

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

CWP No.3323 of 2002

DATE OF DECISION : 8th MARCH, 2019

Ram Kanwar and others

.... **Petitioners**

Versus

State of Haryana & others

.... **Respondents**

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

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Present : Mr. Subhash Ahuja, Advocate with
Mr. Karanveer Ahuja, Advocate for the petitioners.
Ms. Kirti Singh, Deputy Advocate General, Haryana.
None for respondent No.3.

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A. B. CHAUDHARI, J.

1. By the present writ petition the petitioners have made the following prayer:

For the issuance of a writ of certiorari, mandamus or any other appropriate writ, order or direction quashing the impugned order, Annexure: P-3 vide which the respondent No.3 has been promoted as superintendent from the post of personal assistant by declaring Rule 9(1)(e) of the Haryana Veterinary and Allied (Group B) Service Rules, 1996 (in short Rules of 1996) as invalid being totally arbitrary, contradictory and violative of the special rules called as the Punjab Civil Services (Promotion of Stenographers and Stenotypists) Rules, 1961 (in short Rules of 1961) with a further direction to the respondent-authorities to consider the claims of the petitioners for promotion to the post of superintendent from the date respondent No.3 has been given promotion as such with all the consequential benefits.

FACTS:

2. The petitioners had joined the service in the respondent department as Clerks/Steno Typists. They were promoted to the post of Assistants/Head Assistants (now re-designated as Deputy Superintendent). The dates of appointments and promotions are given in para 2 of the petition.

3. Respondent No.3-Smt. Raj Soni had joined the service with the respondent department as Senior Scale Stenographer on 01.08.1978 as against the petitioners' initial appointment in the year 1971-73. Respondent No.3 was promoted to the post of Personal Assistant on 30.06.1997 falling in a different cadre. The pay scales of post of Assistants and the Senior Scale Stenographers were identical throughout. Employees working as Stenotypists, Junior Scale Stenographers and Senior Scale Stenographers in the clerical side on the posts of Assistants/Head Assistants were governed by Punjab Civil Services (Promotion of Stenographers and Stenotypist) Rules, 1961. For promotion to the higher post on the clerical side the eligibility provided is working experience as Assistant for a period of 2 years apart from departmental test and vide sub-Clause (c) the seniority would be determined on the dates of continuance of the service against the post of Senior Scale Stenographers and Assistants. Rule (8) of the Rules of 1961 provides for overriding effect. To repeat Rule (3) and in particular (c) provides for determination from the dates of continuous length of service. Rule 9 of the Rules of 1961 provides for promotion from amongst the Head Assistant or Personal Assistants. Though the petitioners were quite senior to respondent No.3 by considering their seniority as per Rules,

respondent No.2 promoted respondent No.3 on the post of Superintendent under the garb of 1996 Rules. It is submitted that the said action of respondent No.2 is illegal and liable to be quashed and set aside in the light of some judgments of this Court and Supreme Court.

ARGUMENTS:

4. In support of the writ petition learned counsel for the petitioners vehemently argued that the petitioners were initially appointed in the year 1971-73 as against respondent No.3 who was appointed as late as on 01.08.1978. The learned counsel for the petitioners further argued that in the wake of the Rule of counting of seniority on the basis of continuous of length of service, by no stretch of imagination respondent No.3 could be given jumping promotion which is not provided by Rules and this Court has already held that Rules of 1961 would override the Rules of 1963. The learned counsel for the petitioners, therefore, argued that promotion to respondent No.3 purported to be given with the aid of Rule 1(C) of the Rules of 1996 and the Rules itself is required to be quashed and set aside. It was further argued that respondent No.3 was favoured by respondent No.2 but the petitioners admittedly were senior to her taking into consideration the continuous length of service and were therefore liable to be promoted. The learned counsel for the petitioners placed reliance on the following judgments:

Supreme Court of India

- (i) Jagdish Parsad Sinha and other Vs. Bhagwat Prasad and others, 1989(2) RSJ 495;
- (ii) Mohd. Usman and others Vs. The State of Andhra Pradesh, AIR 1971 Supreme Court 1801;

Punjab and Haryana High Court

- (i) Kanchan Bala Vs. State of Haryana, 1998(6) SLR 456;
- (ii) R. C. Dogra and others Vs. The State of Haryana and others, 1997(4) RSJ 450;
- (iii) O.P. Gupta Vs. The State of Haryana and others, 1980(1) SLR 304.

5. The petitioners as well as respondent No.3, all have retired from the service but their claim over benefits arising out of promotion can be granted.

6. Per contra, learned counsel for respondent-State invited our attention to the written statement filed by respondents No.2 and 3 and submitted that there is nothing wrong in giving promotion to respondent No.3, since respondent No.3 had the requisite experience and in accordance with the Rules of 1996, no fault could be found out to the promotion given to her. The respondents, therefore, prayed for dismissal of the petition.

CONSIDERATION:

7. We have heard learned counsel for the rival parties at length. We have perused the entire pleadings and documents in the petition. We have also seen the judgments relied on by learned counsel for the petitioners. The relevant dates of appointments and initial appointments and promotion of the petitioners are given below:

S. No.	Name of the petitioner	Date of joining as Clerk	Date of their promotion as	
			Assistant	Dy. Supdt.
1.	Ram Kanwar	30.12.71	16.10.74	10.10.99
2.	J.P. Singh	01.03.72	03.08.76	17.10.99
3.	Arjan Singh	29.12.71	03.08.76	05.11.99
4.	Narota Ram	27.01.72	03.08.76	29.07.99
5.	Mahesh Kumar	02.02.73	27.07.77	
6.	Ajay Kumar	19.07.73	27.07.77	

8. It is not in dispute that respondent No.3 was promoted by order dated 30.06.1997 to the post of Personal Assistant, for the first time as against the promotion of the petitioners from 1974 to 1977. Thus going by the dates of appointments and promotions of the petitioners and respondent No.3, it is manifest that the difference is almost of about 10 years between them, even if taken from the date of promotion given to respective petitioners and respondent No.3. Since learned counsel for the petitioners assailed Rule 9(1) of 1996, we have given our careful thought as to whether it is necessary to test the validity of the Rule. Our answer is in the negative. In the wake of Rule 8, which is having overriding effect, we do not think it is necessary for us to test the Rule of 1996 as the petitioners are entitled to grant of relief even otherwise. We therefore refrain from examining the validity of Rule 9(1) of the Rules of 1996.

9. In the light of the above data regarding dates of appointments and promotions, we find from Rule 3(c) that the seniority is to be determined by the dates of continuous appointment against the post. Obviously, in the light of the above data all the petitioners were far senior to respondent No.3 even from the date of their promotions as Assistant. In other words, respondent No.3 could be promoted only after the promotion of even the last petitioner i.e. Ajay Kumar. To repeat, in other words, all the petitioners were required to be promoted first before considering the promotion of respondent No.3. Rule 8 of the Punjab Civil Services (Promotion of Stenographers and Stenotypists) Rules, 1961 reads thus:

8. Overriding effect.

The provisions of these rules shall have effect notwithstanding anything to the contrary contained

in any rules for the time being in force regulating the recruitment and conditions of service of persons appointment to public services and posts in connection with the affairs of the State.

10. It is not in dispute that respondent No.3 did not have experience of two years as contemplated by Rule 3 (ii) of Rules of 1961, which experience the petitioners had of more than two years. We thus come to the conclusion that all the petitioners were senior to respondent No.3 in the matter of promotion in question and therefore respondent No.3 was wrongly promoted overlooking the claim of the petitioners.

11. In the case of ***Jagdish Parsad Sinha (supra)*** the Apex Court in paragraph 3 stated thus:

3. The High Court considered the matter at great length and with care. The legal position as settled by several decisions of this Court was noticed. Towards the end of the judgment the High Court has said:

“We have referred to the judgment of the Supreme Court in K.S. Vord and others v. State of Gujarat and others only to illustrate that the courts have at no time ignored the interest of the employees and questioned the authority of the State to frame rules in terms of the proviso to Article 309 of the Constitution of India, but the courts have always taken notice of the fact that those who stood together and fell in line to proceed further have to be provided all opportunities in

respect of their avenues of promotion alike without breaking that order, so that one who ranks higher in the grade may not go down in due course of service. It is in this context that we have no hesitation in holding that rules in the notification dated 18.11.1986 are ultra vires Articles 16(1) and 14 of the Constitutions.”

12. In the case of ***Kanchan Bala (supra)*** the Division Bench of this Court stated thus in paragraph 10:

10. xxx.... xxx.... xxx.... The promotions are governed by the rules which are called as “Punjab Civil Services (Promotion of Stenographers and Steno-typists) Rules, 1961 (hereinafter referred to as the Rules). By the amendment in the Rules made by the Punjab Civil Services (Promotion of Stenographers and Steno-typists) Haryana First Amendment Rules, 1978 (hereinafter referred to as the amended Rules), sub-rule (1) of Rule 3 was substituted as under:

“(1) In offices where the scale of pay of Stenographers is identical to that of Assistants, the Stenographers shall, before becoming eligible for promotion to higher post on the clerical side, have to work as Assistant for a period of two years on some

existing vacancy or by sharing the work of an Assistant.

Explanation I:- The period during which a Stenographer has before the date of issue of these rules, performed the duties of an Assistant whether in addition to his own duties or otherwise will be taken into consideration in computing the period of his training as Assistant.

Explanation II:- Where there is no available vacancy of the post of Assistant for imparting training to the Stenographer, he shall be given at least one third of the work of some Assistant in addition to his own duties. The Assistants who is thus relieved of some of his work will in turn help the Stenographer in his routine duties.”

Therefore, the Stenographer, before becoming eligible for promotion to their higher post on clerical side, has to work as an Assistant for two years on some existing vacancy or by sharing the work of an Assistant. Where there is no available vacancy of the post of Assistant for imparting training to the Stenographer, he has to be given at least one-third of the work of some Assistant in addition to his own duties. Learned

counsel for the petitioner vehemently contended that respondents No.5 to 6 have not undergone this training. This contention is taken up in para 9(viii) of the petition.”

13. While holding that Rule 8 of the 1961 Rules shall prevail over 1963 Rules, a Single Judge Bench of this Court in the case of **R. C. Dogra (supra)** stated thus in paragraph 8:

“8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. No doubt the 1963 rules were framed under proviso to Article 309 of the Constitution of India and these rules apply to all the officials working in the Economic and Statistical Organization. It is also not disputed that all the petitioners as well as respondent No.3 were working in the said Organisation at the relevant time and as such they were governed by the 1963 rules. But a bare reading of 1961 rules shows that these rules were framed also under Priviso to Article 309 of the Constitution of India for regulating the Promotion of a particular cadre i.e. Stenographers and Steno-typists working in the Civil Services of the State, to higher posts in the Clerical side. Under Rule 1(2) of the 1961 rules, these rules apply to all the Stenographers and Steno-typists of all the Departments of the State

except those of the Punjab Civil Secretariat, Punjab Legislative Council and the Punjab High Court. Rule 8 of 1961 rules clearly provides that the provisions of these rules shall have effect notwithstanding anything to the contrary contained in any rules for the time being in force regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. In view of rule 8 of the 1961 rules, the rules of 1961 shall prevail over the 1963 rules so far as the promotion of Stenographers and Steno-typists is concerned.”

14. In the light of the above decisions and on the factual aspect found by us as above, we are convinced that the petitioners were ignored as against respondent No.3 from promotion in violation of the above legal position and we accordingly hold so.

15. The next question is about grant of relief. It is not in dispute that respondent No.3 has retired from service on the promotional post. In that view of the matter the petitioners are entitled to the limited relief of deemed promotion with consequential benefits. In the result we make the following order:

ORDER

- (i) CWP No.3323 of 2002 is partly allowed.
- (ii) It is held that the petitioners were entitled to promotion to the post of Superintendent as per their seniority over and above respondent No.3.

- (iii) The petitioners are granted deemed promotion from the date of promotion of respondent No.3 namely 30.01.2002 (Annexure P-3) to the post of Superintendent and shall be granted the monetary benefits of promotion i.e. arrears of pay etc. on the promotional post within a period of six months from today.
- (iv) The prayer for grant of interest @ 18 % per annum and the other prayers in the petition are specifically rejected.
- (v) No order as to costs.

(A. B. CHAUDHARI)
JUDGE

8th MARCH, 2019
'raj'

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*