

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24118-2018

Decided on 18.07.2023

Rekha Rani

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Dr. Surya Prakash, Advocate for the petitioner

Mr. Gaurav Jindal, Advocate for respondent No.2

Mr. JS Toor, Advocate for respondent No.3

Mr. Balraj Singh Rathee, Advocate and

Mr. Vijay Deep Rathee, Advocate for respondent No.4

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of the order dated 05.09.2018 (Annexure P21) passed by respondent No.2 – Haryana State Pollution Control Board vide which the petitioner has been reverted to the post of Steno-typist from the post of Senior Scale Stenographer. Further a direction is sought to the official respondents to promote the petitioner to the post of Personal Assistant with all consequential benefits.

(2). The petitioner, who belongs to Scheduled Caste category, joined as Steno-typist in the respondent-Board on 01.03.1993. The services of the petitioner were governed by the Haryana State Pollution Control Board, Group A, B, C & D Service Regulations, 1996. The State Government had framed reservation policy dated 09.02.1979 which provided 20% reservation for promotion of employees belonging to Scheduled Caste category. As per

reservation policy, 4th roster point is meant for promotion for Scheduled Caste category candidate and non-availability of any such candidate, the vacancy shall remain unfilled and will be treated as backlog vacancy.

(3). Three posts of Senior Scale Stenographer fell vacant which were filled in by general category candidates i.e. Darshana Devi (promoted on 30.01.1980); Rani Karakoti (promoted on 27.11.1989) and Madhu Kumar (promoted on 27.11.1989). Pursuant to further promotion of Darshana Devi as Personal Assistant on 28.04.1984, one post of Sr.Scale Stenographer was kept vacant.

(4). On the representation made by one Jasbir Singh, the respondent-Board promoted him to the post of Sr.Scale Stenographer, in officiating capacity vide order dated 27.04.1995. Thereafter, on 09.06.1996, Rani Karakoti was promoted to the post of Personal Assistant and again one post of Sr.Scale Stenographer fell vacant. Veena Setia also made representation and she too was promoted as Sr.Scale Stenographer in officiating capacity.

(5). The petitioner gained eligibility for promotion upon completion of 5 years of service, on 01.03.1998. She made representations for being promoted to the post of Sr.Scale Stenographer, however, she was promoted as Junior Scale Stenographer on 28.03.2007. Vide order dated 29.08.2008, the petitioner was demoted to the post of Steno-typist on the ground that she did not appear in type test in English and Hindi, which the petitioner, on her promotion as Junior Scale Stenographer, was required to pass within 6 months.

(6). The petitioner challenged the above order dated 29.08.2008 by way of filing suit for declaring the order dated 29.08.2008 as illegal, bad non-

est, void ab initio wherein the plaintiff (petitioner) has been reverted from the post of Junior Scale Stenographer to the post of Steno-typist.

(7). In the meantime, the respondent-Board constituted a Committee which considered the petitioner's claim for her promotion on 4th roster point to the post of Senior Scale Stenographer being SC candidate and resultantly, vide order dated 16.02.2010 (Annexure P12), she was promoted to the post of Sr.Scale Stenographer w.e.f. 01.03.1998.

(8). One Hukam Chand – respondent No.4 made a representation dated 15.04.2010 claiming that the petitioner could not be promoted as Sr.Scale Stenographer as 5th roster point is not reserved for SC category. Consequently, vide order 22.12.2016 (Annexure P16), the petitioner was again reverted back to the post of Steno-typist. However, on the request of the petitioner, the Chairman of the Board vide letter dated 30.03.2017 (Annexure P17) referred the case to the Government for re-consideration of decision dated 22.12.2016 (Annexure P16). The Government vide order dated 12.07.2017 declined the proposal on the ground that there was no new fact in the proposal under reference.

(9). A show cause notice dated 19.01.2018 (Annexure P19) was issued to the petitioner intimating her reversion to the post of Steno-typist, to which, the petitioner submitted her reply dated 15.02.2018 (Annexure P20). The respondent-Board passed formal order dated 05.09.2018 reverting the petitioner to the post of Steno-typist citing reason that no post of Sr.Scale Stenographer was existing on 01.03.1998 when the petitioner became eligible for promotion. Hence this writ petition.

(10). Learned counsel for the petitioner contended that in the impugned order, the respondent-Board has wrongly recorded against its own record that no post of Sr. Scale Stenographer was available on 01.03.1998, when the petitioner became eligible to the promotion on the said post. Admittedly, Darshana Devi, Rani Karakoti and Madhu Kumar were promoted w.e.f. 30.01.1980, 27.11.1989 and 27.04.1995, filling up 3 posts of Sr. Scale Stenographer. However, Darshana Devi was promoted as Personal Assistant on 08.12.1989 and as such, one post of Sr. Scale Stenographer fell vacant on 08.12.1989. The said post was not filled by the respondents at least till 01.03.1998, when the petitioner became eligible for her promotion to the post of Sr. Scale Stenographer. It is urged that though, Jasbir Singh and Veena Setia were promoted as Sr. Scale Stenographers on 27.04.1995 and 26.09.1996 but they were never promoted against the vacant post of Sr. Scale Stenographer, which was vacated on promotion of Darshana Devi as Personal Assistant and as is evident from the promotion orders of Jasbir Singh and Veena Setia. Both of them were appointed on officiating capacity as Sr. Scale Stenographer against a post of direct recruit.

(11). Dr. Surya Prakash, learned counsel submitted that Jasbir Singh was promoted as Sr. Scale Stenographer on 27.04.1995 only in officiating capacity and was never promoted against the available post prior to the petitioner and as such, he could not be promoted to the post of Personal Assistant, prior to the petitioner since he is junior to the petitioner on the post of Sr. Scale Stenographer. But the respondents have promoted Jasbir Singh as Personal Assistant on 28.03.2007. It is pleaded that notification issued by the State Government clarifies that in case a Scheduled Caste candidate is not

available, such vacancy cannot not be de-reserved for any reasons and as such, since the 4th roster point was required to be filled by the petitioner being SC candidate, the claim of the petitioner is liable to be accepted.

(12). Notice of motion was issued on 09.10.2018 and pursuant thereto, the respondents No.1&2 have filed their reply wherein it has been averred that the petitioner is claiming retrospective promotion on the basis of reservation policy vide instructions dated 09.02.1979 and 22.08.1985 (Annexure P1). The said instructions were amended by the State Government on 04.05.1994 (Annexure R1) vide which it was clarified that where the number of posts in a cadre is upto 4, then no benefit of reservation can be given to any category. However, the amended instructions dated 04.05.1994 were withdrawn on 02.11.1999. It is mentioned that during the intervening period of 5 years i.e. 04.05.1994 to 02.11.1999, respondent No.3 and Veena Setia (now retired) were promoted as Stenographers on 27.04.1995 and 26.09.1996, respectively.

(13). In so far as the argument that respondent No.3 has tampered the report of the Committee and changed the figure 4th to 5th before the word “roster point” in connivance with respondent No.4, it is highlighted that the petitioner has intentionally concealed the comments of the officers on noting (Annexure P-11) wherein, it has been mentioned that as per roster point, the 5th promotion goes to the petitioner and the correction was made by the same member of the Committee, in the report by replacing figure 4th to 5th (Annexure R-3). The Senior Accounts Officer put up the case to the Chairman of the respondent-Board for approval and it cannot be presumed that Competent Authority has not checked the important facts before approval as such, the allegation of tampering in the report are vague and false.

(14). Mr. Gaurav Jindal, Advocate for respondent No.1&2 further submitted that as per the Draft Service Rules of the Board dated 13.09.1996, the mode of recruitment of Stenographer is 75% by promotion from amongst Steno Typists and 25% by direct recruitment. He further stated that there have been three posts of Stenographers exist in the Board: 1 vacancy under direct quota and 2 vacancies under promotion quota.

(15). Learned counsel for the respondent No.1&2 further informed that in 2004, service rules were notified and in terms thereof, 2 posts of Junior scale Stenographer were created for promotion from amongst Steno Typist having requisite experience of 03 years service with speed of 100 W.P.M. in English and 80 w.p.m. in hindi shorthand and transcription thereof @ 30 w.p.m. in English and 25 w.p.m, in Hindi respectively, was made. The petitioner did not appear in the test, nevertheless, she was also promoted to the post of Junior Scale Stenographer against the post of Senior Scale Stenographer on 28.03.2007 as a stop-gap arrangement on temporary basis with the condition that she would clear the mandatory shorthand type test within 06 months from the date of her joining. But, the petitioner failed to appear for test despite opportunity and consequently, she was reverted to the post of Steno-typist vide order dated 26.08.2008. The Civil Suit filed by the petitioner was also dismissed in the absence of any evidence.

(16). It is pointed out that the Committee constituted by the respondent-Board on whose recommendation, the petitioner was promoted, did not take into consideration the instructions dated 04.05.1994, which provided that where the number of posts in a cadre are upto four, then no benefit of reservation can be given to any category. Further, no post of Senior Scale Stenographer was

existing/vacant as on 01.03.1998 which is the date of retrospective promotion since on 01.03.1998, all the sanctioned posts were filled up and as such, the roster point was also not applicable. It is further highlighted that the Committee in its report did not mention the number and date of instructions which was applicable to the petitioner.

(17). Respondent No.4 Hukam Chand has also filed written statement reiterating the averments made by respondents No.1&2. In addition, learned counsel for the respondent No.4 submitted that petitioner cannot challenge the promotion of Jasbir Singh – respondent No.3, after about 21 years of promotion of Jasbir Singh which stands regularized on 09.09.1996. The petitioner is otherwise not eligible for promotion as she did not qualify the test as mandated under Regulation 7 of 2004 Regulations.

(18). Reliance has been placed on *State of Bihar & Ors. vs. Shri Akhouri Sachindra Nath & Ors. AIR 1991 SC 1244* and *Nani Sha vs. State of Arunachal Pradesh AIR 2007 SC 2356* to contend that the petitioner cannot be made senior to the private respondents on account of undue benefit obtained by an officer's sleight of hand on irrelevant consideration of policy and that for retrospectivity of provision, it has to be specifically expressed in the provision and that no retrospective promotion can be given to an employee from a date the said employee was not been born in the cadre.

(19). Mr. Toor, further averred that the petitioner originally belongs to Himachal Pradesh and as per instructions dated 30.01.1972, no person of other State except Haryana is entitled for benefit of reservation under the Scheduled Caste category. He challenged the appointment of the petitioner itself

contending that since the petitioner is not legally appointed, therefore, her appointment is bad in law and as such, she cannot claim promotion.

(20). Replications have been filed by the petitioner to the reply/written statements filed by the respondents wherein the petitioner has countered the averments made by the respondents, while reiterating the grounds taken by her in the writ petition itself.

(21). Heard learned counsel for the parties and gone through the record.

(22). From the records, it can be established that the petitioner was appointed in respondent-Board as Steno typist w.e.f. 01.03.1993. There were 03 sanctioned posts of Senior Scale Stenographer in the Board. As per draft rules, 5 years' service as Steno-typist is required for promotion as Senior Scale Stenographer, which the petitioner on 28.02.1998. At that time there was no promotional post vacant of Senior Scale Stenographer. The petitioner was even promoted to the newly created post of Junior Scale Stenographer but since she could not qualify the test, she was reverted to the post of Steno-typist vide order dated 29.08.2008. She challenged that issue before the Civil Court and ultimately, the civil suit was dismissed vide judgment dated 31.03.2010 (Annexure R4/5).

(23). Subsequently, on the request made by the petitioner on 23.07.2009, she was promoted as Senior Scale Stenographer vide order dated 03.02.2010 w.e.f. 01.03.1998. However, her promotion as Senior Scale Stenographer was found to be not valid as per notified Service Rules, 2004 by the Government. In her reply submitted on 15.02.2018 to the show cause notice dated 19.01.2018, the petitioner raised two issues, namely, a) roster point of the post of Senior Scale Stenographer for SC Category and b) commitment given

by the respondent-Board for her promotion to the post of Senior Scale Stenographer in civil suit at District Court, Panchkula.

(24). It can be borne out from the record that there were 03 sanctioned posts of Senior Scale Stenographer in the Board. All the sanctioned posts were full and 3rd sanctioned posts was filled on 26.09.1996. As per Instruction No. 22/36/86-3 G.S-III dated 04.05.1994, no reservation for any category was applicable where upto 04 posts exist in the cadre. There was no vacant post of Senior Scale Stenographer as on 01.03.1998 when the petitioner was eligible to be considered for promotion on completion of 05 years of service which was requisite period of length of service as Steno-typist for promotion to post of Senior Scale Stenographer. The Instructions dated 04.05.1994 were withdrawn with immediate effect on 02.11.1999. The number of sanctioned posts of Senior Scale Stenographer became available after withdrawal of instructions on 02.11.1999 and as per the service rules notified on 05.10.2004, the provision relating to promotion from the post of Steno typist to post of Senior Scale Stenographer was omitted. Existing 03 posts of Senior Scale Stenographer were continued in approved rules without any alteration. Thus no vacancy of Senior Scale Stenographer was available till 27.03.2007.

(25). It is stand of the respondent-Board that there is nothing on record to show that there was ever any commitment made, by the counsel, before the district Court, for promotion of the petitioner. Neither is there anything mentioned in the promotion order dated 03.02.2010.

(26). Pertinently, since 01.03.1998 with effect from which date the petitioner was promoted retrospectively, there was no existing/vacant post of Senior Scale Stenographer available in the respondent-Board. Three posts of

Senior Scale Stenographer were sanctioned (2 by promotion and 1 by direct recruitment) in the Board since 1993. Further, in the present case perusal of facts and the instructions dated 04.05.1994 (Annexure R-1) and 02.11.1999 (Annexure R-2) makes it clear that scheme of reservation was not applicable till 02.11.1999 (i.e. the date of the withdrawal of the instructions dated 04.05.1994) due to the numbers of posts less than 04 for Senior Scale Stenographer in the Board and this was the reason that roster point phenomena was also not applicable until 02.11.1999 (Annexure R2).

(27). Moreover, the very basis of promotion of the petitioner i.e. the report dated 22.01.2010 of the committee, itself is erroneous on several counts. Firstly, a perusal of the vernacular copy of the minutes of the meeting dated 22.01.2010 (Annexure P13) would shows that a three members' committee was constituted to examine the representation of the petitioner. There are number of over-writing/corrections/amendments in the said minutes wherein, it appears that wherever the word "4th" has been typed, the same has been erased and in place of it, the word "5th" has been overwritten. As to how the petitioner, who is claiming the benefit of 4th roster point under the SC category, has been recommended by the Committee for consideration of promotion against 5th roster point. Such action on the part of the officials constituting the Committee appears to be mischievous.

(28). Secondly, under which provision of law, the Committee comprising of Deputy Superintendent, Senior Accounts Officer and District Attorney has been constituted to consider the representation of the petitioner for promotion. As far as promotion of an official is concerned, every Government department/Corporation/Board has a provision of constitution of a

Departmental Promotion Committee comprising of fairly senior officers, who, after diligent consideration of the material aspects and due application of mind, recommend regarding promotion or non-promotion of an employee, on the basis of service record etc. hardly leaving any space for subsequent amendment/correction. The way the so-called ‘Committee’ has drafted its recommendation speaks volume about the sorry state of affairs and prevailing corruption in the respondent-Board.

(29). Thirdly, after the embargo which was present on the scheme of reservation policy dated 09.02.1979 (Annexure P1) due to instructions dated 04.05.1994 (Annexure R1) which stood withdrawn vide instructions dated 02.11.1999 (Annexure R-2), no post of Senior Scale Stenographer was vacant which became the sole ground for reversion of the petitioner vide order dated 05.02.2018 (Annexure P-21), while considering the representation of Respondent No.4.

(30). Since on the date of retrospective promotion i.e. 01.03.1998, all the three sanctioned posts of Senior Scale Stenographer were filled up and as per Government instructions dated 04.05.1994 also, no benefit of reservation could be given to any category where the number of posts are only upto or less than 4, this Court is convinced that there is no merit in the submissions raised on behalf of the petitioner.

(31). Accordingly, this writ petition is dismissed.

18.07.2023
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No