

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

Date of Decision: October 16th, 2019

1. **CWP No.9666 of 2019**

Surjeet Kumar & others

...Petitioners

Versus

State of Haryana & another

...Respondents

2. **CWP No.9850 of 2019**

Lajwanti

...Petitioner

Versus

State of Haryana & others

...Respondents

3. **CWP No.10139 of 2019**

Neeru Makhija

...Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. R.K.Malik, Senior Advocate with
Mr.Sandeep Dhull, Advocate,
for the petitioners in CWP No.9666 of 2019.
Mr. Parshant Sethi, Advocate,
for the petitioner in CWP No.10139 of 2019.
Mr. Jagjeet Beniwal, Advocate,
for the petitioner in CWP No.9850 of 2019.
Ms. Shruti Jain Goyal, DAG, Haryana.

AMIT RAWAL, J.

This order of mine shall dispose of three Civil Writ Petitions bearing No.9666, 9850 and 10139 of 2019 as the the controversy involved in all the cases is the same. The facts are being taken from CWP No.9666 of 2019.

The grievance of the petitioners is not in detail but short and simple. Considering the nature and duration of the service, Government of Haryana had taken a decision to regularize the services of all the contractual employees who completed three years of service on 28.05.2014. Accordingly, the services of the petitioners were regularized on 14.08.2014 while working as Clerks. For the purpose of promotion to the post of Assistant, the eligibility required was five years of experience as Clerk. Having fulfilled the aforementioned condition, vide order dated 01.03.2019 petitioners were promoted as Assistants and since then have been continuing.

Mr. R.K.Malik, learned Senior Counsel assisted by Mr.Sandeep Dhull, Advocate, representing the petitioners in CWP No.9666 of 2019, Mr. Parshant Sethi, learned counsel appearing on behalf of the petitioner in CWP No.10139 of 2019 and Mr.Jagjeet Beniwal, learned counsel for the petitioner in CWP No.9850 of 2019 submitted that vide impugned orders dated 04.04.2019 (Annexures P-3 to P-87/A), petitioners have been reverted back to the post of Clerk on the analogy that the regularization was on account of June, 2014 policy which was set-aside by this Court giving six months of grace period to the contractual employees to work and fill up all posts through regular incumbents. State of Haryana assailed the aforementioned decision by filing SLP No.33265 of 2018 and while issuing notice had also granted status-quo. The State has misinterpreted expression “status-quo” as it pertained to only regularization, whereas the case of the petitioners was only with regard to the promotion. Respondents adopted pick and choose policy by retaining certain other employees who have been promoted even though have not been regularized under the policy, detail of

which has been given in ground (iv) of Para 5 of the writ petition. In this regard, he drew the attention of this Court to the category assertion in the corresponding paras of the reply, whereby the department has tried to retain the services of seven Assistants. Even the principles of natural justice have not been adhered to as the petitioners were not given any opportunity to explain and rebut the stand of the respondents in reverting back the petitioners.

Ms. Shruti Jain Goyal, learned Deputy Advocate General, Haryana representing the State supported the stand of the Government on the premise that the order dated 26.11.2018 passed in SLP No.31566 of 2018 was not in the knowledge of the department entailing into promotion order. In fact, the aforementioned order was recalled as it was in violation of the status-quo order. Even the Chief Secretary, vide letter dated 27.03.2019 (Annexure R-2/1 directed the General Director Health to review the promotion order whereby 112 employees were promoted as Assistants as most of the Clerks were regularized under the regularization policy of 2014, which was quashed by this Court vide order dated 31.05.2018 in CWP No.17206 of 2014. The justification of non-withdrawal of the promotion order of ten (10) Clerks was on the premise that they were not regularized under the regularization policy dated 18.06.2014.

As regards the seven (7) Assistants still working, it was submitted that they were promoted vide order dated 02.02.2018 which before the status-quo order and in these circumstances reversion orders of the petitioners cannot be faulted with and the petitioners possibly have no grievance to assail the impugned order and, thus, prayed for dismissal of the writ petitions.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioners.

The pleadings will definitely partake the stand taken during the course of hearing. It would be in the fitness of things to extract grounds (iv) and (v) of Para 5 of the writ petition and as well as Paras 8 and 9 of the written statement. The same read thus:-

iv) *That even juniors to the petitioners who were promoted alongwith the petitioners were retained and the petitioners who were seniors were arbitrarily ordered to be reverted. So the action of the respondents is on the face of it discriminatory.*

Undisputedly the petitioners were regularized as Clerks w.e.f. 28.5.2014 and some employees who were promoted as Clerks after 28.5.2014 and were juniors to the petitioners and they were also promoted as Assistant alongwith the petitioners and no reversion orders have been issued to them. The detail of the employees who were juniors to the petitioners and promoted alongwith the petitioners and still continuing as Assistants is given below for ready reference:-

Name	<i>Dt.of promotion as clerk on 25.6.2014 and joining dt.is as under</i>	<i>Date of promotion as Assistant</i>
Bachan Naryan s/o Sh.Rattan Dass	04/07/14	01/03/19
Tarsem s/o Sh.Hazuri Ram	25.6.2014	01/03/19
Umed Singh s/o Sh.Lachman Singh	08/07/14	01/03/19
Dayanand S/o Sh. Antu Ram	03/07/14	01/03/19
Saroj Bala D/o Sh. Sant Raj	27.6.2014	01/03/19
Hukam Chand s/o Sh.Ram Singh	26.6.2014	01/03/19
Rishi Kumar s/o Sh.Ram Phal	23.7.2014	01/03/19
Ramesh Kumar s/o Sh.Basau Ram	26.6.2014	01/03/19

Undisputedly the above persons were junior to the petitioners as Clerks because they were promoted after the regularization of services of the petitioners w.e.f. 28.5.2014 and all the above employees were also promoted as Assistants vide order dated 1.3.2019 alongwith the petitioners and the petitioners were ordered to be reverted by the impugned orders (P-3 to P-87/A) and the above employees who were juniors to the petitioners as Clerks and promoted along with the petitioners as Assistants are still continuing as Assistants. So the action of the respondents to retain the juniors and to revert the petitioners who were seniors is on the face of it discriminatory. So the impugned reversion orders (P-3 to P-87/A) are liable to be quashed on this ground alone.

v) That many employees who were regularized under the same policy decision dt.18.6.2014 under which the services of the petitioners were regularized were also promoted as Assistants and still continuing, so the action of the respondents is on the face of it discriminatory.

In the Head Office of Health Department itself certain Clerks who were regularized under the policy decision dated 18.6.2014 w.e.f. 28.5.2014 like petitioners and they were also promoted as Assistants vide order dated 2.2.2018 and all those employees are still continuing as Assistants. The copy of the promotion order of such 18 employees made by Director General Health Services Haryana on 2.2.2018 to this effect is attached as Annexure P-90. Even certain employees who were regularized under the same policy decision dated 18.6.2014 like petitioners and they were promoted as Assistants in the Public Health & Water Resources Department, Haryana vide order dated 13.7.2017 are still continuing as Assistants. The copy of the promotion order dated 13.7.2017 to this effect is attached as Annexure P-91. Similarly some employees have been regularized under the same policy decision dated 18.6.2014 like petitioners and they were also promoted as Assistants by the Office of Chief Secretary, Govt.of Haryana

vide order dated 29.12.2017, they are still continuing as Assistants. The copy of the promotion order dated 29.12.2017 to this effect is attached as Annexure P-92. So the action of the respondents is on the face of it discriminatory. So on this ground also the impugned orders (P-3 to P-87/A) are liable to be quashed.”

Paras 8 & 9 of the written statement

8. *That in compliance of Hon'ble Supreme Court interim order dated 26.11.2018 and Chief Secretary Haryana letter dated 27.03.2019, the matter was reconsidered at Directorate level and Department vide office order dated 04.04.2019 (Annexure P-3 to P-87/A) decided to withdraw the promotion of 102 clerks (Data Entry Operators who were regularized under regularization policy dated 18.06.2014) who were promoted as Assistants vide office order dated 01.03.2019 (Annexure P-2). It is pertinent to mention that promotion order dated 01.03.2019 was not withdrawn for 10 clerks because these 10 Clerks were not regularized under Regularization Policy dated 18.06.2014. Hence, the action of the Department is not discriminatory as alleged in the grounds of the present writ petition. Hence, present writ petition deserves to be dismissed.*

9. *That petitioners have relied on promotion order dated 02.02.2018 (Annexure P-90), 13.07.2017 (Annexure P-91) and promotion order dated 29.12.2017 (Annexure P-92) whereby Clerks who were regularized under the same policy dated 18.06.2014 were also promoted as Assistants and still continuing as mentioned in ground 5 of the writ petition. It is respectfully submitted that the petitioners have relied on office order dated 02.12.2018 (Annexure P-90) whereby 18 Clerks were promoted as officiating Assistant purely on temporary basis in the office of Director General Health Services, Haryana. It is pertinent to mention that out of these 18 Clerks, only 7 Clerks mentioned at serial No.5 to 11 were regularized under Regularization Policy dated 18.06.2018 vide office order*

No.IT-Cell-2014/404-415 dated 05.08.2018 passed by the director General Health Services, Haryana. These 7 Assistants are still working as Assistants because they were promoted as Assistant vide office order dated 02.02.2018 much before the 'Status Quo' order dated 26.11.2018 passed by the Hon'ble Apex court. Whereas, petitioners were promoted vide order dated 01.03.2019 (Annexure P-2) after passing of the 'Status Quo' order dated 26.11.2018 passed by the Hon'ble Apex court. Hence, there is no discrimination towards petitioners.

The status-quo order cannot be a ground for reverting the petitioners from the post of Assistant as their promotion should have been always kept subject to the outcome of the Special Leave Petition. The promotion always puts more energy in an employee to work hard. The stagnation in the service can lead to not only disgruntlement in the mind of the employees but also effect their efficiency. However, there are certain posts where there is hardly any avenue of promotion in future. To overcome the irony and agony of such persons, the Government had come with a scheme for grant of Assured Career Progression (ACP) after achievement of certain services on the said post. Justification in retaining 10 Clerks having not been regularized for the promotion only and non-withdrawal of the promotion order of 7 assistants is wholly erroneous and preposterous as respondents cannot adopt pick and choose policy in retaining the promotion order of 10 Clerks.

I also cannot remain oblivious of the fact that some vested right accrued by virtue of promotion in favour of the petitioners. That could not have been taken away without adherence to the principles of natural justice.

Accordingly, the impugned orders are set-aside. The writ

petitions are allowed with the aforementioned observations.

October 16th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No