

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

CWP No.2478 of 1996 (O&M)

Date of Decision:07.08.2023

Dalip Singh and others

...Petitioners

$$V_S$$

State of Haryana and others

...Respondents

2. **CWP No.10705 of 2006**

Dalip Singh and others

...Petitioners

 V_S

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.R. Yadav, Advocate
for the petitioners.

Mr. Tapan Kumar Yadav, DAG, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, two writ petitions are being decided which are between the same parties wherein, promotions of private respondents to the post of Assistant Registrar, as well as to the post of Deputy Registrar have been challenged. Certain facts need to be mentioned for correct appreciation of the issue in hand.

2. Petitioner No.1 joined as an Inspector on 02.04.1973 whereas petitioners No.2 and 3 joined as Inspector on 02.04.1974. Further promotion is to the post of Assistant Registrar. Initially, the said post was being governed by the Punjab State Cooperative Subordinate Service Rules, 1936, which were later on repealed and amended by Haryana Cooperation Department Group C (Executive) Rules, 1980. The claim of the petitioner is that when the petitioners were appointed in the cadre of Inspector, private respondents were working as Sub Inspectors, which is a subordinate post to that of Inspector but later on, those Sub

Inspectors i.e. the private respondents were re-allocated to the cadre of Statistical Assistant and thereafter by the impugned order dated 01.02.1996, were given further promotion to the post of Assistant Registrar in preference to the petitioners. The said action of the department was challenged by the petitioners by filing CWP No.2478 of 1996. During the pendency of the said petition, private respondents were further promoted as Deputy Registrar, which order has been challenged by petitioners by filing CWP No.10705 of 2006.

3. Challenge to the promotion of the private respondents to the post of Assistant Registrar is on the ground that once the petitioners joined as Inspectors in the year 1973/1974 and the private respondents were working on the post of Sub Inspector, they cannot jump over and above the petitioners, so as to get the benefit of further promotion as Assistant Registrar in preference to them.

4. The said argument has been resisted by the learned State counsel on the ground that all the facts have not been stated by the petitioners, while filing the petition as, the private respondents, though at one point of time in the year 1973, when the petitioners were working as Inspectors, were working as Sub Inspectors but as the posts of Statistical Assistant were created by the department, same were to be filled up as per the decision of the department, as no Rules were framed for filling up the said posts and the competent authority within the department in its wisdom had decided that the post of Statistical Assistant will be filled up from the Graduates in Mathematics or Economics with three years experience in the collection, scrutiny or interpretation of statistical data in the government offices or in a business concern of repute and keeping in view the fact that at that relevant time, private respondents, who gave option to be appointed as Statistical Assistants, their claim were considered along with all the candidates who opted to be transferred to the cadre of Statistical Assistant

keeping in view the decision of the government and all private respondents who fulfilled all the requisite qualifications, were absorbed in the cadre of Statistical Assistant. As per the respondents, further promotion to the post of Assistant Registrar has been made on the basis of Rules, which govern the service conditions, according to which, Statistical Assistants as well as Inspectors were eligible for promotion to the post of Assistant Registrar and separate quota has been fixed for each of the feeder cadre for further promotion as Statistical Assistant and private respondents were found within their quota for promotion to the post of Assistant Registrar, they were promoted in their own quota of Statistical Assistant, hence question of promoting juniors as being alleged by the petitioners is not correct as at the time of promotion, petitioners as well as private respondents were working in different cadres, both of which were the feeder cadres to the post Assistant Registrar having separate quota, hence, it is prayed that claim of petitioners that promotion of private respondents is bad, is liable to be set aside.

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

6. The first question, which arises for determination in the present case, is that whether the petitioners are to be treated senior to private respondents with regard to their promotion to the post of Assistant Registrar. It may be noticed that prior to the year 1980, private respondents, keeping in view the decision of the government, were absorbed as Statistical Assistants, which is totally a separate cadre. There is no challenge to the order of absorption/transfer of private respondents to the cadre of Statistical Assistant. Once the private respondents were absorbed in the cadre of Statistical Assistant, it cannot be said that since absorption of the private respondents on the said post, there was any *inter se*

seniority between the petitioners and private respondents as both were working in different cadre having separate quota for promotion as Assistant Registrar. Further, it also a conceded position that for promotion to the post of Assistant Registrar, as per rules governing their service, Inspectors as well as the Statistical Assistants were eligible keeping in view the quota provided. The Government considered the private respondents for promotion to the post of Assistant Registrar keeping in view their eligibility, posts were filled up by passing the impugned order of promotion, hence, the claim of the petitioners that they are senior to private respondents and have a preferential right of promotion to the post of Assistant Registrar cannot be accepted as, it is a conceded position that private respondents and petitioners were working on different feeder cadre posts from which they were to be promoted to the post of Assistant Registrar on the basis of quota provided for both the feeder posts, hence, there was no joint *inter se* seniority of the cadre of Statistical Assistants with that of Inspectors, hence, claim of the petitioners that they were senior to private respondents cannot be accepted.

7. Further prayer of the petitioners is that absorption of the private respondents in the cadre of Statistical Assistant is bad for the reason that the petitioners should have been given a chance to compete for the post of Statistical Assistant, which option was never given to them. It may be noticed that private respondents were absorbed in the cadre of Statistical Assistants prior to the year 1980. Nothing has come on record that petitioners ever represented or contested the transfer of private respondents to the post of Statistical Assistant at any given point of time. Even in the present writ petition, though averments have been made that private respondents were given undue benefit while absorbing them as Statistical Assistant but there is no challenge to the said order of absorption in the

cadre of Statistical Assistant, hence, once even while filing the present petition, there is no challenge to the absorption of private respondents to the post of Statistical Assistant, petitioners cannot be allowed to say that question qua absorption of the private respondents to the post of Statistical Assistant, which was done 15 years prior to the filing of the present petition, can be adjudicated as to whether the same is valid or not, especially, when the same is not under challenge. Hence, once the private respondents and petitioners belong to different cadres, petitioners cannot raise any grievance qua the promotion of the private respondents to the post of Assistant Registrar.

8. Learned counsel for the petitioners further argues that even otherwise, the Statistical Assistants have been promoted as Assistant Registrar whereas as per the rules governing the service, on the date when promotions were made, Rules of 1980 and 1995 were in operation, according to which, out of 9 posts of Assistant Registrar, only 1 post could have been given to the Statistical Assistant, hence, on this account also, promotion of private respondents to the post of Assistant Registrar is bad and is liable to be set aside.

9. It may be noticed that though promotions of private respondents have been made in February, 1996, but as per Annexure R-3/5, promotions to the post of Assistant Registrar have been made with retrospective effect i.e. from the year 1980 onwards. That being so, 1995 Rules will not govern the aspect of promotion as, the date of promotion given to the private respondents is much prior to the date when 1995 Rules came into being, hence, the said 1995 Rules cannot govern the terms and condition of promotion, so as to contend that only 1, out of 9 posts of Assistant Registrar, can be given to the Statistical Assistant, hence, on this ground also, claim raised by the petitioners cannot be accepted.

10. Learned counsel appearing for the petitioners further submits that promotion of private respondents to the post of Assistant Registrar is contrary to Rule 8 of the Punjab State Cooperative Services Class-II Rules, 1958. Learned counsel submits that according to Rule 8, no member of the said service shall be eligible for promotion to the service unless duly approved by the government as candidate and included in the list of candidates maintained by the Registrar. It may be submitted that said Rules of 1958 were amended by the Haryana Cooperation Department Group C (Executive) Rules, 1980. Keeping in view said 1980 Rules, the claim of the Statistical Assistants was directed to be considered by this Court, while passing judgment in CWP No.4196 of 1993 on 13.07.1992 wherein a direction was given to consider and promote the Statistical Assistants to the post of Assistant Registrar from the date they had become eligible under 1980 Rules. Once there is specific direction given by this Court for promotion of Statistical Assistant to that of Assistant Registrar from the date they became eligible, the respondents complied with the said order by giving them promotion as Assistant Registrar with retrospective effect, which fact is clear from order Annexure R-1, hence, ground being taken by the petitioners that 1958 Rules have been violated is of no avail as promotions have been made under 1980 Rules and that too, keeping in view directions given by this Court.

11. Even otherwise, present petition was filed in the year 1996. The petitioners as well as private respondents have already retired from service long ago. Changing the position at this stage will be of no use. Even otherwise, once neither petitioners nor respondents are in the service, uprooting the benefit granted to the respondents at this stage i.e. after a period of approximately 30 years of the order under challenge, will serve no purpose.

12. Keeping in view the above, no ground is made out to set aside the orders of promotion of private respondents to the post of Assistant Registrar and thereafter to the post of Deputy Registrar.
13. Once promotion of private respondents as Assistant Registrar is being upheld, writ petition No.10705 of 2006 by which the further promotion of the private respondents to the post of Deputy Registrar has been challenged, cannot be accepted.
14. No ground for interference is made out by this Court in both the writ petitions and the same are dismissed.

(HARSIMRAN SINGH SETHI)

JUDGE

August 07, 2023

Pankaj*

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No