

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

LPA-411-2017 (O&M)
Reserved on 31.01.2023
Date of Decision: 10 .02.2023

State of Punjab and another

. . . . Appellants

Vs.

Gulzar Singh and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

Present: Mr.Aman Dhir, DAG, Punjab.

Mr.Aman Bahri, Advocate,
for respondents No.1, 2, 4, 5, 8, 9 and 12.

Mr.Vaneet Soni, Advocate,
for respondents No.3, 6, 7, 10, 11, 13 to 13.

Mr.B.S. Patwalia, Advocate,
for respondent Nos.29, 42 and 47.

M.S. RAMACHANDRA RAO, J.

This Letters Patent Appeal is filed challenging judgment dt.29.09.2016 in CWP-9073-2015.

The respondents No.1 to 19 had filed the said Writ Petition for a Writ of Certiorari to quash orders dt.14.10.2013 and 05.12.2013 passed by appellant No.2 and had also sought a direction to the appellants to promote respondents No.1 to 19 as Senior Assistants as per their seniority from the date

their juniors had been promoted as Senior Assistants along with all consequential benefits.

The promotion to the post of Senior Assistant is provided under Rule 8(1)(d)(ii) of the Punjab Police Clerical Services (State Service Class III) Rules, 1960 [hereinafter referred to as the 'Rules'].

Rule 8(1)(d) of the Rules states:

"In the case of Assistants Class-I

- (i) by direct appointment; or*
- (ii) by promotion from amongst Clerks with 5 years minimum service and junior-scale stenographers with 5 years minimum service including one year's minimum experience as Clerk;*
- (iii) by selection from among officials employed in departments of Government other than the Police Department."*
(emphasis supplied)

Rule 11 of the Rules deals with the Seniority of members of the Service and states:

"Seniority of members of the Service:-

Subject to the provision of Punjab Services Integration Rules, 1957 the seniority Inter-se of members of the service holding the same class of posts shall be determined by the dates of their joining appointments to such posts in the Service.

Provided that in the case of members appointed directly the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed;-

Provided further that in the case of two or more members joining their appointments in the same class of posts on the same date, their seniority shall be determined as follows:-

- (a) a member recruited by direct appointment shall be senior to a member recruited otherwise;*
- (b) a member recruited by promotion shall be senior to a member recruited by transfer;*

- (c) *in case of members, who are recruited by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred;*
- (d) *in the case of members recruited by transfer from different cadres, their seniority shall be determined accordingly to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn be also the same, then by their length of service, and in case their lengths of service also happen to be the same, an older member shall be senior to a younger member.*

Note:- (1) The posts of clerks, steno-typist and Junior Scale Stenographers shall be treated as the 'same class of posts' for the purpose of preparing a joint seniority list for making promotions to higher posts, their seniority Inter-se reckoning from their dates of joining the posts. Whenever a Steno-typist is promoted as Junior-Scale Stenographer involving the supersession of the some other Steno-typist senior to him, the senior to him, the seniority of the promoted official on the joint seniority list vis-a-vis the other clerks and stenographers would remain undisturbed except that the superseded Steno-typist to the Steno-typists as the case may be, would be brought down on the joint seniority list so as to rank junior to the Steno-typist who has been found suitable for promotion.

(2) Similarly, the posts of Senior- scale Stenographer, Assistant and Head Clerks should be interchangeable and treated, as the 'same class of posts' for the purposes of preparing a joint-seniority list for making promotion to higher posts- their seniority inter-se reckoning from the dates of joining the posts."
(emphasis supplied)

Thus as per Rule 8(1)(d)(ii) of the Rules, Senior Assistant (Assistants Class I) post, when filled up by promotion, should be from amongst
 (a) Clerks with 5 years minimum service and (b) Junior Scale Stenographers

with 5 years minimum service *including* one year's minimum experience as Clerk.

Thus there is an insistence in the Rules that persons holding post of Junior Scale Stenographers should in addition to the 5 years minimum service shall also possesses one year's minimum experience as Clerk.

The post of Clerks are to be filled up as per Rule 7(1)(i)(e) of the Rules by persons who at least possess a first class Matriculate qualification of a recognized University or has passed the intermediate or degree examination in any class.

So, a person who is a mere matriculate is qualified to be appointed as a Clerk.

As per Rule 8(1)(b) of the Rules, Clerks can be appointed by direct appointment or by transfer of officials already in service of Government of a State or the Government of India; or by promotion from among the Restorers in the Police Department who are either graduates; or who are matriculates and have completed five year's service as such and have qualified in a departmental test.

But for the posts of Junior Scale Stenographer and Steno Typist, as per Rule 7(1)(i)(d) of the Rules, a recruit has to possess B.A., B.Sc. or equivalent examination of a recognized University and have good knowledge of stenography and he should also passes a test in stenography which is prescribed.

Thus, a higher qualification is prescribed for recruitment to the post of Junior Scale Stenographer and Steno Typist, while a less qualified person who is a mere matriculate is entitled to be recruited as a Clerk.

Rule 8(1)(g)&(h) of the Rules also mention how posts of Steno Typist and Junior Scale Stenographer are to be filled up and indicate that both these posts can be filled up either by direct appointment or by selection from amongst Clerks, who qualify in stenography test to be conducted by the Inspector General, and in the case of Junior Scale Stenographer by Selection also amongst Steno Typist.

The respondents No.1 to 19 were working as Steno Typists and Junior Scale Stenographers in various departments of the appellants and had been appointed on different dates and were assigned their seniority accordingly. They were found entitled for consideration for promotion as Senior Assistants as per the common seniority list and their consent for promotion as Senior Assistants were sought by appellant No.2 in terms of memo dt.17.05.2013. Respondents No.1 to 19 had submitted their willingness/consents in writing, and thereafter their case was placed before the Departmental Promotion Committee along with other eligible persons for promotion as Senior Assistants on the basis of common seniority list.

We may point out that Note-1 to Rule 11 of the Rules specifically mandates that the posts of Clerks, Steno Typists and Junior Scale Stenographers shall be treated as the 'same class of posts' for the purpose of preparing a joint seniority list for making promotions to higher posts and their seniority *inter se* is to be reckoned from the dates of joining the posts. It is on the basis of this Note-1 to Rule 11 of the Rules that the common seniority list had been prepared by the appellants.

However, respondents No.1 to 19/Writ Petitioners were not promoted to the posts of Senior Assistants, but respondents No.20 to 53 were promoted as Senior Assistants.

This appears to have been done on the basis of Annexure P4 clarification dt.21.05.2013 issued by appellant No.2 stating that only those Junior Scale Stenographers or Steno Typists, *who have one year experience as Clerk* as per Rule 8(d)(ii) of the Rules are eligible for promotion, and not others who had been directly recruited to the post of Junior Scale Stenographer or Steno Typist.

The order of the learned single Judge in the Writ Petition

Before the learned Single Judge, respondents No.1 to 19 contended that the persons, who are promoted as Senior Assistants vide orders dt.14.10.2013 and 05.12.2013 are juniors to them and such promotion cannot be sustained.

Appellants, however, contended that respondents No.1 to 19 were not eligible for promotion as Senior Assistants since they do not possess the one year minimum experience as Clerk as per the requirement of Rule 8(1)(d)(ii) of the Rules.

The learned Single Judge held that the stand taken by the appellants was not correct; that from 2006, Junior Scale Stenographers/Steno Typists had been promoted as Senior Assistants on the basis of a common/joint seniority list of Clerk/Steno Typist/Junior Assistants and Junior Scale Stenographers keeping in view the provisions of Rule 8(1)(d) read with Note-1 to Rule 11 of the Rules. She held that the respondents No.1 to 19 were Senior to respondents No.20 to 53, who were promoted as Senior Assistants vide order

dt.14.10.2013 and such persons, who were junior to respondents No.1 to 19 in the seniority list, could not have been promoted over and above respondents No.1 to 19.

It was held that all categories of employees were having common seniority list and they were treated as equal in terms of the Rules and a notification had also been issued on 16.06.1995 granting exemption from the condition of passing a test/examination for promotion to higher posts.

The learned Single Judge also held that the appellants cannot simply rely on Rule 8(1)(d)(ii) of the Rules and ignore Note-1 appended with Rule 11 of the Rules which specifically provides that post of Clerks, Steno Typists and Junior Scale Stenographers are to be treated as 'same class of posts' for the purpose of making a joint seniority list for making promotions to higher posts.

It was held that in view of Note-1 to Rule 11 of the Rules all categories were to be treated and considered for promotion; and so the impugned orders dt.14.10.2013 and 05.12.2013 had been passed contrary to this principle contained in Note-1 appended to Rule 11 of the Rules. The appellants were directed to reconsider the cases of respondents No.1 to 19 in view of Note-1 appended to Rule 11 of the Rules, and also a clarification dt.26.08.2014 within three months, and respondents No.1 to 19 were also held entitled for all consequential benefits from the date their juniors had been promoted.

The LPA

Assailing the same this appeal is filed by the appellants.

Counsel for the appellants as well as respondents No.20 to 53 contended that the learned Single Judge erred in setting aside the promotion

granted to respondents No.20 to 53 and directing consideration of the cases of respondents No.1 to 19 even though they did not possess one year minimum experience as Clerk as mandated by Rule 8(1)(d)(ii) of the Rules.

They however did not dispute that posts of Clerks, Steno Typists, Junior Scale Stenographers and Junior Assistants are distinct and separate and a person appointed through *direct recruitment* either for the post of Steno Typist or Junior Scale Stenographer or Junior Assistant for which posts qualification of graduation is prescribed, would never have an opportunity to work as a Clerk for which post persons with minimum matriculate qualification are eligible.

If it is not possible for such persons to work as Clerks, the question is “*whether they should be debarred from being considered for promotion as Senior Assistants in view of Rule 8(1)(d)(ii) of the Rules?*”.

In our opinion, the maxim *lex non cogit ad impossibilia* is attracted. The said maxim means that the law does not expect the performance of the impossible. This is a well settled principle of law.

In *Mohammed Gazi Vs. State of M.P. and others*¹ the Supreme Court held that this is a maxim of equity and the law itself and its administration are understood to disclaim all intentions of compelling impossibilities.

Similar view was also expressed in *Industrial Finance Corporation of India Ltd. Vs. Cannanore Spinning & Weaving Mills Ltd.*², where the Supreme Court observed that if law creates a duty or charge, and the party is disabled to perform it, without any fault, and has no remedy over, there the law will in general excuse him.

¹2000 (4) SCC 342

²2002 (5) SCC 54

Counsel for the appellants and respondents No.20 to 53, however, contended that those Steno Typists and Junior Scale Stenographers, who had been appointed to the said post by selection from amongst Clerks after acquiring the stenography qualification are intended to be the beneficiaries of Rule 8(1)(d)(ii) of the Rules and get *promotion* to the post of Senior Assistants since they would then have a chance to get the one year minimum experience as Clerk, and the fact that persons appointed to these positions by *direct appointment* would have no chance, is not very material.

We do not agree with the said plea because of Note-1 to Rule 11 of the Rules treats the posts of Clerks, Steno Typists, Junior Scale Stenographers and Junior Assistants as equal and treats the said posts as of *one class* and enable a joint seniority list to be prepared for making promotion to higher posts by reckoning their *inter se* seniority from their respective dates of joining in the posts.

So no matter how a Steno Typist or a Junior Scale Stenographer or a Junior Assistant is appointed, whether by direct appointment or otherwise by selection from the post of Clerks, they should all be treated as persons holding *same class* of posts under Note-1 appended to Rule 11 of the Rules. No distinction is made in that regard between persons who got appointed to the posts of Steno Typist or Junior Scale Stenographer or Junior Assistant by way of selection from the post of Clerk or by direct recruitment.

In fact the effect of Note-1 appended to Rule 11 of the Rules is that by creating an equivalence of the posts of Steno Typist and Junior Scale Stenographer and also Junior Assistant with the post of Clerk, and providing for a common seniority lists preparation, even Steno Typists and Junior Scale

Stenographers, who have the requisite 5 years of experience, ought to be treated as also having experience as Clerks and therefore qualifying Rule 8(1)(d)(ii) of the Rules.

It would be incongruous to treat persons who got appointed as Steno Typists and Junior Scale Stenographers or Junior Assistants, and who possess the higher qualification of graduation such as B.A., B.Sc., and who are *directly appointed* to the said post as persons who are disentitled to promotion as Senior Assistant on the ground that they did not possess experience of one year as a Clerk, which post is capable of being filled up by a mere matriculate.

In our opinion, persons possessing a higher qualification cannot be put in a more disadvantageous position vis-à-vis persons possessing an inferior qualification such as Clerk, and disqualified from getting a promotion to higher post of Senior Assistant to which Clerks, who can be mere matriculates, are eligible.

In this view of the matter, we do not find any error in the Judgment of the learned Single Judge requiring interference by us in exercise of Letters Patent jurisdiction. The Appeal is accordingly dismissed.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

10.02.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No