

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24334 of 2015 (O&M)
and other connected cases
Date of decision: 23.03.2023

Smt. Avtar Kaur

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naresh Kumar, Advocate
for the petitioner (in CWP-24334 of 2015).

Mr. Padamkant Dwivedi, Advocate
for the petitioner(s) (in CWP-8590-2016)

Mr. Surinder Garg, Advocate
for the petitioner(s) (in CWP-27176 of 2015)

Ms. Mehak Sharma, Advocate, for
Mr. Sharwan Sehgal, Advocate,
for the petitioner(s) (in CWP-6371-2013 and CWP-400-2015)

Mr. Amit Kaith, Advocate
for the petitioner(s)(in CWP-2321, 2322, 2323, 2336, 2802,
12117 of 2016).

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

ANIL KSHETARPAL, J(Oral)

1. The learned counsel representing the parties are ad idem that these writ petitions involve identical issues that arise for adjudication, therefore, these can conveniently be disposed of by a common judgment.

2. 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.”

3. The learned counsels representing the parties are ad-idem that all the petitioners on attaining the age of superannuation have already retired. They were promoted to the post of Senior Assistants after having

qualified the Assistant Grade Examination.

4. After the judgment in *Saroj Rani's case (supra)*, the State Government carried out the exercise by identifying the employees eligible to be promoted under the category of exemptees to the extent of 70 per cent and qualifies to the extent of 30 per cent. In pursuant thereto, the petitioners were sought to be reverted. In all these petitions because the interim order was passed, the petitioners continued to work on the promoted post of the Senior Assistants till their superannuation. The petitioners claim that they qualified the test as per the Punjab State Assistant Grade Examination Rules, 1984 (hereinafter referred to as "the 1984 Rules") before the cut off date in *Saroj Rani's case (supra)* i.e. 21.01.1991. Hence, they are entitled to be promoted on the said date. The arguments of the learned counsels have no substance because the date of qualifying the examination only entitles the candidate to the promoted post, however, the date of passing of the examination cannot be taken as the date of promotion.

5. As already noticed, the petitioners have continued to work till their retirement. Now the only question which arises for consideration is "As to whether the Government should be permitted to make recovery from the petitioners, though, they continued to work under the interim orders of the Court on the said promoted post?

6. In *Saroj Rani's case (supra)*, the Supreme Court directed that those incumbents who have worked on the post of Senior Assistants on account of promotional order in their favour but were held liable to be reverted to their original post, then the salary or the consequential amount paid to them shall not be recovered. Similarly, in *State of Punjab and*

others vs. Rafiq Masih (White Washer) and others (2015) 4 SCC 334, the Supreme Court has held that it will not be appropriate to order recovery from the retired employees.

7. This issue has already been addressed in *Kapil Dev's case (supra)*, which is extracted as under:-

12. Now, the crucial question arises as to “What is the appropriate relief which should be granted to the parties in the peculiar facts of the case?” As already noticed, majority of the petitioners as well as the private respondents, on attaining the age of superannuation, have already retired. In Saroj Rani’s case (supra), the Supreme Court directed that those incumbents who have worked on the post of Assistants/Senior Assistants on account of the promotional orders in their favour and subsequently, they have to be reverted or have been reverted back to their original post, then, the salary or the consequential amount paid to them shall not be recovered. Similarly, if any such employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she shall not be entitled to any arrears of salary. Thus, akin to the facts in which the interim order was passed by the Supreme Court, the petitioners have worked on the post of Assistant/Senior Assistant and have already retired in the present case. Hence, it would not be appropriate to permit the State of Punjab to effect any recovery from them at this stage. The question is “Whether the State should be permitted to refix their salary which would result in reduction of their pensionary benefits?” In the facts of the case, this Court is of the considered view that such a course of action shall not be a viable solution.

13. Keeping in view the aforesaid facts, it is ordered that neither there shall be any recovery on account of change in the date of promotion nor the private respondents who have not worked on the posts shall be entitled to any such salary. However, they shall be granted the notional consequential reliefs including the retiral benefits, which shall be paid to them. In other words, no recovery shall be made from the retirees as a consequence of this judgment. Further, no arrears of salary for the period for which the private respondents, in fact, never worked shall be payable to them. However, the said period shall be counted notionally for the purpose of enhancing their retiral/pensionary benefits, if any. This exercise should be completed, positively, within a period of three months from today.”

8. Keeping in view the aforesaid facts and discussion, this Court is of the view that the ends of justice will be met if the writ petitions are disposed of in the same terms.

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

March 23, 2023
nt

(ANIL KSHETARPAL)
JUDGE

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