

CWP No.2702 of 2018
Date of Decision: 10.01.2020

Sonia Papneja and others

.....Petitioners

Versus

The Registrar General, Punjab and Haryana High Court and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. Sandeep Berwal, Advocate
for the petitioners.Mr. Vikas Chatrath, Advocate,
Mr. Abhishek Chauhan, Advocate and
Ms. Devika Raj, Advocate
for respondent Nos.1 and 2.Mr. Manish Kumar Singla, Advocate and
Mr. Shikha Singla, Advocate
for respondent Nos.3 to 5.**NIRMALJIT KAUR, J.**

The present writ petition is filed seeking quashing of orders dated 22.07.2016, 15.05.2017 as well as another order of the same date i.e. 15.05.2017, placed on record as Annexures P-2, P-3 and P-4, respectively, as passed by respondent No.1, with a further prayer to send back respondent Nos.3 to 5 to the Sessions Division, where they were posted before transfer or in the alternative, the petitioners be promoted to the next post of Stenographer Grade-II and be placed senior to respondent Nos.3 to 5.

While praying for the relief claimed, learned counsel for the petitioners raised following arguments:

Firstly, respondent Nos.3 to 5 on their transfer should have been placed at the bottom of the seniority list in their cadre, whereas, they

have been placed senior to the petitioners, which is contrary and violation of

the Rule 10 (3) of Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (for short, the Rules of 1997), which states that in case a member of a service is transferred, on his written request, he shall be transferred with the condition that he will not claim any seniority over and above the official already working in the cadre of the Sessions Division to which he is seeking transfer. Even, as per condition No.1 of the transfer order, the concerned respondents could not claim any seniority over and above the official working in the concerned cadre.

Secondly, the transfer order was bad as the minimum requirement was 5 years of service in the Sessions Division in which he is initially appointed before being eligible for transfer. In the present case, they had not completed five years of services in their respective Sessions Division.

Thirdly, the posts of Stenographer Grade-II should have been filled up by way of promotion from amongst the petitioners, instead of filling the same by way of transfer from other Sessions Division causing grievance to the petitioners as the said transfers have deprived the petitioners from promotion to the post of Stenographer Grade-II in spite of the fact that they were eligible for promotion.

Lastly, it is evident from Annexure P-8, which is a letter from the District & Sessions Judge, Hisar to the Registrar General, Punjab and Haryana High Court, Chandigarh that earlier certain employees, namely, Pushpa Rani, Vinod Kumar, Anil Kumar, Jyoti Bala, Puneet Kumar, Ritu Pahwa, Neha Mehta and Nitika Nagpal, who were working as Stenographer

Grade-II but they were transferred as Stenographer Grade-III so that the right of promotion of the existing employees in that Sessions Division is not infringed.

Heard.

In order to adjudicate the first argument, it would be appropriate to reproduce Rule 10 of the Rules of 1997, which reads as under:-

“10. LIABILITY OF SERVICE TO TRANSFER: A member of a service may be transferred to any equivalent post:

(1) Within the Sessions Division, by the District and Sessions Judge.

(2) Every member of the service shall be liable to transfer under the orders of the Chief Justice anywhere within the State of Haryana.

(3) On his written request, anywhere within the State by the High Court, if post is available subject to the following conditions:-

(a) That he will not claim any seniority over and above the officials already working in the cadre of the Sessions Division to which he is seeking transfer.

(b) No. T.A./D.A. will be permissible and he will not avail joining time. Provided that official has put in at least 5 years of service in the Sessions Division in which he is initially appointed:

Provided that High Court in a given case may relax the requirements of condition of 5 years of service.”

From perusal of the above, there is no doubt that in case, a member of a service is transferred at his own request, he will be placed at the bottom of the concerned cadre to which he is transferred. However, in

the present case, respondent Nos.3 to 5 were promoted as Stenographer Grade-II and accordingly transferred to the post of Stenographer Grade-II in Sessions Division, Hisar and were placed at the bottom of the seniority of Stenographer Grade-II. Whereas, all the petitioners are Stenographer Grade-III. In case respondent Nos.3 to 5 were transferred on the post of Stenographer Grade-III, there is no doubt that they would have been placed at the bottom of the seniority *viz.-a-viz.* other Stenographers Grade-III, working on the said posts in Sessions Division, Hisar. In case, the argument of learned counsel for the petitioners is accepted, it would amount to demotion of the concerned respondents from the posts held by them, which cannot be accepted. Accordingly, the concerned respondents were transferred and placed at the bottom of the seniority list of Stenographer Grade-II, as per rules, on their post of promotion. Accordingly, the first argument raised by learned counsel for the petitioners is rejected being devoid of merit.

The second argument of learned counsel for the petitioners that the respondents were not eligible for transfer as they had not completed their five years of service also deserves to be rejected. A perusal of Rule 10 (3) of the Rules of 1997 shows that the official seeking transfer is required to have minimum of five years of service in the Sessions Division in which he is initially appointed. It is not disputed that respondent Nos.4 and 5 were initially appointed in their respective Sessions Division in the year 2002 and they had completed more than five years of services on the date of transfer. Thus, the dispute, if any, is only qua respondent No.3. Respondent No.3 had not completed five years of service as required under Rule 10 (3) of the

Rules of 1997. However, as per proviso to Rule 10 of the Rules of 1997 reproduced above, the High Court could, in a given case, relax the requirements of condition of five years of service. This fact is not disputed. This Court accordingly summoned the record to see as to whether the said relaxation was granted. It is evident from the record that the papers of respondent No.3-Ms. Chandni for her transfer from Sessions Division, Karnal to Sessions Division, Hisar were submitted and orders were solicited as to whether the condition of service of five years can be relaxed in the light of provision of Rule 10(3) of the Rules of 1997 or not. The said relaxation was accordingly given by the Senior most Judge of this Court, who was pleased to accept the proposal for relaxing the rules of requirement of minimum five years of service before transfer to another Sessions Division. Thus, respondent No.3 was transferred after following the due procedure of law and rules applicable.

The third argument of learned counsel for the petitioners that the post of Stenographer Grade-II in Sessions Division, Hisar should have been filled up by way of promotion from amongst the petitioners instead of transfer too cannot be sustained. As per Rule 10 of the Rules of 1997, a member of a service can be transferred to any equivalent post within the Sessions Division, by the District and Sessions Judge and anywhere within the State of Haryana under the orders of the Chief Justice as also on his own request anywhere within the State by the High Court, if post is available. There is no dispute that the post was available and respondent Nos.3 to 5 were transferred, in accordance with the rules. Therefore, no fault can be found with the filling up the vacancies by way of transfer.

The last argument raised by learned counsel for the petitioners too has no merit and also deserves to be rejected. No such argument or ground is raised in the writ petition. Hence, there is no specific response to the same in the written statement. In any case, the grievance, if at all, is caused to the employees, who were absorbed one rank below the post held by them and were transferred as Stenographer Grade-III, whereas, they were working as Stenographer Grade-II. However, these employees are neither aggrieved and nor have challenged the same. Hence, the petitioners cannot deprive any benefit from the transfer of these employees to a post below the rank held by them.

Accordingly, the present writ petition is dismissed being devoid of merit.

At this stage, learned counsel for the petitioners submitted that a direction be issued to the Sessions Division to consider the case of the petitioners for promotion. The promotion is not a matter of right and therefore, no such direction can be issued by this Court.

10.01.2020
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No