No. 2 was also eligible as he possessed requisite qualification.

4. Learned counsel for the petitioner contends that respondent No. 2 was granted the promotion on 18.03.1988, surpassing the claims of petitioner No. 2 who was eligible for promotion on that day. Thereafter, respondents No. 3 to 6 and 7 to 11 were also promoted to the post of Clerk vide order dated 28.12.1989 and 03.07.1992 respectively. It is averred that all the private respondents who have been granted promotion by the Board were junior to the petitioners.

5. The petitioners have also questioned the orders Annexures P-2 and Annexure P-3, passed by the Board, as being arbitrary, whereby persons who were granted promotion were exempted from passing the Punjabi type-writing test which was earlier a necessary qualification. It is stated that such

orders were made without amending the rules governing the promotion. It is further stated that the circular dated 11.03.1992 (Annexure P-4), whereby persons were invited to take the Punjabi Type Test was also against the rules. Rule 13 was arbitrarily amended making the Punjabi Typewriting Test compulsory to be passed prior to grant of promotion, as against the earlier Rule of giving opportunity to clear the same after the promotion was granted.

6. The petitioners made representation dated 15.06.1992 (Annexure P-6), to the respondent-Board to consider their case for promotion of those Class IV employees who are matriculate and have rendered five years service, as per Rules. The respondent-Board failed to accede to the same and promoted respondents No. 7 to 11 vide order dated 03.07.1992 (Annexure P-4). Hence the present writ petition.

7. Respondent-Board, in its written statement, has taken the stand that respondents No. 2 to 11 were promoted as per the Rules of the Board. It is stated that the Punjab School Education Board (Employees Service) Regulations, 1988 came into force w.e.f. 05.02.1988 and it was amended on the report of rationalisation committee by the Board vide agenda Item No.19 dated 06.02.1992. Rule 13 of the regulations governs the case of promotions to the post of Clerk which stipulates the promotion to the post on the basis of seniority-cum-merit.

8. Perusal of pleading of respondent No.1 shows that respondent No. 3 was granted promotion in the year 1988 as he acquired requisite qualification on that date. However, petitioner No.1 was not eligible at that time and petitioner No. 2 was much junior to him. Respondents No. 3 to 5

were promoted under the reservation policy of the Board as they belonged to Scheduled Caste category. Respondent No. 6 being eligible participated in direct recruitment process and being successful he was directly recruited as Clerk.

9. As regards the promotion of respondents No. 7 to 11, it is stated that the Rule 13 was amended in 1992 and the quota of promoted employees had been increased to 25%. 42 vacancies were available and out of them 50% had been reserved for SC category candidates. Out of the total seats 25% had been made available for the Class IV employees as per rules and applications were invited vide letter dated 11.03.1992 (Annexure P-4). On the basis of test and verification of the record, respondents No.7 to 11 were found eligible for promotion as they belong to SC category and were promoted vide order dated 03.07.1992.

10. Learned counsel for the respondent No.7 to 11 submitted that the petitioners did not participate in the selection process for the post of Clerk by way of promotion. He further contends that the selection of private respondent is as per Rules and reiterate the stand taken by the Board.

11. I have gone through the pleadings with the able assistance of the learned counsel for the respective parties and have heard them at length.

13. Having gone through the rules governing the promotion of Class IV employees to the post of Clerk, it is evident that the persons who were having the requisite qualifications only could have been considered for promotion. In the present case petitioner No. 1 had cleared the Matriculation examination in the year 1988. Thereafter, he fulfilled all the criteria as were applicable at the relevant point of time. Another promotion order qua

respondents No.3 to 5 was passed on 28.12.1989, but he was not considered at that time also due to lack of requisite qualification as on 18.03.1988. This reason was/is not tenable. The fact is that he acquired qualification in 1988 and he was entitled for consideration being senior most employee of the cadre. Respondent failed to produce any policy or circular relating to reservation in promotion of Class IV employee as Clerk which was taken into consideration while passing order dated 28.09.1989. Therefore, the criteria adopted by the Board is not sustainable. Similar is the case of petitioner No.2. He was not considered as on 28.12.1989 as well as on 03.07.1992 despite having requisite qualifications.

14. Regarding the stand taken by the respondent-Board that the petitioners failed to clear the requisite Punjabi Type Test and the Punjabi Language Knowledge Test, I am of the view the same is not tenable as the provisions governing the promotions were changed without following the proper procedure. Rules cannot be changed at the whims and fancies of the employer to the detriment of the employees.

15. In this view of the matter, the writ stands allowed. Respondent-Board is directed to consider the case of the petitioners afresh for promotion as Clerk.

(ARUN MONGA)
JUDGE

MAY 02, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No