

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

**CWP-34233-2019 (O&M)
Date of Decision:12.05.2023**

Indra Sharma

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Nitin Jain, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Pankaj Gupta, Advocate for respondents No.2 to 4.

JAISHREE THAKUR J. (Oral)

1. The petitioner herein has approached this Court by way of the instant petition under Articles 226/227 of the Constitution of India, seeking to challenge the order dated 26.07.2019 (Annexure P-9) passed by respondent No.3, whereby her claim for being promoted from the post of Clerk to an Assistant, has been declined.

2. Learned counsel for the petitioner would contend that the petitioner joined on the post of Clerk with respondent No.2-HARTRON on 15.05.1985 and subsequently was promoted as a Senior Clerk in the year 1991. He would urge that at that relevant time, no post of Senior Clerk was in existence and the channel of promotion in the year 1991 would be from

the post of Clerk directly to that of an Assistant. Learned counsel would submit that it is only subsequently that she came to know that there was no post of a Senior Clerk in the service rules and people who were similarly situated as mentioned in para 6 of the petition had been promoted directly to the post of an Assistant from that of Clerk. Claiming the same benefit, the petitioner had approached respondent No.2-HARTRON, however, her claim was rejected by a non-speaking order. It is also submitted that the promotion that was given to her was de hors the rules and she has been made to suffer financially on account of the promotion that was denied to her at the relevant time.

3. After the notice of motion was issued, reply has been filed by the respondents herein, wherein a categorical stand has been taken by the respondents that the petitioner had accepted her promotion as a Senior Clerk w.e.f. 08.05.1991 and subsequent to that she had been promoted to the post of an Assistant and therefore, her claim cannot be acceded to as more than 26 years and 07 months have already lapsed. The cause of action, if any, accrued to the petitioner in the year 1991 itself and, therefore, there is an inordinate delay of more than 02 decades in filing of the present writ petition. Learned counsel would argue that in case the claim of the petitioner is acceded to, the entire seniority list has to be upset after a period of more than two decades which would be in controvention of the judgment as rendered by the Hon'ble Supreme Court in ***P.S. Bajwa and others Vs. State of Punjab and others in Civil Appeal No.7605-7610 of 1996***, decided on 11.12.1997.

4. Apart from taking up the plea of delay and latches, learned counsel for the respondent-HARTRON would also urge that in fact as per the rules, at the relevant time, the petitioner did not have necessary qualification to be appointed as an Assistant and, therefore, her appointment as Senior Clerk was the best option that could have been offered to her.

5. Learned counsel appearing on behalf of the petitioner would contend that this argument is not reflected in the written statement .

6. I have heard counsel for the parties and have perused the impugned order which at best is a non-speaking one. No reasons have been given in the written statement as to why the claim of the petitioner could not be acceded to as if she was not eligible at the relevant point of time or that the claim could not be taken into account on account of delay and latches that would upset the seniority list, the same should have been mentioned in the written statement. The petitioner herein is entitled to know the reasons as to why she is being found ineligible to be promoted to the post of Assistant as had been allowed to her colleagues whose name has been mentioned in para 6 of the present writ petition.

7. Consequently, the impugned order dated 26.07.2019 (Annexure P-9) being a non-speaking order is hereby set aside and the matter is remanded back to respondent No.3-Department Level Litigation Policy Implementation Committee, HARTRON, Panchkula, to decide the matter afresh. Any decision taken thereunder would be on the merits of the case and without any influence of the earlier orders passed or any observations as made by this Court.

8. The writ petition is allowed to the limited extent that the impugned order is set aside, directing respondent No.3 to convene a meeting and take a decision in accordance with law within a period of two months from the receipt of certified copy of this order.

9. Needless to say, the order passed will be a speaking one and would be communicated to the petitioner herein.

(JAISHREE THAKUR)
JUDGE

12.05.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No