

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

239

CWP No.37001 of 2019

DATE OF DECISION : 2nd JUNE, 2022

**Punjab and Haryana High Court Employees' Welfare Association,
Punjab & Haryana High Court, Chandigarh, through its President
Mr. Sanjeev Verma, #521A, Sector-7B, Chandigarh**

.... Petitioner

Versus

**Union Territory of Chandigarh through its Secretary Sports, Sector-
17, Chandigarh & others**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for petitioner-Association.

Mr. Anil Mehta, Senior Standing Counsel, with
Mr. Parminder Singh Kanwar, Additional Standing Counsel
for respondents No.1 & 2-U.T. Chandigarh.

Mr. S. P. Jain, Additional Solicitor General of India with
Mr. Pankaj Gupta, Senior Penal Counsel
for respondents No.3 & 4.

Mr. B. R. Mahajan, Advocate General, Haryana with
Mr. Harish Rathee, Deputy Advocate General, Haryana
for respondent No.5.

Dr. Anmol Rattan Sidhu, Advocate General, Punjab with
Ms. Harsimrat Rai, Deputy Advocate General, Punjab and
Mr. Rajbir Atri, Advocate for respondent No.6.

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RAJBIR SEHRAWAT, J. (Oral)

1. The petitioner has filed this petition under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari for quashing the Advertisement dated 11.12.2019 (Annexure P-2) issued by respondent No.2 for conducting trials for selection of Badminton Team of Union Territory, Chandigarh to participate in the All India Civil Services Badminton Tournament to be held from 27.12.2019

to 02.01.2020 to the extent it debars/disallows the employees of the Punjab and Haryana High Court from participating in the trials; with a further prayer that a direction be issued to the respondents to treat the employees of High Court Establishment at par with the employees of UT Chandigarh and at par with the employees of the state Governments; along with certain other prayers.

2. The main prayer giving rise to the present petition was relating to participation of the employees of the Punjab and Haryana High Court (in short, the High Court) in the trials for selection of Badminton Team of Union Territory, Chandigarh; which was to participate in the All-India Civil Services Badminton Tournament. Under the interim orders of this court; the members of the petitioner-Association have already participated in the said tournament and the said event is already over, therefore, the prayer to that extent has become infructuous. However, the petitioner-Association has also made a prayer for getting parity with employees of the State Governments/Union Territory/Government of India; on several other aspects. In fact, the issue of this parity had come up before this court by way of **CWP No.12090 of 2011** titled as **Kanchan Sindhu versus State of Haryana and others** and this court had taken up the issue. At that point of time also, the benefit prayed in the petition was granted to the employees of the High Court establishment under the interim orders of this court. However, the said petition was ultimately disposed of vide order dated 16.11.2011 on the basis of assurance of the State Governments that they will frame policies for generalizing and making the benefits available to the employees of the High Court establishment at par with the employees

of their respective State Governments. However, the said policies have not been brought before this court till date. This has necessitated taking up the issue, particularly, with reference to the prayer of the petitioner-Association for treating the employees of the High Court establishment at par with employees of the State Governments, employees of the Union Territory, Chandigarh and the employees of the Government of India; qua certain 'non-cadre specific' benefits, that is, the benefits which, *per se*, are not arising from the concerned Cadre Rules governing the employees as member of any particular cadre under the Government of India, State Governments, Union Territory, Chandigarh or the establishment of the High Court, rather; are created for them only in their capacity as employees of the government concerned; though some conditions for grant of which may have collateral relation to pay scale or level of the cadre of such employees.

3. The issues which have come up for claim qua parity, mainly, as pointed out by the petitioner-Association are; as under:

- I) To fix quota for High Court employees in Government Houses allotment in Panchkula and Mohali; like it is done in Chandigarh.
- II) To treat the High Court employees at par with the employees of State of Haryana /State of Punjab/ UT Chandigarh and those of Government of India; for eligibility for booking and stay; at State Guest Houses, PWD Rest Houses, Canal Rest Houses situated within or outside the respective States and the Haryana and Punjab Bhawans

situated at Delhi, CPWD Guest Houses/ UT Guest Houses or any other type of Central Government Guest Houses.

- III) For treating the employees of the High Court and their ward at par with the employees and their wards; of State of Haryana /State of Punjab/ UT Chandigarh and those of Government of India; for eligibility for any reservation in any employment and in the admission in Medical/ Engineering/ Colleges and Universities in Haryana, Punjab and Union Territory, Chandigarh; when any quota or reservation is carved out for the employees of the State of Haryana /State of Punjab/ UT Chandigarh and those of Government of India, having domiciles of respective States and UT; or otherwise.
- IV) For considering the employees of High Court at par with the employees of respective State Governments for the purpose of Nomination / Recruitment to Haryana Civil Services and Punjab Civil Services; by the respective State Governments.
- V) To treat the High Court Employees at par with employees of respective State Governments/ UT Chandigarh for the purposes of treatment, including the charges and the ward/room allotment entitlements, at OPD / for Indoor Treatment facilities and for the Medical Tests; in Government Hospitals or Governmental Medical Facilities of the respective State Governments / UT Chandigarh.
- VI) To consider the spouses of the High Court employees; who are working in the State respective Governments; for

‘Couple Case Transfers’ and for deputation; at par with the spouses of the State Government employees.

VII) To consider the High Court Employees at par with employees of respective State Governments/ UT Chandigarh for the purposes of any quota percentage fixed for respective State Government Employees/UT Employees/ Central Government Employees; regarding allotment of Plots/ Housing Scheme / Land Allotment for Group Housing Societies, floated by HSVP/PUDA/GMADA or any other Instrumentalities of the States of Punjab, Haryana and Union Territory, Chandigarh.

VIII) Directing the All India Civil Services Board to allow the sportsperson from amongst the employees of the High Court to participate in all the games; at par with employees of State Governments and of Union Territory, Chandigarh.

IX) To treat employees of the High Court at par with the employees of the State of Punjab, State of Haryana, Union Territory, Chandigarh and of the Central Government regarding all Non-Cadre Specific benefits/ facilities, which are not specifically mentioned above.

4. Since the benefits are being claimed by the employees of the High court establishment at par with the employees of the State of Punjab, State of Haryana, Union Territory, Chandigarh and of the Central Government, therefore, the Advocate General, Punjab; Advocate General, Haryana; Senior Standing Counsel for the Union Territory, Chandigarh and Additional Solicitor General of India were also requested

to assist the court; and also to point out if the State Governments/UT Chandigarh Administration or the Government of India had any objection qua grant of the said benefits to the employees of the High Court establishment, and if yes; then why? The state of Punjab has filed written statement in this regard. The only objection taken by the state of Punjab is that the employees of the High Court establishment are governed by their separate Rules promulgated by the Chief Justice of the High Court under Article 229 of the Constitution of India. They are neither the employees of the state of Punjab nor are they under the control of the Punjab Government. Hence, they are not entitled to the benefits/facilities extended by the state Government to its own employees. Hence, the petition deserves to be dismissed qua the prayers made hereinabove. The state of Haryana and UT Chandigarh, though have not come up with any written statements as such, however, have taken up almost similar stand. Ld. Advocates General for the state of Punjab and Haryana, as well as, Ld. Senior Standing Counsel UT Chandigarh have also reiterated the factum of the employees of the High Court establishment being a separate category, free from the controls of the state government. On a court query, if the State Governments or UT Chandigarh or the Union of India had any serious objection to the issues being raised by the employees of the High court establishment, the learned Advocates General for the States, Ld. Additional Solicitor General of India and Id. Senior Standing Counsel UT Chandigarh have submitted in unison that; other than as mentioned above; they do not have any objection to the demands raised by the employees of the High Court establishment, as such, except to the extent of involvement of any financial implications.

Submitting that the same deserve to be considered in details, the Advocates General of the States have submitted that the State Governments be granted time to apply their mind to the issues. However, this court finds that the State Governments have already availed about 11 years of time to consider these issues yet have not come up with any decision in that regard. Moreover, the state of Punjab has already opposed the prayer of the petitioner by filing their written statement and similar are the stands of the other Governments, therefore, this court finds it appropriate to proceed further with the decision on the matter.

5. The Constitution of India envisages a Parliamentary Democracy in which federal and unitary trait are interwoven with a fair degree of complexity. The due implementation of this democratic system is bound to give rise to some Centre-State and Inter-State disputes. Moreover, the Constitution of India has granted certain Fundamental Rights to the citizens; as protection against any possibility of misuse of the might of the State. All these aspects require Judicial Review of the Executive/Administrative actions, as well as, of the Legislative Instruments made by the Executive and the Legislative Branches of the State. Therefore, the Judicial System has been integrated into the scheme of the Constitution as a separate and independent part of the Indian Statecraft. Article 1 of the Constitution of India defines the constituent States and Union Territories of the Union of India; as included in Schedule-I. Article 214 of the Constitution prescribes a High Court for each State in the Union of India; with a further provision in Article 231 authorizing establishment of a common High Court for two or more States and Union Territories. Though, to ensure the independence of

judiciary, the Constitution of India has left the control of the establishment of the High Court with the Judiciary only, however, the fact remains that the High Court and its establishment performs the Constitutional functions in relation to the affairs of the State(s)/UT(s) under its jurisdiction and the Union of India. This High Court performs the said Constitutional functions qua the affairs of the State of Punjab, State of Haryana, as well as, qua the affairs of the Union Territory, Chandigarh and the Government of India. Merely the fact that the judiciary has been conferred by the Constitution; a status which is independent of the Executive and Legislature controls in its functioning, would not denude the Judicial establishment of its being an integral part of the State as a Constitutional Entity.

6. Although the Ld. Counsels for the States and the UT Chandigarh have pleaded Article 229 of the Constitution of India to portray the High Court establishment as a separate category; being governed by the separate Rules framed by the Chief Justice, however, this Article itself is in favour of the petitioner. Rather, the fact that the establishment of a High Court is an integral part of the State concerned; as a Constitutional Entity; is made amply clear by the Article 229 of the Constitution of India itself. This Article contemplates and makes provision for making of Rules and controlling the condition of service of the employees of the High Court establishment by the Chief Justice of the High Court. However, any Rules so to be framed by the Chief Justice are subject to the law framed by the state legislature; and the Rule relating to the salaries, allowances, leave or pensions, require the approval of the Governor of the State. Furthermore, the administrative expenses of High

Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, have been charged upon the Consolidated Fund of the State, with a further stipulation that any fees or other moneys taken by the Court shall form part of that Consolidated Fund. Therefore, the entire financial liability qua the establishment of the High Court is upon the state exchequer. Moreover, the High Court does not have independent power to impose taxes only for generation of Revenue and creation of assets and resources. Adjudicatory facility has been envisaged and provided to the citizen/litigants either free of cost or on nominal charges, again, as fixed by the Legislature or the Executive, and which are prescribed to go to the Consolidated Fund of the State. Hence the High Court and its establishments have every right to share the resources of the State as a Constitutional Entity. The framers of the Constitution were wise enough to apprehend and envisage a persistently uneasy relationship between the Executive and the Legislature on the one hand and the Judiciary on the other hand. Therefore, in the matter of the financial requirements of High Court and the judicial establishment towards proper performance of their judicial function; they have not been left to either the mercy or even to the unbridled discretion of the state government. The said liability has been conclusively fixed upon the state government. Therefore, despite not being subject to the State Government Cadre Rules and despite being independent of control of the State Government and, further, despite not being employees of the State Government, the employees of the High Court establishment are fully entitled to their due share in utilization of the resources of the State; like any other employees of Executive or the

Legislative establishments of the State. The state government is not obliging them by incurring for them the expenses from the state exchequer. Therefore, even the ground of any possible financial implications in treating the employees of the High Court establishment at par with the employees of the state governments or the employees of UT Chandigarh, in the abovesaid and the like matters, is not sustainable.

7. The employees working under the Executive Government and the Legislature are also governed by their respective Cadre Rules and are entitled to the Cadre benefits thereunder. However, certain other benefits are also granted by the State Governments to their employees, in their capacity as 'Government Employees' only, outside their cadre benefits. These benefits may be having some collateral dependency in relation to the cadre status of such employees, length of service or their scales of pay or the salary drawn by them; or may be; even *de hors* any such conditions like their cadre status or their salary structure, as such. These kinds of benefits are additional benefits to the employees of the State Governments/Union Territory, Chandigarh/Government of India only in their capacity of being 'Government Employees'. But such benefits also involve utilization of the resources of the State as a Constitutional Entity. Once the Legislature and the Executive, which are primarily responsible for framing policies for the Government, can utilize the resources of the State - as Constitutional Entity; for their own employees, then there is no reason why the employees of the High Court establishment should be denied the benefit of participation in the benefits being provided by the State out of the resources of the State - as a Constitutional Entity. Accordingly, this court finds that the employees of the High Court establishment are entitled to be put at par with the employees of the State Governments, Union Territory, Chandigarh under

the jurisdiction of this court, as well as, at par with the employees of the Government of India, so far as the 'Non-Cadre Specific' benefits mentioned above or the like; are granted to the employees of the respective State Governments/Union Territory, Chandigarh/Government of India. Mere fact that some finances are involved in a scheme/benefit, would not be ground to deny the parity to the employees of the High Court establishment with the employees of the State Governments; although, if any specific expenses are to be incurred for participation in any scheme/for availing any benefit, the same has to be borne by the concerned employee of the High Court establishment, but only at par with the employees of the state Govt. concerned or the employees of the UT Chandigarh or the employees of the Central Government; as the case may be.

8. In view of the above, the present petition is allowed. The employees of the High Court establishment are ordered to be put at par with the employees of the State Governments of Punjab, Haryana, Union Territory, Chandigarh, as well as, at par with the employees of the Central Government in the matters of 'Non-Cadre Specific' benefits being granted; or to be granted; by the respective Governments to their respective employees. The list of such benefits, though not limited to, but would include the benefits as mentioned below:

- (i) In the matter of entitlement and eligibility for any reservation in any employment and in the admission in Medical/ Engineering/ Colleges and Universities and other institutions in and under the control of the state of Punjab, Haryana and Union Territory, Chandigarh; when any quota or reservation is carved out for the employees of the State of Haryana /State of Punjab/ UT Chandigarh and those of

Government of India or their wards, having domiciles of respective States and UT; or otherwise.

(ii) In the matter of and for the purposes of treatment, including the charges and the ward/room allotment entitlements, at OPD / for Indoor Treatment facilities and for the Medical Tests; in Government Hospitals or Governmental Medical Facilities of the respective State Governments / UT Chandigarh.

(iii) In the matter of and for the purpose of Nomination / Recruitment to Haryana Civil Services and Punjab Civil Services; by the respective State Governments.

(iv) In the matter and for the purpose of any quota percentage fixed for respective State Government Employees/UT Employees/ Central Government Employees; regarding allotment of Plots/ Housing Scheme / Land Allotment for Group Housing Societies, floated by HSVP/PUDA/GMADA/Chandigarh Housing Board or any other Instrumentalities of the States of Punjab, Haryana and Union Territory, Chandigarh.

(v) In the matter of 'Couple Case Transfers' policy and for the purposes of any deputation; to consider such spouses of the High Court employees; who are working in the respective State Governments, at par with the spouses of the State Government employees.

(vi) In the matter of Government Houses allotment in Panchkula and Mohali; by fixing a quota; like it is done in Chandigarh.

(vii) In the matter and for the purpose of eligibility for booking and stay; at State Guest Houses, PWD Rest Houses, Canal Rest Houses situated within or outside the respective States and the Haryana and Punjab Bhawans situated at Delhi, CPWD Guest Houses/ UT Guest Houses or any other type of Central Government Guest Houses.

(viii) In the matter and for the purpose of participation in all the games; organized by or under the aegis of the All-India Civil Services Board.

(ix) Any other and all 'Non-Cadre Specific' benefits/ facilities, which are not specifically mentioned above; but which are granted by the respective State Governments and the UT Chandigarh to their own employees.

9. Accordingly, the State of Punjab and State of Haryana through their respective Chief Secretaries, UT Chandigarh through Advisor to the Administrator and the Government of India through Ministry of Personnel; are directed to issue the necessary Notifications making the employees of the High Court establishment eligible for the above-said Schemes/benefits; within a period of four months from the date of receipt of the certified copy of this order. A specific clause to this effect shall be included by the respective Governments in all the future policies which are in the nature of the above-said benefits. It is further ordered that in case there is any doubt qua a policy or the benefit being a 'Non-Cadre Specific' benefit, as mentioned above, the same shall be clarified by the Registrar General of the High Court by issuing notification with approval of the Chief Justice of this Court; as the Cadre Controlling authority. Once such notification is issued by the Registrar

General, that shall be taken as a conclusive provision on the said aspect. None of the State Governments, Union Territory and Central Government, shall be entitled to deny the benefits to the employees of the establishment of this court once such a notification is issued by the Registrar General of the High Court.

10. During the arguments, it has also been brought to the notice of the court that for availing certain benefits, the State Governments/UT Chandigarh issue some cards/identity cards to their respective employees. Therefore, wherever there is such requirement or convenience for issuance of a card/identity card, the same shall also be issued by the Registrar General of this Court, which shall be mandatorily recognized and accepted by the respective Governments / UT Chandigarh/Central Government and their concerned authorities.

11. Copy of this order be provided to the Advocates General for the States of Punjab and Haryana and to the Senior Standing Counsel, Union Territory, Chandigarh, as well as to the Additional Solicitor General of India for the necessary compliance. Furthermore, the copy of this order be also sent to the Chief Secretaries of the States of Punjab and Haryana; Advisor to the Administrator, Union Territory, Chandigarh as well as, to the Ministry of Personnel, Government of India.

2nd JUNE, 2022
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>