

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(221)

RSA-665-1998

Date of decision:- 15.01.2024

Anju Bala

... Appellant

Versus

Haryana State and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Naveen Daryal, Advocate for the appellant.

Mr. Sharad Aggarwal, DAG, Haryana.

SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is before this Court in a second appeal challenging the concurrent finding of fact recorded by both the Courts below.
2. Brief facts may be noticed.
3. Plaintiff filed a suit averring that pursuant to an advertisement issued by the S.S.S. Board for recruitment of clerk, she appeared and cleared a written test. She claims that she belongs to the backward class. 5373 candidates were selected for the post of clerk. Plaintiff was never informed about the individual result nor was it pasted on the notice board outside the office of defendant No.2. Certain names of successful candidates were recommended to the Transport Department, although there was no requisition from it. It has been averred that although her name was recommended for appointment as clerk in the office of Director, Mines & Geology Department, defendant No.3, but the recommendation was not

accepted by the department and one, Anoop Kumar, whose name was at merit No. 3420, was offered appointment in the Department of Food and Supplies. Claiming that she has been discriminated against, she has filed a suit for declaration to the effect that she be deemed to be appointed as clerk from the date candidate lower than her in merit has been appointed and for consequential benefits of pay and allowances.

4. Upon notice, suit has been contested by the defendant-State *inter-alia* by placing reliance upon a judgment of a Division Bench of this Court in **CWP-8187-1990** titled as “**Sudesh Kumar Versus State of Haryana and others**”, besides taking a number of other objections. It has been specifically averred that the result was displayed on the notice board of the S.S.S. Board along with roll numbers and that the name of Anoop Kumar was at Serial No. 2909 and not at the merit number claimed by the plaintiff. A stand has been taken that plaintiff’s name was recommended to the Mines and Geology Department, Haryana, but was returned due to non-availability of vacancy for the post of backward class and it would be recommended again in other departments, against demand, without disturbing the merit of the candidates. The stand taken by the defendant-State was controverted by the plaintiff by filing a replication. After framing of issues and leading of evidence by the parties, Trial Court by judgment and decree dated 05.11.1996 dismissed the suit on merits. The lower Appellate Court by judgment dated 07.10.1997 came to the conclusion that civil court at Karnal does not have the territorial jurisdiction and while rejecting the appeal, ordered that the plaint be returned to the plaintiff for presentation to the proper court under Order 7 Rule 10, CPC.

5. Counsel for the parties have been heard.

6. No ocular or documentary evidence could be brought to the notice of this Court to show that the cause of action had arisen to the plaintiff-appellant at Karnal. Record shows that the recruitment process was carried out by the Subordinate Services Selection Board at Chandigarh. Residence alone would not vest the Courts at Karnal with territorial jurisdiction. There is no infirmity in the judgment passed by the lower Appellate Court.

7. The entire controversy has been put to rest by the order passed by a Division Bench of this Court in **Sudesh Kumar's** (supra), which deserves to be noticed and is reproduced as under:-

“This order of ours will dispose of C.W.P. No. 8187 of 1990 as well as C.W.P. No. 12206 of 1990.

The facts which are not in dispute, in brief are that the Subordinate Services Selection Board, Haryana (hereinafter called the Board), advertised a huge number of posts of Clerks to be appointed in various Departments of Haryana. The requisition of the posts of Clerks in the various Departments of Haryana was more than 1000. A joint written test was taken by the Board and one merit list was prepared by the Board. The names of the selected candidates were recommended for appointment in different Departments of Haryana against the posts of Clerks as per the requisition made by each department. Somehow it so happened that the candidates, who were recommended by the Board for being appointed in a particular department were not given appointments for various reasons, like there no requirement of the filling of the posts at the relevant time or/for some reasons the posts were not available etc. The end result of this was that candidates who were lower in merit and were recommended for appointment in a particular department got appointments, whereas the candidates who were higher in merit and recommended for appointment in another department, did not get appointments at all. In other words, candidates lower in merit got the appointments; whereas the candidates higher in merit did not get the appointments, though their names were recommended by the Board for being appointed by a particular department.

The grievance of the petitioners is that while giving appointments, petitioners who were higher in merit have been ignored, while candidates lower in merit have got appointments. The learned counsel for the petitioners

submitted that this was a clear violation of Articles 14 and 16 of the Constitution of India. On the other hand, the stand of the respondent-Board is that the Board had recommended the names of the candidates to various departments strictly in accordance with merit and it is for the department to make appointments, as the Board is not the appointing Authority, but is only a recommending Authority. According to the learned counsel for the respondents, the Board is not at fault at all and if a certain department does not give appointments, the Board cannot be blamed for that. It has not been denied that the candidates lower in merit have been appointed by the other departments; whereas the petitioners who were higher in merit have not been given appointments by the department where the names of the petitioners were recommended and their names have been sent back to the Board. It has been further pleaded by the Board in its written statement that the names of the persons which have been received back and could not be appointed by various departments on account of one reason or the other, such names would be again sent for appointment as per their original merit as and when any requisition is received by the Board subject to any decision of the Government regarding the validity of the existing selection list. It has been further stated that different departments have different qualifications for the post of Clerk and sometimes the person whose name is recommended for appointment does not have the requisite qualification and that is why he is not given appointment by the concerned department.

After hearing the learned counsel for the parties, we are of the view that there is merit in the submissions of the learned counsel for the petitioners. There is no denying the fact that the Board is the sole and single recruiting agency of the State for the posts of clerks and other such like posts falling within the purview of the Board. The various departments send the requisition for the posts of Clerks as per their requirement and the Board makes one joint selection as was done in the present case. Once there is a joint selection and one common merit is prepared, certainly the person higher in merit has a prior right of appointment than the person lower in merit. The appointments have to adhere to and in accordance with the merit list strictly. For no fault of persons like the Petitioners who are higher in merit and happened to be recommended to a particular department where for one reason or the other they were not given appointments can be made to suffer. This cannot deprive them of their right of being appointed in the other departments on the basis of higher merit. Simply because the persons who were lower in merit have been appointed by the other departments would not absolve the Board to withdraw those recommendees who are lower in merit and recommend the names of the persons who are higher in merit who had not been appointed by a particular department and their names

have come back. If that is not done, it will be a clear violation of the provisions of Articles 14 and 16 of the Constitution of India.

It is true that the Board sends recommendations according to the requisitions which it had received that between the sending of the requisition and actual selection and recommending the candidates quite a bit of time lapses and when the recommendations are sent at that moment there is no requirement of as many posts in a particular department for which earlier on it had sent its requisition. That is why this problem arises because the persons who are higher in merit do not get appointments as their names come back. It would be appropriate if before sending recommendations to each department, the Board was to ask the department at that particular time as to how many posts that department wanted to fill so that the same number of candidates can be recommended by the Board to that particular department. That would avoid the present situation in which the petitioners have been put in.

By directing the Board at this stage to recommend the names of the petitioners and other similarly situated persons who are higher in merit and whose names have been received back from the departments as they could not be appointed, would at this juncture disturb the persons who have already been appointed in the other departments, though lower in merit. We would not like to disturb such persons who have been appointed in the other departments who are lower in merit. Under the circumstances, we direct that from now onwards whenever a requisition is received from any department for filling the posts of Clerks, all persons who are higher in merit as compared to the last person who might have been appointed as a Clerk, till today on the basis of the merit prepared on 15th October, 1989, shall be appointed first. Till such persons who are higher in merit are appointed, the selection list prepared on 15th October, 1989 would not lapse irrespective of any instructions to the contrary issued by the State of Haryana, if any. This direction is in consonance with the Haryana Government instructions issued by the Chief Secretary vide letter No. 2637-SOS-1-76/12144 dated 17th May, 1978. in which it has been observed as under:-

"The Government has also decided that if the name of any candidate has been recommended by the Subordinate Services Selection Board for appointment to any department and the department fails to appoint him for any reason, the validity of the names of such candidates will never lapse and the recommendation of such candidates can be made to any other department at any time by the Subordinate Services Selection Board."

Before parting with the order, we may also deal with a point raised by the learned counsel for the respondent that there are different qualifications for the posts of Clerks in different departments. The learned counsel for the petitioners in C.W.P. No. 12206 of 1990 drew our attention to the Government instructions dated 17th May, 1978 (Annexure P-3), wherein it is mentioned that the qualifications for the post like Clerks by all departments should be similar and that whenever requisition from the departments to fill up posts for common categories, is received by the Board, the demands of the departments may be consolidated and a common advertisement may be issued and it should be mentioned that these posts pertain to different departments. Further, it has been mentioned that a joint seniority list of successful candidates be prepared according to the merit of the candidates. From the above, it is clear that the qualifications for the posts of Clerks in different departments had to be the same and further it is evident that one joint test/interview for all posts in different departments had to be carried out and a joint merit list prepared. This has in fact been done in the present case. Under the circumstances, it cannot be said that the persons who were on the merit list were not qualified to be appointed in any of the departments.

The writ petitions are allowed and the respondent-Board is directed to make further appointment of Clerks in accordance with the observations made above. No costs.”

8. Counsel for the parties could not apprise the Court as to whether the plaintiff-appellant has been offered appointment after the above-reproduced order or has filed a fresh suit after to the return of the plaint pursuant to the judgment under challenge. Clarifying that the findings recorded by the Trial Court would not be an impediment in case of a fresh suit by the plaintiff-appellant, this Court is of the view that no interference is called for in the judgment of the First Appellate Court.
9. Finding no merit in the appeal, it is hereby dismissed.

15.01.2024

(SUVIR SEHGAL)

Kamal

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No