

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25967 of 2012 (O&M)
Date of decision: 23.03.2023

Usha Rani

..Petitioner

Versus

State of Punjab and others

..Respondents

CWP-25968 of 2012 (O&M)

Ramesh Kumar

..Petitioner

Versus

State of Punjab and others

..Respondents

CWP-4890 of 2014 (O&M)

Harbans Kaur

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Padamkant Dwivedi , Advocate
for the petitioner (in CWP-25967 and 25968 of 2012).

Mr. Amit Kaith, Advocate
for the petitionr (in CWP-4890 of 2014)

Mr. R.S.Pandher, Sr. DAG, Punjab

ANIL KSHETARPAL, J(Oral)

1. By this order, Civil Writ Petition No.25967, 25968 of 2012 and 4890 of 2014 shall stand disposed of.

2. The learned counsel representing the parties are ad idem that these writ petitions involve identical issues that remain to be adjudicated, therefore, these can conveniently be disposed of by a common judgment.

3. In fact, a previous batch of writ petitions involving an identical issue has been decided in **Kapil Dev and Others vs. The State of Punjab**

and others(Civil Writ Petition No.4286 of 2000 and other connected cases, decided on 25.01.2023). In the aforesaid judgment, this Court has traced the history of the litigation which is extracted as under:-

“2. Basically, these writ petitions are off-shoot of the judgment passed by the Supreme Court in Saroj Rani and Another v. State of Punjab and Others (1999) 6 SCC 637 which was disposed of with the following directions:-

“35. For the aforesaid reasons emerging from the facts and circumstances of this case, we issue the following directions:-

(1) All vacancies on the post of Assistant/Senior Assistants prior to 21st January, 1991 are to be filled up by those who qualified by passing the examination and exemptees would have no claim on such vacancies.

(2) All vacancies after 21st January, 1991 shall be filled in the ratio of 70 per cent and 30 per cent between exemptees and qualifiers in the examination, respectively, for each year in question till all the existing qualifiers are absorbed.

(3) All promotions or reversions made have to be readjusted within the aforesaid frame work, irrespective of any interim orders then in force.

(4) Any incumbent who worked on the post of Assistant/Senior Assistant on account of promotion orders and in case they have to be reverted or have been reverted, any salary or consequential amount paid to such employees for working on the post of Assistant/Senior Assistant shall not be taken back from them. Similarly, if any employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she will not be entitled to

any arrears of salary.

(5) State shall complete this exercise of promotion on the above said formula on or before the 31st December, 1999, till then the existing arrangement shall continue.

(6) So far two appellants in the appeal of Ravi Lamba, since they were promoted prior to 21st January 1991, for which there is no dispute and their reversion order being held illegal, they may be promoted forthwith and they may not be asked to wait for the final exercise of promotion in all other cases.”

3. It would be noticed here that after a long drawn litigation in the first and second rounds, the Supreme Court decided the dispute between the group which had passed the examination under the Punjab State Assistant Grade Examination Rules, 1984 (hereinafter referred to as “the 1984 Rules”) and the group which was granted exemption from appearing in the examination under Rule 12 of the 1984 Rules. Pursuant to the directions of the Supreme Court, the exercise was carried out in various departments. The challenge is to the consequential orders passed in furtherance thereto. The services of the employees are governed by the Punjab Social Welfare Department (Class-III) Service Rules, 1973 (hereinafter referred to as “the 1973 Rules”). Rule 9(iv) of the 1973 Rules provides that the post of Assistants, Accountants, Cashiers and Junior Auditors shall be filled 75% by promotion from Clerks/Steno-typist/Junior Scale Stenographers and Typists having not less than five years experience, whereas, the remaining 25% posts shall be filled by direct recruitment. As per the stand of the State, at the relevant time, there were 55 sanctioned posts of Assistants in the department. However, as on 01.01.1986,

88 persons were working as such on the common cadre posts as these persons were promoted/recruited by direct appointment, before the promulgation of the Assistant Grade Examination, to the post next to the Clerk, namely Assistant/Accountant/ Investigator/ Research Assistant/ Cashier/Statistical Assistant etc. which have equivalent pay scales and are inter-transferable. Hence, as per the common seniority list, the revised pay scale of Rs.1800-3200 was given to 55 Senior Assistants as identified on 01.01.1986, whereas, the remaining were adjusted in the pay-scale of Rs.1500-2640 against the other posts. In the month of December, 1984, the State of Punjab introduced the Assistant Grade Examination by making a provision in the Rules, 1984.

4. Prior to the aforesaid 1984 Rules, the promotions to the post of Assistant from that of Clerk were made on the basis of seniority-cum-merit, having the requisite experience and qualification. After the introduction of the 1984 Rules, the State made a provision for bringing up the meritorious and efficient employees to the promoted posts through examination. Subsequently, the rigors of the rules were sought to be relaxed. On 05.12.1984, the first amendment in the 1984 Rules was brought, which protected the seniority of those who failed to clear the Assistant Grade Examination in the first attempt. It was provided that if one qualifies the test within first two attempts, he shall be assigned the seniority in the cadre of Assistants in accordance with the seniority in his substantive post. In the month of September, 1985, instead of two chances, four chances were allowed by amending the Rules. By another amendment in the year 1986, five chances were substituted instead of four chances. Though this process continued, however, still

there were a large number of Clerks who could not qualify the examination inspite of their long service. In the year 1991, the government took a conscious decision to exempt all such employees, who have had completed 18 years of service as Clerk, from taking recourse to examination for promotion. Such notification was issued in exercise of powers under Rule 12 of the 1984 Rules. This led to litigation between the various groups. In Surinder Jit Singh and Others v. State of Punjab and Others 1994 (4) SLR 702 (Punjab and Haryana) (FB), the Court upheld the validity of the notification granting exemption. Still the litigation continued. Ultimately, the cases were finally settled by the Supreme Court with the directions which have already been quoted above.

5. Pursuant thereto, the necessary exercise has been undertaken and a detailed order has been passed on 17.02.2000. Most of these writ petitions have been filed challenging the correctness of the aforesaid consequential exercise undertaken by the departments. These writ petitions have come up for final disposal after a period of 23 years. In the meantime, most of the petitioners and the private respondents, on attaining the age of superannuation, have retired from service. In these circumstances, this Court is called upon to adjudicate the rights between the various groups.”

4. In these 3 writ petitions, the petitioners claim ante dated promotion as Senior Assistants from the date they passed the Assistant Grade Examination held under the Punjab State Assistant Grade Examination Rules, 1984 (hereinafter referred to as “the 1984 Rules”). They claim that certain employees who are petitioners in Civil Writ Petition No.

4286 of 2000 and other connected cases have been given similar promotion i.e. ante dated promotion.

5. This court has considered the submissions of the learned counsels representing the parties.

6. Clearing of the departmental examination is a sine-qua-non to make the incumbents eligible for promotion to the post of Senior Assistant and other similar connected posts. However, the date of passing the examination cannot be treated as the date of promotion.

7. In these cases, the petitioners have been promoted in 2007, 2008 and 2010, respectively, in the exercise carried out pursuant to the directions issued by the Court in **Saroj Rani's case (supra)**.

8. The correctness of the aforesaid exercise is the subject matter of challenge in these writ petitions. Though, pursuant to the interim order passed in the batch of writ petitions, the petitioners have continued on the promoted posts of Senior Assistant, however, once the order of promotion in their favour from the date of clearing the examination has been held illegal, hence, the petitioners are not entitled to any relief i.e. ante dated promotion.

9. Consequently, the writ petitions filed by the petitioners are held to be without any substance.

10. Hence, dismissed.

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

March 23, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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