

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101+207)

CM-19367-CWP-2023 in/and
CWP-6575-1996
Date of Decision : November 22, 2023

Kartar Singh Saharan and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. Vijay Vardhan, Advocate and
Mr. Kartikey Chaudhary, Advocate, for the petitioners.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Mr. R.K. Arya, Advocate, for the applicant
in CM-19367-CWP-2023.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-19367-CWP-2023

Learned counsel for the applicant submits that present application may kindly be disposed of having been not pressed any further with liberty to the applicant to avail appropriate remedy in case he feels aggrieved against any action.

Ordered accordingly.

CWP-6575-1996

1. In the present writ petition, the challenge to the promotion of the private respondents from the post of Statistical Assistant to that of Assistant Registrar with a further prayer to direct the respondents to

consider the claim of petitioners, who were working as Inspectors for promotion to the post of Assistant Registrars.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioners were working on the post of Inspector, Cooperative Societies on which post they were appointed on different dates, which are depicted in paragraph 2 of the writ petition. The private respondents were working on the post of Statistical Assistant. The next promotion is to the post of Assistant Registrar, Cooperative Societies, which post was to be filled up as per Punjab State Cooperative Service (Class II) Rules, 1958 (hereinafter referred as “1958 Rules”). The method of recruitment was given in Rule 5 of the 1958 Rules according to which, the said post was to be filled up by promotion from State Service Class III meaning thereby that whosoever is working on a class III post, is eligible for promotion to the post of Assistant Registrar.

4. Though, the posts of Statistical Assistant were very much in existence in the Haryana Cooperation Department but the Statistical Assistants were not being considered for promotion to the post of Assistant Registrar. The Department framed new Rules in the year 1980 which were known as Haryana Cooperation Department Group ‘C; (Executive) Rules, 1980, which were notified on 14.03.1980. In the said Rules, the post of Statistical Assistant was also included in Group C service i.e. class III post. Despite the said amendment to the 1980 Rules, the Statistical Assistants working in the Department were not being considered for promotion to the post of Assistant Registrar, which action was challenged in ***CWP No.4196 of 1983 titled as Rameshwar Dass and another vs. State of Haryana and***

others, decided on 13.07.1992 (Annexure P-1). Learned Single Judge, vide order dated 13.07.1992, held that once under 1980 Rules, the status and the rank of Statistical Assistant is higher than that of Inspector, the Statistical Assistant is entitled for promotion to the post of Assistant Registrar in preference to the Inspector. Keeping in view the said direction given, the Statistical Assistant's claim was considered and they were promoted to the post of Assistant Registrar, which order is under challenge in the present writ petition.

5. It may be noticed that the said judgment of the Coordinate Bench of this Court was challenged by the Haryana State Cooperative Inspector and Sub Inspector Association by filing CWP No.13348 of 1992 which came up before the Division Bench. The petitioners were also part of the said Association which had challenged the said judgment dated 13.07.1992. The Division Bench vide order dated 15.12.1993, the dismissed the said writ petition holding that the Statistical Assistants are entitled for promotion to the post of Assistant Registrar having higher status and analysis given by the learned Single Judge vide judgment dated 13.07.1992 was upheld qua the status given to the Statistical Assistant, which Post also formed part of class III Rules. It was thereafter, in the year 1995 that for the first time for promotion to the post of Assistant Registrar, ratio between the Statistical Assistant and the Inspector was fixed by the Government of Haryana. The 1980 Rules were amended in the year 1995 to grant the quota in the cadre of Assistant Registrar for the feeder cadre of Statistical Assistant and the Inspector according to which, the post of Assistant Registrar was to be divided between Statistical Assistant and Inspector in the ratio of 1:8.

argues that though the judgment dated 13.07.1992 was given by the Coordinate Bench in the year 1992 but the said judgment has not taken into consideration the fact that from the year 1986 till 1991, the pay scale of both the post was same though, once again in the year 1991, the pay scale of the post of Statistical Assistant was increased than that of Inspector, hence, from 1986 to 1991, it cannot be said that the post of Statistical Assistant was having a higher pay scale than that of Inspector.

7. The second argument raised by the learned senior counsel for the petitioners is that in the year 1981, the ratio of 8:1 was fixed between Inspector and Statistical Assistant, hence, the same should have been adhered to while making the promotion and in case, the same is adhered to, promotion of the private respondents is bad in law.

8. Learned counsel for the respondents submits that the present petition is liable to be dismissed on the simple ground that once the Coordinate Bench while passing order in CWP No.4196 of 1983, decided on 13.07.1992, approved the higher status of post of Statistical Assistant as compared to the post of Inspector so as to give them preference over the Inspector for promotion to the post of Assistant Registrar as well as the judgment of the Division Bench in CWP No.13348 of 1992, which was filed by the Association, of which the petitioners were the members, wherein the promotion of Statistical Assistant to the post of Assistant Registrar in preference to the Inspector was upheld and the interpretation given by the learned Single Judge vide judgment dated 13.07.1992 was upheld, hence, the subsequent filing of the present petition challenging the promotion of the private respondents which promotion of private respondents were ordered on the basis of the order passed by this Court, is

not at all maintainable.

9. Learned counsel for the respondents further submits that though there was a letter issued in the year 1981 fixing the quota but the said letter was a proposal only to be given effect after the amendment of rules in question whereas, the said amendment was only carried out in the year 1995 hence, the letter dated 24.04.1981 being relied by the learned senior counsel to claim the quota between the Cadre of Inspector/Statistical Assistant, cannot be accepted.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. From the facts, which have been narrated hereinbefore, it is clear that since 1980, the Statistical Assistants were part of the Class III cadre so as to be entitled for promotion to the post of Assistant Registrar. The said benefit was not being given to the Statistical Assistant which action of the respondent-State came up for judicial scrutiny in CWP No.4196 of 1983. Learned Single Judge held that as per the 1980 Rules, for the purpose of promotion, the Statistical Assistants are higher in status and rank than the Inspector hence, Statistical Assistants have a better claim for promotion as compared to the Inspector. The relevant paragraph of the order passed by the learned Single Judge is as under:-

“ After hearing the learned counsel for the parties, I am of the view that there is considerable force in the contention of the learned counsel for the petitioners. A bare perusal of Appendix ‘B’ to 1980 Rules shows that for the purpose of promotion to the post of Statistical Assistant, apart from having certain academic qualifications, an experience of three years as Inspector, Cooperative Societies, is necessary. This would go to show that the post of Statistical Assistant in 1980 Rules is higher in status and rank than that of Inspector, in as much as it is as Inspector, Cooperative Societies, who has three years

experience as such and has certain academic qualifications who is eligible for promotion to the post of Statistical Assistant. It is also not disputed that the pay scale of the post of Statistical Assistant is higher than that of an Inspector Cooperative Societies and even the academic qualifications prescribed for direct recruitment to the post of Statistical Assistant are higher than for direct recruitment to the post of an Inspector, Cooperative Societies. Rule 5 of the 1958 Class III Rules, provides that the post in the service shall be filled by promotion from class III. Now if an Inspector is eligible for promotion to class II service, why should not a Statistical Assistant, who is higher in rank and status, be not eligible for consideration for promotion? No justifiable reason has been given by State Government as to why Statistical Assistant are not eligible for promotion to the post in Class II Service. If more the none categories are eligible for promotion to the next higher rank, it is always open to the State Government to provide certain quota for each category, but in absence of any such quota, according to me, the higher rank has to be exhausted first before going to the lower rank, which may also be eligible for promotion to a particular post. It has not been suggested on behalf of the State Government that any quota has been fixed for all the eligible categories for being promoted to class II Service. This being the factual matrix, since the Inspectors, Cooperative Societies, are eligible for promotion to class II service, there is no reason to deny the same right of consideration for promotion to Statistical Assistants. The denial of such right would be, to my mind, violative of class II Rules as also the equality clause enshrined in Article 16 of the Constitution of India.”

12. A bare perusal of the above reproduction would show that the Statistical Assistants have been treated at a higher rank/pedestal as compared to the Inspector for promotion to the post of Assistant Registrar.

13. The argument which has been raised by the learned senior

counsel for the petitioners is that though Statistical Assistants were having a higher pay scale upto the year 1986 but from the year 1986 to 1991, the pay scale for the post of Inspector and Statistical Assistants remained the same though in the year 1991, the Statistical Assistants were again given the higher pay scale, hence, from the year 1986 to 1991, it cannot be said that the Statistical Assistants were higher in status as compared to the Inspector. The said argument cannot be accepted in view of the findings which have been recorded by the Coordinate Bench wherein, on the basis of the Rules, the higher status was given to the post of Statistical Assistants on the basis of the qualification and experience and not on the basis of the pay scale. Once, the pay scale was not taken into account by the Coordinate Bench to hold the post of Statistical Assistant at a higher footing than the post of Inspector to claim promotion to the post of Assistant Registrar, the argument that the pay of the Statistical Assistant and Inspector remained same for a period of five years, will not grant them equal status so as to claim promotion to the post of Assistant Registrar by claiming equality.

14. Even otherwise, it may be noticed that prior to 1986, it is a conceded position that the Statistical Assistant were having a higher pay scale though for a limited period, the pay scale of Statistical Assistant and the Inspector remained the same but the said anomaly was challenged by the Statistical Assistant, which was accepted by the Government in the year 1991 so as to again grant the benefit of higher pay scale to the Statistical Assistant as compared to the Inspectors, which shows that the Statistical Assistants were treated at a higher pedestal as compared to Inspectors even by the Government for the grant of the pay scale and that is why, the higher pay scale was again restored to the Statistical Assistant in the year 1991.

Hence, the argument which has been raised by the learned senior counsel to claim that the post of the Inspector is equivalent to the post of Statistical Assistant, cannot be accepted.

15. The second argument, which has been raised by the learned senior counsel is that as per the letter dated 24.04.1981, there has to be a ratio of promotion for the post of Assistant Registrar qua the feeder cadre of Inspector as well as Statistical Assistant. The letter dated 24.04.1981 is reproduced hereunder for the ready reference.

“ Sub: Recruitment to the post of Assistant Registrar, Cooperative Societies, Haryana from the Statistical Assistants fixation of ratio between Inspector Cooperative and Statistical Assistants.

2. Reference: Your Office memo no. Admn. 11/BAG 115 dated 12.2.1981.

The Government has decided to fix the ratio of 8:1 between Inspector Cooperative and Statistical Assistants respectively for the purpose of promotion to the post of Assistant Registrar, Coop. Societies, Haryana.

3. In every slab of 9 vacancies to be filled by promotion the vacancy at no. 5 will go to the Statistical Assistant for promotion as Assistant Registrar, Cooperative Societies, if a Statistical Asstt. gets promoted as Statistical Officer before the arising of 5th vacancy, this vacancy (i.e. 5th) would thus go to the Inspectors. If a Statistical Assistant gets promoted as Statistical Officer after the 5th vacancy has arisen he would be promoted as such not no vacancy would be Statistical Assistant in the next slab of 9.

Revised draft service rules for class II may be sent accordingly.”

16. A bare perusal of above would show that the said proposal was to come into effect only after the service rules are amended. It was

mentioned in the letter itself that the draft service rules for the Class II post

be sent accordingly. This shows that till the service rules are amended so to provide the quota in the service rules, the said letter could not have been given effect to. Rather in earlier proceeding, State never pleaded any quota for effecting promotions between the Cadre of Statistical Assistants and Inspectors.

17. Even otherwise, the said letter was very much available with the Inspectors at the time when CWP No.4196 of 1983 as well as CWP No.13348 of 1992 were decided. No such claim was raised by the petitioners at that time and even Govt. never pleaded quota.

18. Keeping in view the fact that the petitioners have already lost through their Association in the similar claim raised in CWP No.13348 of 1992, challenging the promotions of the private respondents in the cadre of Assistant Registrar does not arise especially when the said promotion was result of the direction given by the competent Court of law for granting promotion to the Statistical Assistant from the date they gained the eligibility under 1980 Rules.

19. No other argument was raised.

20. As of now, it may be noticed that not only the petitioners but even the private respondents have retired from service since long. Upsetting the promotions, which were ordered on the basis of direction given by the competent Court of law, at this stage, even otherwise is not feasible.

21. No ground is made out for any interference by this Court.

22. Accordingly, the writ petition is dismissed.

November 22, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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