

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

CWP-7840-1998 (O&M)

Date of decision: September 06, 2022

Kanchan Bala and others

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kamal Sharma, Advocate for the petitioners.

Mr. R.D. Sharma, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondents to regularize promotion of the petitioners as Field Assistants from the date they were promoted on *ad hoc* basis with all consequential benefits.

2. Pledged case is that petitioner No.1 was working as Junior Field Investigator and was promoted vide office order dated 09.04.1982 (Annexure P-1) as Field Assistant by respondent No.2 in the pay-scale of Rs.525-1050 against a vacancy due to the deputation of a certain Field Assistant. Her promotion was, however, made on *ad hoc* basis. Petitioners No.2 and 3 were also working as Junior Field Investigator and were also promoted as Field Assistants by respondent No.2 vide office order dated 31.07.1987 (Annexure P-2). Promotion of petitioners No.2 and 3 was also made on *ad hoc* basis against regular vacancies. As per the Punjab Economic & Statistical Organization (State Service Group 'C' Rules 1963 as applicable to the State

of Haryana, 50% of the posts of Field Assistants are required to be filled by promotion amongst Junior Field Investigators and 50% posts by direct recruitment. The concerned official against whom petitioner No.1 was promoted on *ad hoc* basis, did not return to his parent Department having been absorbed in the Department where he had gone on deputation. Accordingly, promotion of petitioner No.1 was required to be made on regular basis as the official against whose vacancy petitioner No.1 was promoted, had ceased to hold a lien. Promotion of petitioners No.2 and 3 was made against regular vacancies and despite them having worked for over 16 years their promotion has not been made on regular basis. So, petitioners served legal notice dated 16.04.1998 (Annexure P-4), but to no avail.

3. Having heard learned counsel for the petitioners, what thus, emerges is that the claim of the petitioners for seeking promotion w.e.f. the date when they were either deputed by way of transfer and/ or deputation and/ or regular incumbent not being available is *inter alia* on the assertion that some of the incumbents who were concededly, not available owing to them having been sent on deputation and their choosing not to return to respondent No.2 for long years, as per Rule 3.14 of the Haryana Civil Services Rules, Volume 1, Part 1, the Department ought to have terminated their lien on the promotional post. Having perused the pleadings specially the explanation rendered in reply to the replication in Paras-6 to 10 thereof, I am of the view that even on facts, petitioners seem to have been misled into filing the petition under the impression that the vacancies which existed on the promotional post were not filled up despite being available. Same is incorrect as is borne out from the deposition made in Para-6 of the aforesaid

reply by the responsible officer of the Department i.e. Sh. J.S. Hooda, Economic & Statistical Adviser to Government, Haryana in the following terms:-

- “6. xx xx xx. *It is submitted that at the time of promotion of petitioner No.1 in the year 1982, the vacancies caused as a result of deputation of Sarvshri Punni Ram, Sube Singh, Ram Kishan, Hawa Singh Malik, Sher Singh, Giriraj Singh and O.P. Adlakha were also taken into consideration. All the deputationists who had gone to D.R.D.As have returned to respondent department except Shri Ram Kishan who was appointed by transfer in the Social Welfare Department and the vacancy thus caused were also taken into consideration for regularization of Field Assistants. It is further submitted that respondent has taken into consideration all the vacancies which occurred due to death, retirement, deputation, termination, promotion on higher posts on regular basis i.e. Statistical Assistant/ Assistant Research Officers and appointment by transfer in other departments. The fact is that against the sanctioned strength of 61 posts of Field Assistants, 123 vacancies have been filled i.e. 62 vacancies more than the sanctioned strength. This number of 62 vacancies has actually occurred on account of death, retirement, deputation, termination, promotion on higher posts on regular basis and appointment by transfer in other Government departments. Thus it is imperative that the vacancies caused by the out-go of the deputations have been taken into consideration at the time of regularization of Field Assistants. It is further submitted that as all the vacancies have been taken into account, the termination or otherwise of the lien of the deputationists has no relevance. Similarly, the transfer of any official to other departments has no effect in the matter. The respondent has placed all the true and correct facts before the Hon’ble Court. Thus, the promotion of petitioner No.1 could not be made on regular basis from the date of promotion on adhoc basis because she was junior to other Field Assistants who were promoted prior to 29.4.98 on regular basis against promotion quota posts.*”

4. In the aforesaid background, I see no grounds to interfere and to accept the claim of the petitioners as made herein. Apart from the above, I am not able to convince myself with the arguments that in the absence of termination of lien of those who had gone on deputation, petitioners can stake their claim since concededly the same would become alive only once there is a formal order of termination of lien with the incumbents who had gone on deputation. Still further their claim has to be considered as per applicable statutory Rules which clearly envisage that the seniority is to be given due credence for being considered on promotional post. Not a single instance has been shown by the petitioners where any of the junior have been accorded the benefit who were similarly situated i.e. with effect from the date when they were deputation on *ad hoc* basis on promotional post. Concededly, subsequently when their cases became ripe for being accorded the promotion, all of them have been promoted. Not only that they have all superannuated after rendering full length of service.

5. No grounds for interference are made out even on merits as already discussed herein above.

6. Dismissed.

7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 06, 2022
mahavir

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No