

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25709-2015 (O&M)

Date of decision: December 21, 2022

Indu Bala

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. Tara Chand, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate and
Ms. Vidushi Kumar, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing the Minutes of Meeting of Departmental Promotion Committee (DPC) held on 22.09.2015 (Annexure P-15) as well as consequent order dated 23.11.2015 (Annexure P-16), supplied to the petitioner on 04.12.2015, whereby respondent No.3 has been promoted to the post of Private Secretary, Department of Women and Child Development, Haryana w.e.f. 09.08.2012 i.e., the date on which the petitioner was promoted to the said post, by alleging that she was immediately junior to him and the petitioner has been promoted to the post of Superintendent w.e.f. 09.08.2012.

2. Succinct factual background first as pleaded in the petition. Petitioner was appointed as Junior Scale Stenographer with the Social Welfare Department, Haryana through employment exchange on 27.09.1984

(Annexure P-1). Petitioner preferred CWP-2032-1987, which was disposed of vide order dated 20.10.1993 in view of the statement made by learned State counsel that case of the petitioner for regularization shall be considered in view of judgment rendered by Supreme Court in **State of Haryana versus Piara Singh**¹. During pendency of aforesaid petition, vide order dated 31.05.1991 (Annexure P-2), services of the petitioner were regularized on the post of Junior Scale Stenographer in the pay scale of Rs.1200-2040 plus usual allowances w.e.f. 01.01.1991. Said letter dated 31.05.1991 was superseded by another office order dated 18.07.1997 whereby date of regularization of services of the petitioner to the post of Junior Scale Stenographer were held to be 01.11.1986 instead of 01.01.1991. It was also stated that seniority of the petitioner vis-à-vis other employees appointed on regular basis shall be determined w.e.f. 01.01.1986. Vide order dated 08.09.1999 (Annexure P-4), petitioner was promoted to the post of Senior Scale Stenographer w.e.f. 21.02.1991. Vide letter dated 28.07.1999 (Annexure P-5), the Department of Woman and Child Development circulated seniority list of temporary Junior Scale Stenographers. In the said seniority list, petitioner was placed at No.2 and respondent No.3 was placed at No.4.

2.1 Vide order dated 29.03.2000 (Annexure P-6), petitioner was promoted to the post of Personal Assistant in the pay-scale of Rs.5500-9000 plus Rs.150 as special allowance with the condition that she will remain on probation for a period of one year. Later on, upon successful completion of said probation period, petitioner was allowed to draw due annual increment. Upon upgradation of post of Personal Assistant to that of Private Secretary,

petitioner was appointed as such. Respondent No.3 filed CWP-1462-1995 against the Department and Surinder Singh, which was allowed vide order dated 30.11.2022 directing that he declared as senior to said Surinder Singh and while holding his reversion on 10.03.1992 to the post of Junior Scale Stenographer to be bad, he was held entitled for consideration to be promoted to the post of Personal Assistant w.e.f. 05.12.1994 i.e., the date when his senior namely Surinder Kumar was promoted with all notional benefits. Pursuant to the order passed in aforesaid writ petition, vide an office order dated 10.06.2013, respondent No.3 was promoted to the post of Personal Assistant w.e.f. 05.12.1994. A supernumerary post of Personal Assistant was created for respondent No.3. Vide DPC meeting dated 31.03.2015 (Annexure P-11), without making petitioner aware, upon the representation of respondent No.3, his case was considered for promotion to the post of Private Secretary. In the said meeting, though it was observed that it would not be appropriate to revert the petitioner at this belated stage, DPC recommended to promote respondent No.3 to the post of Private Secretary and revert the petitioner in view of non-availability of post of Personal Assistant; further petitioner was recommended for the post of Superintendent. Petitioner made representations dated 20.03.2015, 30.03.2015 and 25.05.2015. Petitioner approached this Court vide CWP-12332-2015, which was allowed vide order dated 10.06.2015 (Annexure P-12) quashing minutes of DPC dated 27.03.2015 (Annexure P-11) and directed that fresh exercise be conducted within a period of two months. Further vide impugned office order dated 22.09.2015 (Annexure P-15), respondent No.3 has been promoted to the post of Private Secretary w.e.f. 09.08.2012 and petitioner was treated to be

promoted to the post of Superintendent w.e.f. 09.08.2012. Hence, the present petition.

3. In the return dated 21.01.2016 filed on behalf of respondents No.1 and 2, defence taken *inter alia* is as under:-

“3. That the true facts of the case are that the petitioner was appointed on *ad hoc* basis as Junior Scale Stenographer vide Memo No. 311/42/EAISW/84 dated 27.09.1984 for a period of six months from the date of joining or till a candidate recommended by the Subordinate Services Selection Board, Haryana, known as Haryana Staff Selection Commission, (henceforth called as Board) joins duty whichever is earlier (Copy of the same is annexed as Annexure P/1) and the petitioner joined as such on 27.09.1984. However, the petitioner remained in service after completion of tenure of six months although her services were liable to be terminated on joining of regular candidates recommended by the Board. The recommendations of respondent No. 3 was received from Board vide letter No. SSSB (Conf.)- 86/144 dated 08.12.1986 for appointment to the post of Junior Scale Stenographer under General category. When the appointment letter vide Annexure P/10 was issued to the respondent No. 3, the *ad hoc* services of the petitioner should have been terminated by the erstwhile Social Welfare Department, Haryana due to non-availability of General category post of Junior Scale Stenographer. Upon the joining of the candidates recommended by the Board vide aforesaid letter, the petitioner, under the apprehension of terminating her services being the *ad hoc* basis, preferred the Civil Writ Petition No. 2032 of 1987 which was disposed of on 20-10-1993 with the following directions:-

"Concededly, the petitioner had put in more than two years service prior to the filing of the present petition. Learned counsel for the state contends that her case for regularization of services shall be considered in view of the instructions of the State as also the judgment rendered by the Supreme Court in *State of Haryana V. Piara Singh*, 1992(5) SPJ 1 and if she fulfils all the conditions as mentioned in the instructions and the judgment aforesaid, her services shall be regularized. I order accordingly. However, till such time the case of the petitioner is considered for regularization, her services shall not be terminated. The petition is disposed off."

It is worthwhile to mention here that during the pendency of the aforesaid writ petition, the *ad hoc* services of the petitioner (Smt. Indu Bala) alongwith Smt. Sneha Lata and Smt.

Meena Kumari as Junior Scale Stenographer were regularized w.e.f. 01-01-1991 in compliance of Haryana Govt. Notification No. GSR/II/Const./Art 309 dated 28-02-1991 by erstwhile Social Welfare Department, Haryana vide order Endst. No. 34995-4010/EA2/SW/91 dated 19-06-1991(Annexure P/2). Further, according to the instructions issued by the Chief Secretary to Govt. of Haryana vide its letter No.6/4/90-5GSI dated 28-04-1997, the services of petitioner along with Smt. Sneha Lata, Junior Scale Stenographer were regularized w.e.f. 01-11-1986 instead of 01-01-1991 vide order dated 18.07.1997 (Annexure-P/3). Thereafter, the seniority list of Junior Scale Stenographers was prepared and objections were called from the concerned quarter vide Memo No. 52285-312/EA/WCD/99 dated 03-03-1999. After considering the objections, the seniority list of Junior Scale Stenographer was prepared and issued vide Memo No. 20896-930/EA4/WCD/99 dated 30-07-1999 to all the concerned officials for information. Thereafter, the petitioner was given promotion as Senior Scale Stenographer, Personal Assistant and Private Secretary with effect from 21.02.1991 (Annexure-P4), 08.12.1994 (Annexure-P6) and 09.08.2012(Annexure-P7) respectively.

4. *That in view of the judgment delivered by the Hon'ble High Court in CWP No. 1462 of 1995 titled as Rishi Pal Saini Vs. State of Haryana & others on dated 30.11.2012 it was directed that the respondent No. 3 (Sh. Rishi Pal Saini) was wrongly reverted on 10.03.1992 to the post of Junior Scale Stenographer and said order is, accordingly, quashed. Further it was directed that the petitioner shall be entitled for consideration to be promoted to the post of Personal Assistant w.e.f. 05.12.1994, the date when his junior, respondent No. 4 (Surender Singh) was promoted. It was further directed that the petitioner shall be further entitled for all the notional benefits as if he would not have been reverted from 10.03.1992 and also for the benefits of higher post of Personal Assistant w.e.f. 05.12.1994. In compliance with the aforesaid orders of Hon'ble High Court, the reversion order issued vide Endst. No. 19280-98/EA6/SW/92, dated 10-03-1992 was withdrawn meaning thereby Respondent No. 3 would have continued to the post of Senior Scale Stenographer w.e.f. 21-02-1991 i.e. the date when he was initially promoted as Senior Scale Stenographer. Further, the Government of Haryana has created a Superannuary post of Personal Assistant w.e.f. 05-12-1994 for promotion of Respondent No. 3 vide order Endst. No. 66/SW (3)/WCD/2013, dated 29-05-2013. Accordingly, the Respondent No. 3 was further promoted to the post of personal Assistant w.e.f. 05-12-1994 from the date his junior Sh. Surender Singh was promoted. Now, vide order Endst. No. 1178/SW3/2015 dated 02.12.2015 (Annexure-P/16), on the recommendation of DPC, (Annexure-p/15), the Respondent No. 3 has been ordered to be promoted as Private Secretary and petitioner treated as promoted to the post of Superintendent w.e.f. 9.8.2012 in the same pay band on which she was promoted to the post of Private*

Secretary to protect her present status and pay. In compliance of the said order, both the petitioner and respondent No.3 have joined on their respective posts. The said action of the respondent is legal, valid and sustainable in the eyes of law as justice have been meted out to both the parties i.e. petitioner and respondent no.3 and the same deserves to be upheld by this Hon'ble Court in view of the facts mentioned above. Therefore the present writ petition may kindly be dismissed.”

4. I have heard rival contentions of learned Senior counsels representing respective parties as well as learned Deputy Advocate General, Haryana representing the official respondents.

5. Before advertng to the rival pleadings and arguments canvassed on the similar lines, it would be relevant to refer to order dated 04.05.2016 passed by my learned Brother Deepak Sibal, J.(as he was then seized of the matter), which is reproduced herein below:-

“On 29.01.2016, this Court had passed the following order:-

"A perusal of the proceedings of the impugned Departmental Promotion Committee (Annexure-P15) shows that a tentative seniority list for the cadre of Junior Scale Stenographers was made on 01.02.1999 and circulated vide letter dated 03.03.1999 inviting objections from the effected employees. Respondent No. 3 – Rishi Pal is stated to have submitted his representation dated 15.03.1999 on which no decision was produced before the Departmental Promotion Committee. The written statement filed on behalf of the State of Haryana contradicts the afore said fact as in the same, it is submitted that after considering the objections of respondent No. 3, the seniority list of Junior Scale Stenographers was prepared and issued on 30.07.1999 with information to all concerned officials. In view of the afore referred contradiction between the proceedings of the Departmental Promotion Committee which was headed by the Principal Secretary, Women and Child Development Department, Haryana and the written statement filed on behalf of the State, I consider it just and appropriate to direct the Chief Secretary, Government of Haryana to reconcile the position and file an affidavit in this regard before the adjourned date. Adjourned to 09.02.2016."

In compliance of the above quoted order, an affidavit dated 23.02.2016 of Sh. D. S. Dhesi, Chief Secretary to Government of Haryana has been filed, a relevant extract of which is as under:-

"Further, that though the representation/objections dated 15.03.1999 of the respondent No.3 against the tentative seniority list was considered by the Department, however no final decision was taken on the same as mentioned above and the seniority list was issued on 30.07.1999 as such with information to all concerned officials. Needless to say, no decision on representation dated 15.03.1999 was conveyed to the respondent No.3 by the office. Accordingly during the course of Departmental Promotion Committee (DPC), it was rightly observed by the DPC that no decision on the representation dated 15.03.1999 of respondent No.3 was produced before the DPC. In view of the facts and circumstances cited above, it is evident that the contents of the DPC and the facts of the written statement filed by the State w.r.t. order dated 29.01.2016 of the Hon'ble Court are as per record. The afore referred contradiction, as observed by the Hon'ble High Court vide its order dated 29.01.2016 in the above case, between the proceedings of the DPC which was headed by the Principal Secretary, Women and Child Development Department, Haryana and the written statement filed on behalf of the State is clarified and reconciled accordingly."

A perusal of the above quoted extract of the affidavit shows that to the tentative seniority list dated 03.03.1999 of Junior Scale Stenographers, respondent No.3 had filed objections which were considered but no final decision was taken thereupon. It is further stated therein that no final decision on the afore-referred objections by respondent No.3 was conveyed to him.

The noting portion attached with the affidavit as Annexure A-3 has been perused which shows in depth consideration of the objections/representation filed by respondent No.3 in response to the grant of seniority to the petitioner, as Junior Scale Stenographer w.e.f. 01.11.1986 in the tentative seniority list dated 03.03.1999. The notings further go on to show that the main objection of respondent No.3 was that the petitioner-Indu Bala as Junior Scale Stenographer should be given seniority w.e.f. 30.09.1988 and not from 01.11.1986 and that he was the only person who had filed objections qua the tentative seniority granted to the petitioner as Junior Scale Stenographer. After considering the entire matter threadbare the notings further go on to show that a final decision was taken that the petitioner should be granted seniority as Junior Scale Stenographer w.e.f. 01.11.1986 and not from 30.09.1988, as claimed by respondent No.3, since that would be as per the stand taken by the State before this Court in a writ petition filed by one Meena Kumari against the grant of seniority to the petitioner-Indu Bala. In response to Meena Kumari's petition, the State had placed on the record of this Court a speaking order defending the grant of seniority to the petitioner as Junior Scale Stenographer w.e.f.

01.11.1986 and while accepting the stand of the State, Meena Kumari's writ petition had been dismissed. In view of these facts, it was felt that now the State could not and should not take any contrary stand. Thus, it was finally decided to grant seniority to the petitioner as Junior Scale Stenographer w.e.f. 01.11.1986 instead of 30.09.1988 as claimed by respondent No.3 and as a direct consequence thereof the seniority list was finalised and circulated. The noting portion further goes on to show that at more than one place, it has been observed that the seniority dispute between respondent No.3 and Surender Singh (another Junior Scale Stenographer) had nothing to do with the grant of seniority to the petitioner-Indu Bala as Junior Scale Stenographer w.e.f. 01.11.1986.

Prima facie the affidavit of the Chief Secretary, Government of Haryana dated 23.02.2016, referred to above is in conflict with the noting portion attached to the same affidavit and therefore the same cannot be reconciled.

The matter is serious but before proceeding any further with the matter, I direct the Chief Secretary, Government of Haryana to be present in Court on 06.05.2016 at 10.00 a.m. with the original record to reconcile his affidavit with the noting portions attached thereto.

Adjourned to 06.05.2016.

To be taken up at 10.00 a.m.”

6. *Apropos an affidavit dated 23.02.2016 of the then Chief Secretary was filed and the stand taken therein being apposite to the controversy in hand is reproduced herein below:-*

“2. The matter has been examined as per record. It has been observed that the seniority list of Junior Scale Stenographer was prepared and issued vide Memo No.52285-312/EA1/WCD/99 dated 03.03.1999. A copy of the same is attached as Annexure-A1. In reference of the aforesaid letter, the Respondent No.3 submitted his representation/ objections dated 15.03.1999. A copy of the same is attached as Annexure-A2 against the said tentative seniority list which was considered by the Department on file at that time. A true copy of relevant noting file NP-22 to 33 are enclosed as Annexure-A2 colly. As per the noting dated 25.05.1999 of the then concerned superintendent, it was observed that in view of point No.8 of salient feature of regular policy as mentioned in instructions of Chief Secretary, Haryana issued vide No.6/4/90-5GSI dated 28.04.1997, the seniority of all Class-III employees so regularized viz-a-viz Class-III employees appointed on regular basis shall be determined w.e.f. 30.9.88 (copy of relevant noting NP-22). However, in view of the objections/ comments dated 18.06.1999 and 07.07.1999 of the then Joint Director regarding the matter

being sub judice (refer copy of NP-24 to 27), the seniority of Sh. Rishi Pal viz-a-viz Smt. InduBala was not finalized and the seniority list dated 30.07.1999 was issued with the remarks that the seniority of Sr. No.3 & 4i.e. Surender Singh and Rishi Pal is subject to the decision of court case pending in Hon'ble High Court. It is evident from the above that after considering the objections, seniority list of Junior Scale Stenographer was prepared and issued vide Memo No.20896-930/EA4/WCD/99 dated 30.07.1999. A copy of the same is attached as Annexure-A4 to all concerned officials for information. Further, that though the representation/ objections dated 15.03.1999 of the Respondent No.3 against the tentative seniority list was considered by the Department, however no final decision was taken on the same as mentioned above and the seniority list was issued on 30.07.1999 as such with information to all concerned officials. Needless to say, no decision on representation dated 15.03.1999 was conveyed to the Respondent No.3 by the office. Accordingly during the course of Departmental Promotion Committee (DPC), it was rightly observed by the DPC that no decision on the representation dated 15.03.1999 of Respondent No.3 was produced by the DPC."

7. Learned Senior counsel for the petitioner, in support of his argument contends that in absence of challenge to order of promotion of petition by respondent No.3 alleging that she was junior to him, out of reasonable time period, the impugned order ought to be outright set aside. In support thereof, he would rely on **P.S. Sadasivaswammy versus State of Tamil Nadu²**, **Shiba Shankar Mohapatra &Ors. Versus State of Orrisa &Ors.³**, **Rajendra Pratap Singh Yadav and others versus State of U.P. and others⁴**, **State of Punjab and Anr. Versus Balkaran Singh⁵**, **Trilochan Punetha & etc. versus Public Service Tribunal, Uttarakhand at Dehradun & Others⁶**, **S.P. Yadav and others versus Lok Sabha and another⁷**, **Yunus (Baboobhai) A Hamid Padvekar versus State of**

²1975 (1) SCC 151

³2010 (12) SCC 471

⁴2011 (7) SCC 743

⁵2007 AIR (SC) 641

⁶2008 (4) ALL. LJ 386

⁷**CWP. (C) No.162-2013**

Maharashtra Through its Secretary and others⁸, Mr. Veduzo Sasu and 14 Ors. versus The State of Nagaland and 16 Ors.⁹, Sahdeo Kerketta son of late Budhua versus National Institute of Foundry & Forge Technology¹⁰, Manohar Lal versus H.P. Vidhan Sabha and others¹¹ and Bhagwan Prasad Singh versus State of Bihar and others¹².

8. Per contra, learned Senior counsel representing respondent No.3 would argue that once it is established that benefit of seniority was given to the petitioner wrongly, it is open to the official respondents to rectify the mistake at any stage and therefore, the entire reliance placed by learned Senior counsel for the petitioner on the judgments relied upon by him is of no consequence. In support of his argument that since the promotion given to the petitioner is not only wrong, but the entire process of doing so is vitiated and tainted and the petitioner cannot therefore, be given benefit thereof. He would argue that in somewhat similar circumstances when it was found that entire selection process in appointing a person to a particular post was vitiated, Supreme Court in the case of **Dr. M.S. Patil v. Gulbarga University and Ors.**¹³ held that even a delay of as long as 17 years is no ground to remove a tainted person from service once it is established that process of appointing was vitiated. Much emphasis has been laid on the delay on the part of respondent No.3 to challenge the seniority in question.

9. Let us first advert to the same. On first flush, if one is to go by the sheer chronology in abstract, it does appear that there has been an inordinate delay in challenging the seniority. However, on a closer scrutiny, it

⁸ 2009 (2) R.C.R. (Civil) 208

⁹ WA-11-2022

¹⁰ 2019 (1) J.C.R. 177

¹¹ 2017 LIC 10399

¹² 2008 (6) S.C.T. 666

¹³ 2010 (10) SCT 63

is revealed that not only respondent No.3 at any stage acquiesced to the seniority as a *fait accompli*, but on the other hand the pot remained boiling all throughout owing to another collateral litigation instituted by respondent No.3 vide CWP-1462-1995 challenging the promotion order dated 05.12.1994 of on Sh. Surinder Singh vide which, he was promoted to the post of Personal Assistant. Petitioner had claimed in his writ petition that despite his being No.1 in the merit-list of the Staff Selection Board on the post of Junior Scale Stenographer, he was denied the promotion and on the other hand, he had been reverted vide an order dated 10.03.1992 on the post of Junior Scale Stenographer from the post of Senior Scale Stenographer. In the aforesaid background, a tentative seniority-list dated 03.03.1999 (Annexure A-4) was circulated. Objections were called for. Pertinently, as on the date of circulation of the said seniority-list, respondent No.3 was not in the cadre of Junior Scale Stenographer. Owing to the pendency of the writ petition filed by the petitioner as noted above, it was specifically mentioned against the name of respondent No.3 that tentative seniority-list would be subject to the outcome of the writ petition bearing CWP-1462-1995 filed by respondent No.3. The said writ petition was finally disposed of vide order/ judgment dated 30.11.2022 vide which the claim of the petitioner was accepted and his writ petition was allowed, by my learned Brother Gurmeet Singh Sandhawalia, J. *inter alia* as below:-

“20. Another factor to be taken into consideration was that respondent-Department had prepared a joint seniority list of the Stenographers of both the languages in which the petitioner had been shown at Sr.No.1. This fact has not been denied by the respondents and the justification given by respondent No.4 is that it was a mistaken belief of the Department. The Department had also taken the opinion of the Board regarding the inter se seniority on 27.10.1994, after the petitioner had made a

representation on 25.10.1994. In pursuance of the request, the Board had opined on 03.01.1995 that the petitioner was senior to respondent No.4 and they were placed at merit No.1 & 3 respectively. The instructions of the Government dated 24.11.1962 would also show that the Chief Secretary had written to all the heads of the Department that inter se seniority amongst the direct recruits was to be maintained in the order of merit suggested by the Public Service Commission. Similar instructions dated 19.04.1971, pertaining to the seniority of direct recruits, recommended by Public Service Commission/Subordinate Service Selection Board, were also issued by the Chief Secretary, Haryana Government. In the said letter also, it was specified that for the employees recruited through the Board inter se seniority was to be determined according to the merit list prepared by the Board. It was also mentioned in the said circular that the seniority of candidates was fixed keeping in view their age and date of joining and these were against the Government instructions and, therefore, the rules of each class should be considered and action be taken accordingly.

21. *Thus, the defence of the State that the Chief Secretary had opined otherwise or in contradiction of the instructions of the Government, cannot be accepted and thus, the decision dated 10.03.1992, regarding the petitioner on the basis of the advice of the Chief Secretary, on the ground that respondent No.4 had joined earlier which is a mere fortuitous circumstance cannot be justified.*

22. *Another factor which is to be taken into consideration is that the Board, vide its letter dated 16.08.1995, has noticed that the petitioner had to clear the test of the Junior Scale Stenographer (English), at the speed of 100 w.p.m. with 8% mistake whereas a Hindi Junior Scale Stenographer had to attain the speed of 80 w.p.m. with 8% mistake. Admittedly, inter se between the parties, the petitioner was at S.No.1 and though even for a different language, undisputedly, and respondent No.4 cannot be placed at a pedestal higher than the petitioner. Therefore, the merit of the petitioner could not have been brushed aside and he is rightly entitled to claim seniority over and above respondent No.4. The purpose of test and the forming of the merit-list would be defeated if the contention of the State and the private respondent is to be accepted that the date of joining would be the relevant date. Counsel for respondent No.4 has relied upon the judgment of the Hon'ble Apex Court in State of Haryana & others Vs. Balwant Singh and others 1996 VAD SC 15 to contend that seniority is to be given from the date of joining of service. From a perusal of the said judgment, it would be clear that the Hon'ble Apex Court has held that seniority of the candidates has to be reckoned from the date on which they joined the service and not according to the merit list prepared, since in that case, due to litigation, the respondents could not join. Accordingly, the Hon'ble Apex Court held that the seniority was*

to be given from the date of joining in 1985-86 and not when letters of appointment were offered in 1972. Thus, the said judgment is not applicable to the present facts and circumstances of the case.

23. *Reliance was also placed upon the judgment in Bhey Ram Sharma & others Vs. Haryana State Electricity Board & others AIR 1993 SC 2573. The said judgment would not be applicable to the present case since in the said case, the appointments were made in pursuance to the advertisement on the basis that the appellants who in that case had to undergo a training course prior to joining and therefore, lost out on seniority as they joined later qua the respondents therein who had joined earlier, though selected by later advertisement.”*

10. Perusal of the aforesaid judgment would reveal that delay on the part of respondent No.3 was necessitated owing to the pending collateral proceedings before this Court and it is only after the outcome of the same that a fresh DPC was held and vide decision dated 27.03.2015 (Annexure P-11), it was recommended to promote respondent No.3 to the post of Superintendent. I am therefore of the opinion that there has been no delay on the part of respondent No.3 and therefore, all the judgments relied by the learned Senior counsel for the petitioner, to that extent, are not applicable in the present case. The decision of the DPC was challenged by petitioner in an earlier writ petition bearing CWP-12332-2015, which was disposed of with a direction to the Department that case of the petitioner vis-à-vis respondent No.3 shall be considered afresh and the earlier proceedings of DPC dated 27.03.2015 recommending name of respondent No.3 was quashed. Pursuant to the directions of this Court, both petitioner and respondent No.3 submitted their objections before the DPC which constitute of 5 members under the Chairmanship of Principal Secretary to the Department of Woman and Child resulting in passing of the impugned order dated 22.09.2015 (Annexure P-15), resulted on the basis of the recommendations made by the DPC after

considering rival objections. The impugned order is premised essentially on the following reasoning:-

“In view of the above points emerging from hearing of both the parties, their written submissions as well as the office record perused with regard to the claims of both the parties, it is found that Smt. Indu Bala continued in the service against Government instructions dated 24/4/1984 and 13/7/1988 as also against the terms of her own appointment letter dated 27/9/1984. She was further given seniority over Sh. Rishi Pal against the judgement passed in CW No. 2032 of 1987 in total contrast to the settled law, with regard to seniority of direct recruitee viz-a-viz adhoc appointee. She was wrongfully promoted to the post of Private Secretary in the Department instead of Sh. Rishi Pal who was fully eligible for the post of Private Secretary and in terms of Hon'ble High Court order dated 30/11/2012 passed in the case of Rishi Pal V/s State of Haryana and Others as well. He was also entitled to all the consequential benefit of seniority, promotion and monetary benefits (arrear of pay etc.) at par with Smt. Indu Bala.

Therefore, in view of the facts emerging above, Sh. Rishi Pal Saini deserves and is entitled to seniority over Smt. Indu Bala who was wrongly given seniority over Sh. Rishi Pal Saini and as such, Sh. Rishi Pal Saini be promoted to the post of Private Secretary in place of Smt. Indu Bala giving all consequential benefits.

As Smt. Indu Bala was retained in service though in violation of her terms of her appointment and the Govt. Instructions, but was later regularized and promoted as Senior Scale Stenographer, Personal Assistant and Private Secretary, Committee feels that a sympathetic and lenient view is taken and has decided that she may be promoted and adjusted against the vacant post of Superintendent for which she is fully eligible, to avoid heart burning to her. Therefore, a supernumerary post of Private Secretary be got created from FD and adjusted her to that post. In the meantime, till such supernumerary post of Private Secretary for her is sanctioned, she may be appointed to the vacant post of Superintendent, being also eligible for such post, in the department to protect her present status and emoluments as both their posts of Private Secretary and Superintendent are equivalent posts.

Recommendations:

Under the circumstances and facts cited above, the committee is of the view that Sh. Rishi Pal is senior to Smt. Indu Bala. Sh. Rishi Pal was recommended by SSS Board, Haryana for regular appointment as Junior Scale Stenographer on 08/12/1986 and was appointed as such w.e.f. 26/06/1987 in the department and promoted as Senior Scale Stenographer w.e.f. 21/02/1991. His last 10 years ACRs are Outstanding. There is no

doubt on his Integrity, nor there is any disciplinary action pending against him. Sh. Rishi Pal Saini fulfills the criteria for promotion to the post of Private Secretary and thus, he is recommended for promotion, with all the consequential benefits, to the post of Private Secretary presently being held by Smt. Indu Bala since 09/08/2012.

Now, after deciding the seniority in favour of Sh. Rishi Pal Saini vis-à-vis Smt. Indu Bala, Sh. Rishi Pal Saini deserves to be promoted to the post of Private Secretary from the date his junior Smt. Indu Bala stood promoted to that post, I.e. w.e.f. 09/08/2012.

As there is only one sanctioned post of Private Secretary in the department, and also in view the fact that 5 posts of Superintendent in the department are already lying vacant which are in the same pay band of Rs.9300-34800+4200GP as that of Private Secretary and also have the same feeder cadre as for the post of Private Secretary from where Smt. Indu Bala was promoted, it is proposed that Smt. Indu Bala be treated as promoted to the post of Superintendent from the date, i.e. 09/08/2012, on which she was promoted to the post of Private Secretary, to protect the present status and pay of Smt. Indu Bala, keeping in view her service and track record.

Smt. Indu Bala fulfills the requisite qualification and experience for the post of Superintendent as she has more than ten years experience as Personal Assistant. Regarding her experience as Assistant, vide office order Endst. No.2113-2122/EA-4/WCD/07, dated 17/04/2007, she had been assigned the duties of Assistant in view of her request dated 05/07/2007.

The case may be moved to the Finance Department to sanction a supernumerary post of Private Secretary for her as a personal measure in the pay band of Rs. 9300-34800+4200GP so that she may be posted against the post of Private Secretary when it is sanctioned by the Finance Department.”

10.1 Perusal of the above reasoning as above in the impugned order reveals that merely corrective steps were taken relying on **State of Haryana and others versus Piara Singh and others**¹⁴ inasmuch as undue benefit of seniority was given to the petitioner w.e.f. 01.11.1986 flies in the face of administrative instructions dated 24.04.1984 (Annexure R-1). The relevant of the said instructions is as below:-

“I am directed to invite your attention to Haryana Government Circular letter No.9-IGS/71/2910, dated the 5th Feb,

1971 on the subject noted above in which instructions were issued that when recommendations from Haryana Public Service Commission/ Subordinate Services Selection Board, Haryana are received then the adhoc employees should be discharged in the same order in which they were appointed i.e., those appointed first should be discharged first and so on.

The matter has been reconsidered by Haryana Government and it is felt that the above principle of “first come first go” clashes with the principle of seniority in adhoc appointment. It has, therefore, now been decided that henceforth the junior most adhoc employees should be discharged first and so on. This decision shall take effect from the date of issue of this letter and may be brought to the notice of all the officers/ officials concerned for compliance.”

11. A bare perusal of the above instructions shows that on appointment of respondent No.3 as a regular incumbent on the post in question, which was earlier occupied by petitioner on ad hoc basis had the instructions *ibid* been applied, same would have resulted in dispensing/ termination of her services as on 26.09.1987 i.e., date of joining of respondent No.3. Be that as it may, petitioner was given seniority w.e.f. 01.01.1991 on the basis of **Piara Singh’s** judgment.

12. As an upshot of the discussion above, I see no reason to interfere with well reasoned impugned order with which I am in agreement and in any case, neither is there any irregularity in facts nor in law so as to warrant the interference under extra-ordinary writ jurisdiction of this Court by exercising powers of judicial review.

13. In the parting, I may also hasten to add that trite it is to say that ad hoc services cannot be considered in fixing the seniority. Reference may be had to Supreme Court judgment rendered in **State of West Bengal versus Aghore Nath Dev**¹⁵ read with **S.K. Saha versus Prem Prakash and**

others¹⁶. Furthermore as regards the equity, interest of the petitioner is duly protected as no financial benefits have been taken away from her and not only that even her status in service has duly been protected by giving her the post of Superintendent, which is equivalent to that of the Private Secretary on which she had earlier been promoted. Concededly, the pay-scales of the post of Superintendent and that of the Private Secretary are equivalent and therefore, petitioner is not prejudiced in any manner by the corrective measures which have been taken vide impugned order. That apart, as mentioned in the impugned order itself, the DPC has recommended that the case may be moved to the Finance Department to sanction a supernumerary post of Private Secretary for the petitioner as a personal measure in the pay band of Rs. 9300-34800+4200GP so that she may be posted against the post of Private Secretary when it is sanctioned by the Finance Department. If/when that recommendation is accepted, the petitioner's perceived grievance over her re-designation as Superintendent will also get redressed.

- 14. Dismissed. No order as to costs.
- 15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 21, 2022
mahavir

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No