

CWP-12435-2015 (O&M)
and other connected cases 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.CWP-12435-2015 (O&M)

Gurwinder Singh and another
....Petitioners

Versus

State of Punjab and others
..Respondents

2.CWP-23168-2015 (O&M)

Gurwinder Singh
....Petitioner

Versus

State of Punjab and others
..Respondents

3.CWP-19150-2022 (O&M)

Raj Kumar and others
....Petitioners

Versus

State of Punjab and another
..Respondents

4.CWP-14575-2015 (O&M)

Kamaldeep Kaur and others
....Petitioners

Versus

State of Punjab and others
..Respondents

5.COCP-1179-2022 (O&M)

**CWP-12435-2015 (O&M)
and other connected cases** **2**

Baljeet Singh and others
....Petitioners

Versus

State of Punjab and others
..Respondents

Date of decision: 27.01.2023
Reserved on: 19.01.2023

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dheeraj Kumar, Advocate
for Mr. H.P.S.Ishar, Advocate for the petitioner

Mr. H.C.Arora, Advocate for the petitioner
in CWP-19150-2022

Mr. Gurpreet Singh, Addl. AG, Punjab

Mr. R.K.Arora, Advocate
for the petitioner in COCP-1179-2022
for respondent no.3 to 11, 13 to 18 & 20 to 22
in CWP-12435-2015
for respondent no.3, 4, 6, 8 to 14 & 16 to 29
in CWP-14575-2015
and for intervenor in CWP-19150-2022

ANIL KSHETARPAL, J

1. By this order, four Civil Writ Petitions i.e CWP-12435-2015, 23168-2015, 19150-2022, 14575-2015 and one COCP-1179-2022 shall stand disposed of.

2. According to the learned counsel representing the petitioners, the following questions need adjudication:-

“(1) Whether Rule 20 of the Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 has overriding effect of the provisions contained in Punjab Civil Services (Promotion of Stenographer and Steno Typists)

Rules, 1961 where under Stenographer and Steno Typists, along with Clerks were eligible for promotion as Senior Assistant.”

(2) Whether in view of the judgment rendered by a Division Bench of this Hon’ble Court in Piara Singh vs. State of Punjab and another quashing the notification dated 07.06.2001, the Punjab Civil Services (Promotion of Stenographer and Steno Typists) Rules, 1961 are still applicable?”

3. The relevant facts, in brief, are required to be noticed to understand the controversy involved in this batch of writ petitions.

4. The aforesaid issues arise with respect to the validity of the seniority list of Clerks, Steno Typists and Stenographers drawn on 21st May, 2015 in the Department of Soil and Water Conservation, Punjab.

5. The following are three different service Rules which will be referred to while deciding the cases:-

a) the Punjab Civil Services (Promotion of Stenographer and Steno Typists) Rules, 1961 (hereinafter referred to as the ‘1961 Rules’)

b) the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 as amended upto date (hereinafter referred to as ‘1994 Rules’)

c) The Punjab Soil and Water Conservation and Waste Land Development Sub Office (Group C) Ministerial Service Rules, 2001 (hereinafter referred to as ‘2001 Rules’)

6. As per Rule 2 of 1961 Rules, the officials working as Stenographers or Steno Typists are entitled to be considered for promotion to the post of Assistants, which is extracted as under:-

*“2. Stenographers and Steno Typists
shall be eligible for promotion to the post of*

Assistant, Head Assistant, Deputy Superintendent of Superintendent as the case may be, in accordance with the provisions hereinafter appearing.”

7. Subsequently the 1994 Rules were notified and it is evident that these lay down general and common conditions of service. The relevant Rule for the purpose of decision of this case is Rule 20, which is extracted as under:-

“20. Over riding effect. - The provisions of these rules shall have effect notwithstanding anything contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State

8. At this stage, it is important to note that in the year 2015, the 1994 Rules were amended and a provision was made in them to promote the Steno Typists/ Stenographers to the post of Senior Scale Stenographers. It is not disputed that in the Department of Soil and Water Conservation, the post of Senior Scale Stenographer does not exist.

9. In the year 2001, the Punjab Soil and Water Conservation and Waste Management Department, Rules 2001 were notified, in which there were no avenues of promotion of the officials working as Steno Typists/ Stenographers in the Department of Soil and Water Conservation. This led to the filing of various writ petitions in the High Court. In **Piara Singh vs State of Punjab and another**, CWP-20485-2006, a Division Bench of this Court, after considering the various aspects of the matter, quashed the 2001 Rules, which were notified vide notification dated 7th June, 2006. The operative part of the judgment reads as under:-

“We have heard learned counsel for the parties and perused the record from which we have found that the petitioner had made a categorical averment in the writ petition that at the time of his appointment, his services were governed by the 1961 Rules and as per Rule 5(1) of the 1961 Rules, the Junior Scale Stenographers and Steno- typists along with Clerks were eligible for promotion to the post of Assistant after qualifying the test prescribed for the said post. This fact is not denied by the official respondents rather no answer has been given in this regard which means that the averment made by the petitioner is correct to the extent that he was governed by the 1961 Rules in which there were avenues for promotion to the post of Senior Assistant. It is also admitted by the official respondents that the petitioner had passed the Assistant Grade Examination in the year 1992 naturally when the 1961 Rules were in vogue. More-so, all that has been stated in the written statement is that 2001 Rules have been framed in which there is no avenue for promotion for the Junior Scale Stenographers and Steno-typists and the 100% promotion to the post of Senior Assistant is meant for the Clerks. It is also not denied that the Department of Agriculture had realized the difficulties of the petitioner and suggestions were made for amendment in the 2001 Rules which has been accepted by the Punjab Public Service Commission, as mentioned in para 7 of the writ petition, and there is no denial in the written statement to it except that the matter has to be finalized by the Council of Ministers, though, much water has flown thereafter as the recommendations were accepted by the Punjab Public Service Commission on 28.02.2005. From the resume of the aforesaid facts, one thing is established that in terms of Rule 6 and Appendix-B of the 2001 Rules, there were no promotional avenue for the petitioner which he was earlier having under 1961 Rules.

In Dr. Ms. O.Z. Hussain's case (supra), it was held as

“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of

promotion, the nonmedical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate."

In view of the aforesaid discussion, we are of the considered opinion that the notification dated 07.06.2001 is patently illegal, arbitrary and discriminatory inasmuch as no avenue for promotion is provided to the persons like the petitioner who was earlier having the same in the 1961 Rules, despite the fact that he had passed the Assistant Grade Examination way back in the year 1992 and was eligible for promotion to the post of Senior Assistant since then. Thus, both the writ petitions are allowed and the impugned notification dated 07.06.2001 is hereby quashed."

10. On, 7th March 2017, CWP No. 26078 of 2016 '**Balwinder Singh and others vs State of Punjab and others**' relating to Department of Agriculture came up for decision before this Court. In that Department, the posts of Senior Scale Stenographers did exist which were meant to be filled exclusively by promotion from the post of Junior Scale Stenographers and Steno typists. In that context, the Division Bench declared that Senior Scale Stenographers and Steno Typists cannot claim promotion to the post of Assistants. The operative part of the judgment in **Balwinder Singh's cse (supra)** reads as under:-

“[7] It is undeniable that 1994 Rules are applicable to all Government Departments in the State of Punjab wherever there are no separate service rules formulated by the Department. Similarly, where the departmental service rules are silent on an issue, such Rules stand supplemented by the provisions of 1994 Rules.

[8] In the Department of Agriculture to which the petitioners belong, there are no separate service rules to regulate the conditions of service. The service conditions of the petitioners and other employees of Agriculture Department are therefore governed under the 1994 Rules only.

[9] The claim of the petitioners for promotion as Senior Assistants and Rules 5&6 of 1961 Rules has been however, taken away by virtue of Rule 14-A inserted vide the impugned notification dated 15.03.2015 whereunder the posts of Senior Assistants are now to be filled up by promotion from amongst Clerks only having atleast five years' working experience. In the absence of any other contrary rule having force of law, the provisions of 1994 rules have occupied the field and are enforceable to regulate the conditions of services of all the employees of Department of Agriculture.

[10] At this juncture, it is useful to refer to Rule 20 of 1994 rules which is loaded with a non-obstante clause whereby provisions of 1994 rules have got an over-riding effect on any other rules for the time being in force.

*“...20. **Over-riding effect:-** The provisions of these rules shall have effect notwithstanding anything contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State.....”*

[11] It may thus be seen that even if there are other statutory rules under which the employees of Agricultural Department can seek some service benefits, such Rules cannot be enforced if these are contrary to the provisions of 1994 Rules. The claim of petitioners for promotion to the posts of Senior Assistants now has to be determined under Rule 14-A of 1994 Rules and the said rule has an over-riding effect over the provisions of the rules contrary thereto, in view of non-obstante clause inserted in Rule 20 (ibid).

[12] The resultant effect is that the reliance placed on by the petitioners on Rules 5 and 6 of 1961 Rules has lost its strength and the said provision has become totally defunct by virtue of Rule 14-A read with Rule 20 of 1994 Rules.

[13] The second plea taken by the petitioners is also misconceived and misdirected. By virtue of Rule 15-A of 1994 Rules, now post of Senior Scale Stenographer is exclusively meant for promotion from amongst the Junior Scale Stenographers. The post of Senior Scale Stenographer on one hand and that of Senior Assistant on the other, carry the same pay-scale and same pay-band. The petitioners have thus got an alternative promotional avenue of equal status under the 1994 Rules. Incidental fact that there are more posts of Senior Assistants and less of Stenographers, cannot be seen an element of arbitrariness in the rules as the vacancy position in a cadre is an incidence of service. It is well settled that chance of promotion is not a condition of service.”

11. Subsequently in **Darshan Singh and another vs. State of Haryana** CWP. 27577 of 2013 decided on 23.04.2015, a direction was issued to the Chief Conservator of Soil, Punjab to prepare/ finalize joint seniority list to the concerned posts within a period of four weeks. The operative part of the order is extracted as under:-

In view of the above, without going into merits of the case and commenting thereon, the present writ petition is disposed of with directions to the Chief Conservator of Soils, Punjab-respondent No.2 to prepare/finalize the joint seniority list within a period of four weeks from today and thereafter consider the claim of the petitioners for promotion to the post of Senior Assistant from the due date as per their entitlement and pass appropriate orders within a further period of four weeks. Decision so taken be conveyed to the petitioners forthwith.

12. Pursuant to the directions, a joint seniority list of Clerks, Steno Typists and Stenographers has been notified on 21st May, 2015 consequential orders of promotion, while considering the claim of Steno

Typists have been passed. In these writ petitions, the challenge is to the aforesaid joint seniority list issued on 21st May 2015 and the consequential orders.

13. Heard the learned counsel representing the parties at length and with their able assistance perused the paper books of the various cases alongwith their oral and written arguments.

14. On the one hand, the learned counsels representing the petitioners have drawn the attention of the Court to Rule 20 of the 1994 Rules to contend that the 1961 Rules stand superseded because Rule 20 starts with a non-obstante provision. While relying upon the order passed in **Balwinder Singh's case (supra)**, they contend that the 1994 Rules have been placed at a higher pedestal and shall result in superseding the 1961 Rules. It is, thereby, contended that the Stenographers and Steno Typists are not entitled to seek promotion to the posts of Senior Assistants.

15. On the other hand, the learned counsels representing the respondents, including the State Government, contend that Rule 20 of the 1994 Rules cannot supersede the 1961 Rules because the 1961 Rules are specific to the Department, whereas, the 1994 Rules are general in their nature and application. They rely upon the doctrine of *generaliaspecialibus non derogant*.

16. In the aforesaid circumstances, the questions noted in this beginning of the judgment arise. First of all, it is important to clarify that the order passed in **Balwinder Singh's case (supra)** relate to the employees engaged in the Department of Agriculture and does not cover

the employees of the Punjab Soil and Water Conservation Department. In the Department of Soil and Water Conservation, the posts of Senior Scale Stenographers do not exist.

17. In the 2001 Rules, the State failed to provide any channel/avenues of promotion to the employees/officials who were working as Steno Typists and Stenographers in the Soil and Water Conservation Department. This led to the filing of the Civil Writ Petition no. 20485 of 2006 and ultimately, the 2001 Rules were quashed. In these circumstances, the Department has started applying 1961 Rules which provide for a proper channel of promotion for Clerks and Steno Typists working in the Department. Hence, the order passed in **Balwinder Singh's case (supra)** shall not be applicable to the facts of the present case.

18. The second argument of the learned counsel representing the petitioners is with reference to Rule 20 of the 1994 Rules. The same needs to be cautiously examined and interpreted. On a careful reading thereof, it is evident that the various special Rules notified by the specific Departments have not been entirely/completely superseded except to the extent specified in Rule 20. In other words, Rule 20 uses a non obstante provision to a limited extent. The 1994 Rules have been given an overriding effect over the specific Rules of the various Departments only for the limited purpose of regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. In other words, the 1994 Rules are applicable in all the Departments of Punjab only with respect to regulating the

recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. Moreover, the 1994 Rules, as is evident from the long title are relating to general and common conditions of service. These Rules do not deal with every aspect of service involved in various Departments of the State. Hence, the maxim of *generaliaspecialibus non derogant* shall be applicable to the facts of the present case.

19. While applying the interpretative tools, the Court is required to give meaning to each word used in the provision. On a plain and logical reading of Rule 20, it is evident that the State Government never intended to supersede the specific Rules which are peculiar to the situations arising in the individual Departments. Otherwise, the State Government could have stated that these Rules shall supersede the pre-existing Rules applicable to the various Departments. It is evident that this was never the intention of the Government. It was for this reason that the Rule 1994 Rules were given an overriding effect only with respect to the situations which have been, explicitly, envisaged in the Rules, itself.

20. This aspect can be examined from yet another perspective. The Division Bench in **Piara Singh's case (supra)** quashed the 2001 rules vide judgment dated 11th December, 2012. At that time, the 1994 Rules were in existence, however, the State of Punjab did not claim that on account of the 1994 Rules, there was a channel/criteria for promotion for the incumbents working as Steno Typists and Stenographers in the Department of Soil and Water Conservation. In 2001, the writ petitions

were defended only on the basis of the 2001 Rules, which were quashed and held to be illegal in the said judgments. The entire basis of the judgment passed in **Piara Singh's case (supra)** is to the effect that the officials working on the post of Steno Typists and Stenographers shall have the proper channels/avenues of promotion. If the argument of the learned counsel representing the petitioners is accepted, the judgment passed in **Piara Singh's case (supra)** would be rendered ineffective.

21. In view of the foregoing discussion, the conclusion is inevitable. Consequently, it is declared that Rule 20 of the 1994 Rules has a limited over-riding effect on 1961 Rules with respect to regulating the recruitment and conditions of service for appointment to public service and posts held under the State. Secondly, in view of the judgment passed in **Piara Singh's case (supra)** the 1961 Rules shall continue to operate till these are repealed or substituted in the future by the Legislature or the Government in the exercise of the powers of delegated legislation.

22. Keeping in view the aforesaid facts, CWP No. 14575 of 2015 filed by the petitioners and CWP 12435 of 2015 challenging the seniority list dated 21st May, 2015 shall stand dismissed. Similarly, CWP No. 19150 of 2022 seeking a writ of Mandamus to direct the respondents to prepare and notify a separate seniority list of Clerks shall also stand dismissed. The COCP No. 1179 of 2022 filed by the Steno-Typists and Stenographers shall stand disposed of with a direction to the respondents to forthwith implement the directions dated 23.04.2015 issued in **Darshan Singh's case (supra)**.

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

27.01.2023
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE