

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

CWP No.26162 of 2017(O&M)

Reserved on:20.02.2023

Date of Decision.23.03.2023

Mukesh Kumari

...Petitioner

Vs

State of Haryana and others

...Respondents

2. CWP No.28979 of 2017

Saroj Kumari

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh K. Kataria, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Dhiraj Chawla, Advocate
for respondents No.3 to 5.

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JAISHREE THAKUR J.

1. This order of mine shall dispose of both the writ petitions i.e. CWP Nos.26162 & 28979 of 2017 as the issue for consideration is identical. Challenge in both the writ petitions is to the impugned order dated 13.07.2017 (Annexure P-6) whereby respondent No.6 has been promoted to the post of Assistant against the Service Rules and settled principles of law.

2. Petitioner in CWP No.26162 of 2017 was appointed as Junior Scale Stenographer on 30.07.2009 in the pay scale of Rs.5200-20200+2400 Grade Pay whereas petitioner in CWP No.28979 of 2017 was appointed as Steno Typist vide order dated 30.07.2009 in the pay scale of Rs.5200-20200+1900

Grade Pay. Services of the petitioners in both the writ petitions are governed by the Haryana Technical Education Department, Ministerial Field Establishment other than Technical Staff (Group C) Service Rules, 1996. Selection to the post of Assistant is to be made: (i) by promotion from amongst Junior Scale Stenographer, Steno Typist, Clerk, Cashier, Storekeeper Grade B or Assistant Storekeeper or (ii) by transfer or deputation of an official already in the service of any State Government or the Government of India. One post of Assistant has been filled up by promoting respondent No.6 on 13.07.2017, who was holding the post of Clerk in a lower pay scale than that of petitioners in both the writ petitions, who are working as Junior Scale Stenographer & Steno-Typist respectively, by the official respondents vide resolution dated 30.03.2017, which was approved by respondent No.2 vide letter dated 12.07.2017. On coming to know about the aforesaid fact, petitioners in both the writ petitions made representations dated 20.11.2017 and 17.10.2017 to the respondent-authorities but no action has been taken thereon. Aggrieved against the aforesaid action of the respondents, petitioners have approached this Court by way of aforesaid writ petitions.

3. Learned counsel appearing for the petitioners would contend that petitioners are holding higher posts with a higher pay scale than respondent No.6 and therefore, they ought to have been given preference over the persons holding lower post in feeder cadre. It was further argued that seniority on the strength of total length of continuous service can only be a determining factor for promotion when the persons are on equal footing. However, in the present case, respondent No.6 was working as a Clerk whereas the petitioners were working as Junior Scale Stenographer and

Steno Typist respectively and therefore, the post of Clerk being the feeder cadre of both the aforesaid posts, they were entitled to be given preference over respondent No.6 for promotion to the post of Assistant. Reliance has been placed upon the judgments rendered by this Court in **Rattan Singh Vs. State of Haryana and others** passed in CWP No.14250 of 1998 decided on 04.05.1999 and **Sultan Singh Vs. State of Haryana 1991 (1) SCT 78** to contend that a person, who is holding higher post in the feeder cadre has a prior right of consideration for promotion and after exhausting such holders of the post in the feeder cadre, the consideration may trickle down to the lower post in the feeder cadre.

4. Per contra, learned counsel appearing for the respondent-State as well as for the private respondents would argue that as per Rule 9 (d) of the Haryana Technical Education Department Ministerial Field Establishment other than Technical Staff (Group C) Service Rules, 1996 (hereinafter referred to as Rules of 1996), recruitment to the post of Assistant shall be made by promotion from amongst the *Junior Scale Stenographer, Steno Typist, Clerk, Cashier, Storekeeper Grade B or Assistant Storekeeper*; or by transfer or deputation of an official already in the service of any State Government or the Government of India, having five years experience on the aforesaid posts. It is argued that Rule 11 of the aforesaid Rules deals with seniority, which provides that seniority *inter se* the members of the services shall be determined by the length of continuous service on any post in the service with a proviso that where there are different cadres in the service, the seniority shall be determined separately for each cadre. It is further argued that considering the length of service, respondent No.6 was senior to the petitioners and therefore, his name was recommended for

promotion to the post of Assistant by the Board of Management in its 42nd meeting held on 30.03.2017, which got approval on 12.07.2017. It is also argued that petitioners have laid their claim on the basis of higher pay grade, which is not the criteria prescribed anywhere in the Rules seeking promotion to the post of Assistant. Moreover, the petitioners herein have not challenged the provisions of the Rules governing the services of the petitioners as well as private respondent No.6 and they failed to point out that official respondents have acted in contravention to Rules 9 and 11 of the Rules of 1996 while promoting respondent No.6 to the post of Assistant.

5. I have heard learned counsel for the parties and with their assistance, have perused the paper book as well as the case laws cited. A perusal of the seniority list (Annexure P-11) would reflect that petitioner in CWP No.26162 of 2017 had joined the respondent-Institute as Junior Scale Stenographer on 31.07.2009 and petitioner in CWP No.28979 of 2017 joined as Steno Typist on 04.08.2019 whereas respondent No.6 entered into service as Clerk on 27.03.1997 and therefore, considering the continuous length of service, respondent No.6 was senior than the petitioners. As per Rule 9 (d) of the Rules of 1996 and Appendix B attached thereto, recruitment to the post of Assistant is to be made by way of promotion from amongst the Junior Scale Stenographer, Steno Typist, Clerk, Cashier, Storekeeper Grade B and Assistant Storekeeper and five years experience is mandated on the said posts. Admittedly, respondent No.6 was senior than petitioners on the basis of continuous length of service. Now coming to the argument raised by the counsel appearing for the petitioners that persons working on posts having higher scale have to be given preference while considering them for promotion and after exhausting such holders of the post, consideration ought

to be made to the lower posts in the feeder cadre. If the said argument of the petitioners is accepted then, in that eventuality, a person working on lower post would never be promoted. The present case would be classic example of the said eventuality itself where for promotion on one post of Assistant, both the petitioners who had only 8 years of service are claiming promotion over a person who had 20 years service at his credit on the date of consideration.

6. Further, the ultimate dispensation in the judgment rendered **Rattan Singh's case** (supra) on the basis of which petitioners claim relief, is that when the post by promotion is to be filled up, all eligible persons irrespective of the date of acquiring eligibility have to be considered in accordance with the seniority and therefore, since petitioner therein admittedly had the longer length of service as Personal Assistant than the respondent therein as Head Assistant, it was held that petitioner had prior right. In fact, in the said case, claim of the petitioner was not accepted on the premise that he had higher pay scale, rather on the premise that he had longer continuous service than the private respondent therein, though they were on equal footing. In the case at hand, as per Rule 11 of the Rules of 1996, seniority *inter se* the members of the services shall be determined by the length of continuous service on any post in the service with a proviso that where there are different cadres in the service, the seniority shall be determined separately for each cadre. Meaning thereby, where there are different cadres in the service, the seniority shall be determined separately for each cadre but seniority *inter se* the members of the services, who are eligible for promotion to a post where service holders of various feeder cadres are eligible for promotion, shall be determined by the length of

continuous service. Since respondent No.6, though was working as Clerk, had longer service than the petitioners herein, he has rightly been promoted to the post of Assistant. Petitioners herein have miserably failed to prove that promotion of respondent No.6 has been made in contravention to Rule 9 (d) and 11 of the Act of 1996. If for the sake of arguments, it is assumed that case of the petitioners is that the rule making authority has acted arbitrarily in making various categories of posts as feeder cadre for promotion to the post of Assistant, then they were required to challenge the concerned Rule itself, which admittedly they chose not to do so. In the absence of challenge to the Rules and failure to prove that the official respondents have acted arbitrarily and in contravention to the said Rules while promoting respondent No.6 to the post of Assistant, their prayer in the writ petition cannot be acceded to.

7. In view of the aforesaid facts and circumstances, this Court finds no reason to interfere under the writ jurisdiction. Both writ petitions are accordingly dismissed.

(JAISHREE THAKUR)
JUDGE

March 23, 2023
Pankaj*

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