

CWP-12738-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-12738-2017

Date of Decision: 31<sup>st</sup> January, 2020

Prem Lata & others

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashish Grover, Advocate,  
for the petitioners.

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

\*\*\*\*\*

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court praying for issuance of a writ in the nature of certiorari for quashing the letter/order dated 03.11.2016 (Annexure P-6), whereby the proposal sent for their promotion from the post of Senior Assistant to the post of Superintendent Grade-II, has been rejected.

2. Learned counsel for the petitioners contends that as per the admitted facts, petitioners were working on the post of Senior Assistant. Their cases for consideration for promotion to the post of Superintendent Grade-II were duly considered by the Department and recommended to the Competent Authority vide letter dated 25.01.2016 (Annexure P-3). It is during the period when their cases were under consideration, an amendment in the prevalent rules was brought about called as Punjab Cooperative Audit (Group 'B') Service Rules, 2016 (hereinafter referred to as '2016 Rules') vide

notification dated 15.10.2016 (Annexure R-1). He contends that because of the amendment in the rules, which now required experience of eight years' as Senior Assistant instead of three years, which was the rule under which the claim of the petitioners was considered and when the vacancies for the promotion of the petitioners had occurred, the said claim of the petitioners for promotion has been rejected vide order dated 03.11.2016 (Annexure P-6). This the counsel contends is not sustainable in the light of the fact that the vacancies which had occurred were prior to the coming into force of the amended rules and therefore, had to be filled-up as per the then prevalent rules especially in the light of the fact, as in the case of the petitioners, the claims have been duly considered and recommended to the Competent Authority for final decision. In support of this contention, he has placed reliance upon the judgment of the Full Bench of this Court in **Jagdish Chander Vs. The State of Haryana** (1994 (4) SCT 29). He, therefore, contends that the impugned order deserves to be set aside and the writ petition allowed.

3. On the other hand, learned counsel for the State submits that the rules as existing on the date of consideration of the claim of the petitioners for promotion would be relevant. He contends that although initially, as per the unamended rules as it existed i.e. Punjab Cooperative Audit (Group 'B') Service Rules, 2007 (hereinafter referred to as '2007 Rules'), the experience which was required for promotion to the post of Superintendent Grade-II was three years on the post of Senior Assistant but as per the rules which came into force on 15.10.2016 (Annexure R-1), the

requirement of experience was increased from three years to eight years, which the petitioners did not possess and therefore, their claim has rightly been rejected vide order dated 03.11.2016 (Annexure P-6). He, thus, contends that the impugned order being in accordance with law does not call for any interference.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the record of the case.

5. The facts that the claim of the petitioners for promotion to the post of Superintendent Grade-II from the post of Senior Assistant was considered, the requirement was more than three years of experience and forwarded on 25.01.2016 (Annexure P-3) as per the then prevalent rules i.e. 2007 Rules, has not been disputed. The factual position of there being vacant posts of Superintendent Grade-II available then, has also not been disputed. The only reason why the claim of the petitioners for promotion on consideration having been recommended has been rejected is the coming into force of the 2016 Rules, on 15.10.2016 (Annexure R-1), which have been made applicable to the Department and the petitioners did not possess the requisite qualification as per these 2016 Rules. This action of the respondents in considering the claim of the petitioners, as per the amended rules, is not sustainable in the light of the Full Bench judgment of this Court in *Jagdish Chander's* case (supra), wherein it has been held that the existing vacancies on the date of amendment coming into force have to be filled from the persons eligible according to the unamended rules without

CWP-12738-2017

reference to the eligibility qualification now provided by the amended rules.

6. In view of the above, impugned order dated 03.11.2016 (Annexure P-6) rejecting the claim of the petitioners for promotion to the post of Superintendent Grade-II from the post of Senior Assistant is hereby set aside. Direction is issued to the respondents to consider the claim of the petitioners for promotion as forwarded on 25.01.2016 (Annexure P-3) in accordance with the Full Bench judgment of this Court in *Jagdish Chander's* case (supra) i.e. according to the prevalent rules when the vacancies/posts of Superintendent Grade-II became available as the factum that the vacancies were available on 25.01.2016 has not been disputed.

7. The said decision on the basis of 2007 rules be taken within a period of two months from today and the decision be conveyed to the petitioners forthwith.

(AUGUSTINE GEORGE MASIH)  
JUDGE

31<sup>st</sup> January, 2020  
*Harish*

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