

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

Civil Writ Petition No.31417 of 2019(O&M)
Date of decision: October 31, 2019

Shashi Bala

...Petitioner

Versus

Chandigarh Administration and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.R.S.Duggal, Advocate for
the petitioner.

Harinder Singh Sidhu, J. :

1. This writ petition has been filed against the order dated 09.04.2019 of the Central Administrative Tribunal, Chandigarh Bench, whereby, Original Application No.060/00133/2018 filed by the petitioner was dismissed.
2. The petitioner joined in the Chandigarh College of Architecture as Hostel Attendant Mis. Duties (Clerk) on 10.11.1983. Her services were regularised on 31.07.1984.
3. The services of Hostel Attendant were governed by Chandigarh College of Architecture, Chandigarh (Group-'C' Posts/Ministerial) Recruitment Rules, 2002 (for short 'the 2002 Rules'). As per the said Rules, the post of Hostel Attendant was feeder cadre for promotion to the post of Senior Assistant along with Clerk/ Junior Assistant having 05 years experience.

4. One Vikas Mittal, Hostel Attendant submitted a representation dated 18.4.2012 to the respondents requesting for merger of the post of Hostel Attendant with that of Clerk. The representation was declined vide order dated 27.08.2013 stating inter-alia as under:-

“The Recruitment Rules of Group 'C' Non-Gazetted Ministerial posts have already been approved and notified by the Home Secretary, Chandigarh Administration dated 22.01.2002 vide which Hostel Attendants of this College are eligible for promotion to the post of Senior Assistant. On the basis of approved and notified Recruitment Rules of Group 'C' Non-Gazetted Ministerial Posts, your request has been considered and not acceded to.”

He filed OA No.1439/CH/2013, which was disposed of vide order dated 21.11.2014. The Ld. Tribunal concluded that injustice has been caused to the Hostel Attendants while considering their cases for the post of Senior Assistants. Accordingly, the competent authority was directed to examine the issue regarding merger of posts of Hostel Attendants and Clerks in the Chandigarh College of Architecture in the light of the observations made in the order

5. The respondents assailed the order of the Tribunal by filing CWP No.9030 of 2015 which was disposed of vide order dated 08.05.2015. The orders of the Tribunal were modified. The respondents were directed to look into the grievance of the Hostel Attendants with reference to non-availability of promotional avenues and/or desired pay-scales and redress the same within their policy frame-work. The Court also observed that it

would be open to the Authorities to upgrade the post of Hostel Attendant and merge the same with the Clerical cadre, if required in administrative and public interest.

6. In compliance with the order dated 08.05.2015, the respondents passed order dated 28.09.2015 mentioning that the post of Hostel Attendant is excluded from promotion to the post of Senior Assistant due to marked distinction in essential qualifications, pay-scales and nature of duties of the post of Clerk vis-a-vis the post of Hostel Attendant.

7. The petitioner filed OA No.060/01107/2015 assailing the order dated 28.09.2015. The contention of the petitioner was that the decision was contrary to the 2002 Rules as per which, the post of Hostel Attendant was a feeder cadre, for promotion to the post of Senior Assistant. The respondents could not by changing the qualification take away the promotional avenue of the post of Hostel Attendant. It was prayed that eligible Hostel Attendants in terms of the 2002 Rules be promoted as Senior Assistants as per joint seniority maintained by the respondents till 2013.

8. The case of the respondents was that as per the amended Chandigarh College of Architecture Recruitment Rules, 2013, which were notified on 17.10.2013, different qualifications had been prescribed for the post of Clerk and for the post of Hostel Attendant. Draft Rules for promotion to the post of Senior Assistant had also been notified. The post of Senior Assistant had been upgraded to Group-B. As per the decision

taken, the post of Hostel Attendant was not to be a feeder cadre for the post of Senior Assistant. It was their contention that the order dated 28.09.2015 could not be challenged without a challenge to the 2013 Recruitment Rules whereby, the post of Hostel Attendant had been excluded as feeder cadre for the post of Senior Assistant.

9. The Ld. Tribunal accepted the contention of the respondents. As the Recruitment Rules, 2013 had not been challenged by the petitioner, therefore, the OA was dismissed vide order dated 12.09.2017.

10. During the pendency of the aforesaid Original Application, the petitioner attained the age of superannuation on 30.09.2016. She was granted extension in service on 21.09.2016 and 18.09.2017 as per the Government policy. Two Junior Assistants, whom the petitioner claimed to be junior to her, namely, Babu Ram and Ashok Bhagat, were promoted to the post of Senior Assistant.

11. Claiming that she had a fresh cause of action, the petitioner filed OA No.133 of 2018, which has been dismissed by the impugned order. In this OA also, the petitioner challenged the exclusion of the post of Hostel Attendant for promotion to the post of Senior Assistant. She also prayed for quashing of the promotion orders of Babu Ram and Ashok Bhagat, who were impleaded as respondents.

12. The Ld. Tribunal, taking note of the fact that the prayers in OA No.133 of 2018 and earlier OA No.060/01107/2015 were identical, held that the subsequent OA No.133 of 2018 was barred by the principles of res judicata. The Ld. Tribunal further adverted to the fact that the qualification

for a Clerk is Graduation whereas for a Hostel Attendant it is 10+2. The nature of the duties of two posts are not similar or inter-changeable. In view thereof, the respondents had taken a conscious decision after the order of the High Court in CWP No.9030 of 2015 to not merge the two posts. It further noticed that the primary grievance of the petitioner regarding non-availability of promotional avenue had been taken care of by granting up-gradation of pay-scales under the ACP Scheme on completion of 4, 9 and 14 years of service, which she has availed. Thus, both on grounds of res-judicata as well as on merits, the OA was dismissed.

13. Thus, there is no illegality or infirmity in the order of the Ld. Tribunal. We find no reason to interfere with the same.

14. Consequently, this petition is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 31, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No