

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIAGRH

CWP No.16737 of 1990 (O&M)

Reserved On: 17.04.2023

Decided on:26.05.2023

Ministerial Staff Association

...Petitioner

Versus

State of Punjab and others

...Respondents

CWP No.12196 of 2014 (O&M)

Dilbag Rai and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.Malik, Senior Advocate, with
Mr. Sandeep Dhull, Advocate
for the petitioner(s)

Mr. D.K.Singal, Addl.A.G., Punjab

ANIL KSHETARPAL, J.

1. With the consent of the learned counsels representing the parties, two connected writ petitions involving identical issues are being disposed of by a common order.

2. In the first round, Civil Writ Petition No.16737 of 1990 was allowed by the learned Single Judge on 15.07.2010. However, the same was set aside by the Division Bench while directing decision of the writ petition afresh.

3. Though, the validity of Rule 1(i) of the Punjab Roadways (Ministerial) State Service Class-III, Rules 1977 has been challenged in the

writ petition, however, on 16.01.2020, the learned counsel representing the petitioner expressly stated that he does not wish to press the aforesaid prayer.

4. On 17.04.2023, the following order was recorded:-

“Arguments have been heard at length.

On the one hand the learned senior counsel representing the petitioner while relying upon the judgment passed in Kartar Singh and others vs. State of Punjab and others, AIR 1990 (Punjab) 1 and S.I.Rooplal vs. Lt. Governor through Chief Secretary (2001) 1 SCC 644 contends that once a conscious decision was taken by the Government to merge the post of the Diesel Pump Attendants with that of Clerks, there was no occasion for placing the Diesel Pump Attendants, who were re-designated as Clerks, at the tail of the seniority list particularly when their pay scales were equivalent.

On the other hand, the learned State counsel while relying upon Rule 9 of the Punjab Roadways (Ministerial) State Service Class-III Rules Rules 1977 contends that the post of Diesel Pump Attendant was a feeder cadre post for promotion to the post of Clerk, hence the petitioners have been rightly placed at the tail of the seniority list because their earlier service as a Diesel Pump Attendant cannot be counted as Clerk because they became clerk for the first time on re-designation in the year 1999.

One more issue which would require adjudication is “Whether the State can be permitted to make recovery from the petitioners in view of the fact that most of them have already retired?”

Judgment reserved.

A photocopy of this order be placed on the file of the other connected case.

5. In order to appreciate the controversy involved in the present case, it is appropriate to take notice of Rule 9 (1)(f) and (h) which are extracted as under:-

9. (1) Appointment to the Service shall be made in the following manner namely:-

- (f) In the case of Clerks, including Ledger Keepers-
- (i) 90 per cent by direct appointment; and

(ii) 10 per cent by promotion from amongst Diesel Pump Attendants, Restorers, Daftries and Peons if they fulfil the requisite qualifications; or

(iii) by transfer or deputation of an official already in the service of Government of a State or Government of India, if a suitable candidate is not available by the methods referred to in sub-Clauses (i) and (ii);
- (h) In the case of Diesel Pump Attendants-
- (i) by direct appointment ; or

(ii) by transfer or deputation of an official already in the service of Government of a State or Government of India, if a suitable candidate is not available by the method referred to in sub-clause (i)”

6. In 1977, the rules were amended and Sr.No.6 of appendix 'B' attached to the rules reads as under:-

Sr. No.	Designation of the post	Mode of recruitment	Qualifications and experience for appointment by		
			Promotion	Direct recruitment	Transfer
1.	2.	3	4	5	6
	6. Clerk (The post of Cashier, Assistant Cashier, Store Keeper, Assistant Store	(i) Eighty-five per cent by direct appointment		(i) Matriculate in second division or has passed Senior Secondary Part-II	

	Keeper and Assistant Accountant have already been redesignated as Clerk. <u>The post of Diesel Pump Attendant to be re-designated as Clerk)</u>	(ii) Fifteen per cent by promotion from amongst the Restorers and the Class-IV employees	Should be- (i) Matriculate in second Division or has passed Senior Secondary Part-II Examination from a recognized university or institution; and (ii) Should have an experience of working on the post of restorer or class-IV employee for a minimum period of five years and should have qualified typing test in (Punjabi) or he will have to qualify a test in Punjabi type writing to be conducted by the Board or by the appointing	examination from a recognized university or institution; (ii) Qualifies a test in Punjabi typing to be conducted by the Board or by the appointing authority as the case may be at the speed of thirty words per minute.	
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			authority at the speed of thirty words per minute within a period of one year from the date of appointment: Provided further that in case he fails to qualify such test within the stipulated period he shall be allowed annual increment only with effect from the date of passing such test and he shall not be paid any arrears for the period he could not qualify the test.		
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7. It has come on record that the posts of cashier/Assistant Cashier/Assistant Account/Store keeper and Assistant Store Keepers in the Transport Department were designated as Clerk/ Senior Clerk as per the instructions dated 06.10.1994, whereas the posts of Diesel Pump Attendants were merged with the category of clerks with effect from the date of notification dated 27.01.1999. The petitioners herein were Diesel Pump Attendants. Though, they claim that their qualification and pay scale were at par with the Clerks, however, the same is disputed by the State as well as the

private respondents with reference to the service rules. It is evident on perusal of Rule 9(1)(f) that the post of Diesel Pump Attendant was one of the feeder cadre amongst various other feeder cadres to the post of Clerks. No doubt, in the year 1999, decision was taken to merge the Diesel Pump Attendants with the cadre of Clerks, however, their posts in the hierarchy were treated to be at a lower pedestal than the Clerks. In such circumstances, a conscious decision was taken by the Government to place the Diesel Pump Attendants at the tail of the seniority list of Clerks is required to be examined.

8. The learned senior counsel representing the petitioners rely upon a full Bench judgment of the Court in **Kartar Singh and others (supra)**. In that case, a number of persons working in the consolidation department became surplus in that department resulting in retrenchment. However, the authorities absorbed these retrenched employees in the revenue department. It was in that context the Bench held that the officials working in the consolidation department shall not lose their seniority. In the present case, the petitioners were not working on the same or equivalent posts in the different department. Hence, the aforesaid judgment is not applicable.

9. The next judgment relied upon the learned counsel is **S.I. Rooplal (supra)**. In that case, the petitioner was a Sub Inspector in the Border Security Force (BSF) and was transferred on deputation to Delhi Police in the cadre of Sub Inspector (Executive). Subsequently, he was absorbed in the transferred post. In that context, the Supreme Court held that

the petitioner would not lose his seniority and he will be entitled to count his service in the BSF as Sub Inspector towards seniority in Delhi Police in the cadre of Sub Inspector (Executive). Hence, the aforesaid judgment is also not applicable to the fact of the present case.

10. The learned senior counsel representing the petitioners has not contended that there is an infringement of a provision of a service rule while framing fresh seniority list to reflect the position of the Diesel Pump Attendants at the tail. The members of the petitioners' association, who were merged with the in the cadre of the Clerk for the first time in the year 1999, in absence of rule supporting their case, cannot claim that the service as Diesel Pump Attendants should be counted towards Clerk as the posts of Diesel Pump Attendants were feeder cadre for the post of Clerk.

11. The next relief sought by the members of the petitioners' association is with respect to the alleged recovery to be made from the petitioners. It has been alleged that most of them have already retired. The members of the petitioners' association are not alleged to have misrepresented or instrumental in receiving the more amount than they deserve. The members of the petitioners' association are Class-III employee. As already noticed, most of them have already retired.

12. In view of the law enunciated in the **State of Punjab and others vs. Rafiq Mahsih (White Washer) (2014) 8 SCC 883**, the recovery of the excess payment from the retired erstwhile Class-III employee would not be justified. Hence, in the facts of the case, it is observed that no recovery from

the members of the petitioners' association with respect to the subject matter of the present writ petition shall be made.

13. With these writ petitions, both the writ petitions are disposed of.

14. All the pending miscellaneous applications, if any, are also disposed of.

26th May, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO