

202 (1st and 4th case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: December 07, 2022

1. CWP-4579-2010 (O&M)

Ravinder Kumar Dhamija and others

.....Petitioners

versus

State of Haryana and others

.....Respondents

2. CWP-5308-2016 (O&M)

Neelam Devi and another

.....Petitioners

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Arjun Pratap Atma Ram, Advocate,
Ms. Sanah Sahni, Advocate and
Mr. Shubham Tandon, Advocate for the petitioner(s)
in CWP-4579-2010.

Mr. Sunil Kumar Nehra, Advocate and
Mr. Arnav U. Singh, Advocate for the petitioner(s)
in CWP-5308-2016.

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Saroj Malakar, Advocate for
Mr. Vijay Pal, Advocate for respondents No.4 and 5 in
CWP-4579-2010.

Mr. Rose Gupta, Advocate and
Ms. Garima Modi, Advocate for respondent No.6 in
CWP-4579-2010.

Mr. Bishan Dass Rana, Advocate for applicant/
proposed respondent No.7 in CWP-4579-2010.

ARUN MONGA, J. (ORAL)

Vide this common order, bunch of above-mentioned two petitions are being disposed of, since not only the facts but the issues raised therein are also similar. For brevity, facts are being taken from CWP-4579-2010.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to quash impugned order dated 05.03.2010 (Annexure P-11) whereby respondent No.3 has declared private-respondents as senior to the petitioners and has opined that the promotion orders of the petitioners as Accounts Clerks are required to be reviewed. Further a writ in the nature of Mandamus was sought seeking to direct the official respondents to determine the seniority of Sub Divisional Clerks only from the date of their promotion as Sub Divisional Clerks.

3. Succinct factual background first, as pleaded in the petition. Petitioners were initially appointed as Steno-Typists. They were promoted as Accounts Clerks (also called Senior Accounts Clerks). Thereafter, from the post of Accounts Clerk/ Senior Accounts Clerk, petitioner No.4 was promoted to the post of Deputy Superintendent. Private-respondents were appointed as Clerks in the respondent Department and were further promoted as Sub Divisional Clerks in the year 2008.

3.1 Originally services of the petitioners and private respondents were governed by the Punjab Public Works Subordinate Service (Building and Roads Branch) Rules, 1934, which were superseded by the Punjab Secretariat Service Buildings and Roads Branch (Recruitment and Conditions of Service) Rules, 1943 (for short 'Rules of 1943'). Under these Rules,

promotion to the post of Assistant was from Senior Clerks. There was no channel of promotion for Steno Typist/ Stenographer to the post of Assistant. Respondent-State promulgated the Punjab Civil Services (Promotion of Stenographers and Steno-Typists) Rules, 1961 (Annexure P-6). As per Rule 5 thereof, a Steno Typist was also made eligible for promotion to the post of Assistant (subject to qualifying the prescribed test). As per Rule 5(2), *inter se* seniority of such Steno Typist and Clerk was to be reckoned from the date of their appointment on the respective post of Clerk/ Steno-Typist. Rules of 1943 were repealed by the Haryana Public Works Department, Building and Roads Branch (State Service Group-C) Ministerial Establishment of Subordinate Offices) Rules, 1980 (Annexure P-7). As per said Rules, posts of Accounts Clerk and Assistant are to be filled up by promotion from amongst the Sub Divisional Clerks or Steno Typists.

3.2 Private-respondents preferred CWP-6488-2007, which was disposed of vide order dated 06.10.2009 (Annexure P-9) with a direction to the respondent-State to decide the pending representation of the private-respondents. Pursuant thereto, private-respondents submitted their representations. Petitioners also filed cross-representations. Superintending Engineer concerned referred the case to the Government for instructions/ necessary advice. Upon receipt of advice/opinion, respondent No.3 held that seniority of Sub Divisional Clerks is to be determined by taking into account their seniority on the basis of their continuous length of service as Sub Divisional Clerks plus Clerks. Further, it was held that even though Clerks promoted as Sub Divisional Clerks would be given seniority with effect from the date of their appointments as Clerks, they would be eligible for promotion

to the post of Accounts Clerk/ Assistant only after putting in regular service of three years as Sub Divisional Clerks. On the basis thereof, respondent No.3 passed impugned order dated 05.03.2010 (Annexure P-11) and declared private-respondents senior to the petitioners and opined that the promotion orders of the petitioners as Accounts Clerks are required to be reviewed.

4. I have heard competing arguments of learned counsel for the parties and perused the record.

5. Controversy herein is encompassed on a very short radius i.e., whether the Clerks who stood promoted as Sub Divisional Clerks at the time of being considered for further promotion on the post of Assistants are to be given the benefit of seniority as Sub Divisional Clerks w.e.f. the date of promotion into the feeder cadre of Sub Divisional Clerks or w.e.f. the date of their appointment as Clerks, their service as Clerk is also to be added to the feeder cadre of Sub Divisional Clerks. The answer is not far to seek. Before advertng to the controversy, reference may be had to the Rules 9 & 11 of the Rules of 1980, which read as below:

“9. (1) Recruitment to the service shall be made in the manner indicated below:-

(a) x x x x x x x x x

(b) In the case of Head Clerks/ Head Assistants,-

(i) by promotion from amongst Accounts Clerks/ Assistants or Stenographers; or

(ii) by transfer of an official working on a similar post either in the service of Government of India or of a State Government.

(c) x x x x x x x x x

(d) In the case of Accounts Clerks/ Assistants,-

- (i) by promotion from amongst the Sub Divisional Clerks or Steno Typists; or
- (ii) by transfer of an official working on a similar post either in the service of Government of India or of a State Government.

(e) In the case of Sub Divisional Clerks,-

- (i) by promotion from amongst the Clerks; or
- (ii) by transfer of an official working on a similar post either in the service of the Government of India or of a State Government.

(f) In the case of Steno Typists,-

- (i) by direct recruitment 75%
- (ii) by promotion from amongst the Clerks who qualify the departmental test in type and shorthand; or 35% by transfer of an official working on a similar post either in the service of the Government of India or of a State Government.

(g) In the case of Clerks,-

- (i) by direct appointment 80%
- (ii) by promotion from amongst Peons, Chowkidars, Ferro-Khalasi, Malis, Sweeper, Gestorers Operators, Maters, Beldars, Mistry, Supervisors, Fitters, Carpenters, Telephone Attendants, Drivers, Operators, Helpers, Cleaners, Attendants, Fireman, Gangman, Jamadars, Wiremen, Electricians, Electric Mistries, Khalasis, Khansamas, Boatmen, Gauge Reader, Lab. Assistants and Horticulture Supervisor and Chairman; or 20% by transfer of an official working on a similar post either in the service of the Government of India or of a State Government.

(2) The promotion of Stenographer to the post of Head Clerk/ Head Assistant and Steno typist to the post of Accounts Clerks/ Assistant shall be governed by the Punjab Civil Services (Promotion of Stenographer and Steno typist) Rules, 1961.

(3) x x x x x x x x x”

x x x x x x x x x

“11. (1) Seniority, interse of members of the Service (both civil as well as Electrical and Mechanical) shall be determined by the length of continuous service on any post in the Service:

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre:

Note:- *The Service will consist of two cadres; one Civil and the other Electrical-cum-Mechanical. The seniority of Civil cadre will be separate than that of Electrical-cum-Mechanical cadre whose seniority will be combined:*

Provided further that in case of members appointed by direct recruitment, the order of merit determined by the Board, shall not be disturbed in fixing the seniority.

Provided further that in case of two or more members appointed on the same date, their seniority shall be determined as follows:-

- (a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or transfer;*
 - (b) a member appointed by promotion shall be senior to a member appointed by transfer;*
 - (c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and*
 - (d) in the case of members appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by the length of their service in the appointments, and if the length of such service is also the same, older member shall be senior to younger member.*
- (2) The seniority in the cadres of Circle Superintendent and Head Assistant/ Head Clerk will be provincial and it will be maintained by the Chief Engineer.*
- (3) The seniority in the cadres of Accounts Clerk/ Assistant, Stenographer, Sub Divisional Clerk, Steno Typist and Clerk will be on Unit basis and it will be maintained by the Superintending Engineer incharge of the Unit:*
Provided that if any official whose seniority is maintained at the Unit level is transferred from the Unit to the other, on administrative reasons or otherwise, his seniority in his parent Unit will remain intact.”

5.1

Rule 2 of Rules of 1961 reads as under:-

“2. Stenographers and Steno-Typists shall be eligible for promotion to the post of Assistant, Head Assistant, Deputy Superintendent or Superintendent, as the case may be in accordance with the provisions herein after appearing.”

6. A homogeneous reading of Rule 9 read with Rule 11 of the Rules of 1980 thus, clearly reflects that the post of Clerk is a feeder cadre post for promotion to that of Sub Divisional Clerk, which in-turn is the feeder cadre post for promotion as Assistant/Accounts Clerk. Furthermore, the posts of Accounts Clerks/Assistants or Stenographers, Sub Divisional Clerks and Steno-Typists are in different cadres with which post of Clerks does not constitute a common cadre. As against the aforesaid backdrop, the defence taken in the return as also the arguments addressed on the similar lines by the learned State counsel are that the eligibility for promotion to the post of Accounts Clerks/Assistants has to be determined by combined reading of Rules of 1980 with those of Rules of 1961, with particular emphasis on Appendix B of Rules of 1980 vis-a-vis Rule 4(2) of Rules of 1961. Taking recourse to the combined reading of the said Rules, the impugned seniority-list has been determined in terms thereof. In other words, *inter se* seniority of such Stenographers and Steno-Typists vis-a-vis Clerks was determined as per dates of their respective appointments against the post of Stenographers or Steno-Typists or Clerks, as the case would have been at the relevant time, on the elementary principle of earlier appointee being senior as well as two persons having been appointed on the same date, elder being considered as Senior. There is no quibble about that.

6.1 The question arises whether Rules of 1961 were to be made operative *qua* the post of Clerks and Sub Divisional Clerks also or they are applicable only to the Stenographers/Steno-Typists. A bare perusal of Rules of 1961 clearly shows that Rules of 1961 have been wrongly applied by the Department while clubbing the seniority of Sub Divisional Clerks with

Clerks. Admittedly, the post of Sub Divisional Clerk, in any case, is not mentioned as such in the Rules of 1961. The said position is also borne out from Rules 5(1) & (2) of Rules of 1961, which read as below:

“5 (1)	<i>The Junior Scale-Stenogrpahers and Steno-Typists shall, along with Clerks, be eligble for promotion tothe post of Assistant,after they have qualified in the testprescribed for the post of Assistant. On their apointment as Assistant they shall, like other Assistants, be eligible for promotion to higher posts on the clerical side on the basis of their seniority in the Assistant cadre</i>	<i>Promotion of junior scale Stenogrpaher and Steno-Typists</i>
(2)	<i>The inter-seseniority of such Junior Scale-Stenographers and Steno-Typists vis-a-vis Clerks shall be determined by the date of their continuous apointment against the post of Junior Scale-Stenographer or Steno-Typist or Clerk as the case may be, and if the dates of their apointment be the same, the elder shall be senior to the younger.”</i>	

6.2 Reading of the above goes on to show that the *inter se* seniority of Stenographers vis-a-vis Clerks shall be determined by the date of their continuous appointment on their respective posts and there is nothing in them to show that the service on the earlier held lower feeder posts of Steno-Typist or Stenographer is to be added to the service as Stenographer for nextpromotional post. In any case, even otherwise, it defies common sense that upon promotion, a person having gone up the ladder and holding seniority on the promotional post, which in-turn is a feeder post for further promotion, should be made junior while considering him for further promotion by giving another person additional seniority for service on the

lower sub feeder post and thereby the latter should be made senior for the purposes of considering third level promotion.

7. As an upshot of the above, the impugned order dated 05.03.2010 (Annexure P-11) in CWP-4579-2010 is set aside. Respondents are directed to re-cast the seniority-list in terms of view taken by the Court as hereinabove.

8. Likewise, order dated 11.03.2016 (Annexure P-4) in CWP-5308-2016 is also quashed. Respondents are directed to re-cast the seniority-list in terms of the said view take in the case.

9. Pending application(s), including CM-11173-CWP-2017 in CWP-4579-2010 seeking impleadment of applicant as respondent No.7, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 07, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No