

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

LPA NO. 961 OF 2023 (O&M)

RESERVED ON : MARCH 19, 2024

DATE OF DECISION : APRIL 22, 2024

Dilbag Rai and others

...Appellants

Versus

State of Punjab and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA,
ACTING CHIEF JUSTICE**

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Ashok Kumar Nabhwala, Advocate,
For the appellants.

Mr. Saurav Khurana, Additional Advocate General, Punjab.

LAPITA BANERJI, J.

Consideration in the present appeal is of an order dated May 26, 2023 passed by an Hon'ble Single Judge in CWP No.12196 of 2014, whereby the Hon'ble Single Judge declined the prayer of the appellants to quash the office orders dated March 04, 2003, seniority list dated February 24, 2004 and speaking order dated December 02, 2005.

2. By the common order dated May 26, 2023, the Hon'ble Single Judge decided two writ petitions being CWP No. 16737 of 1990 and the present writ petition being CWP No.12196 of 2014. In the first round of litigation relating to the parties in CWP No.16737 of 1990, the learned Single Judge had allowed the prayer of the petitioners on July 15, 2010, but a Co-ordinate Bench set-aside the order passed by learned Single Judge directing

the writ petition to be heard again. In the said writ petition, validity of Rule 9 (1) of the Punjab Roadways (Ministerial) State Service Class-III Rules 1977 (for short “1977 Rules”) had been challenged in so far as the Diesel Pump Attendants (DPAs) were being clubbed with Class,-IV employees and directions had been sought for granting benefits equivalent to that of the **Clerks** to DPAs. The said challenge to the vires of the Rules was given up before the Hon’ble Single Judge on January 16, 2020, when the said writ petition was being heard afresh. Rule 9 (1)(f) of the 1977 Rules is reproduced herein below :

- “(f) in the case of Clerks including Ledger Keepers-
- (i) 90% by direct appointment; and
 - (ii) 10% by promotion from amongst **Diesel Pump Attendants**, Restorers, Daftries and Peons if they fulfill the requisite qualifications, or
 - (iii) By transfer or deputation of an official already in the services of Government of a State or Government of India, if suitable candidate is not available by the methods referred to in sub-clause (i) and (ii).”

3. The appellants in the present Letters Patent Appeal had *inter-alia* prayed for a declaration that Rule 8 of Punjab Civil Services (General & Common Conditions of Service) Rules 1994 (for short “1994 Rules”) is ultra vires the Constitution of India in wrongly determining the seniority by determining the length of continuous service on a particular post in a cadre, in CWP No.12196 of 2014. However, such challenge to vires was given up. Rule 8 of the 1994 Rules is set out hereinafter :

8. **Seniority** - The seniority inter se of persons appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post in that cadre of the Service.

Provided that in the case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four Months from the date of order of appointment the order of merit determined by the Commission or the Board, as the case may be,

shall not be disturbed: Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post: •

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows:-

(a) a person appointed by direct appointment shall be senior to a person appointed otherwise;

(b) a person appointed by promotion shall be senior to a person appointed by transfer;

(c) in the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and

(d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to a younger person:

'[Provided further that in the case of persons recruited by direct appointment in the same cadre obtaining equal marks during same selection process, their inter-se-seniority shall be determined on the basis of their age. That is, an older person shall be senior to the younger person.] Note:- Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.

The appellants also prayed for quashing of office order dated March 04, 2003, provisional seniority list dated February 24, 2004 and speaking order dated December 02, 2005 which was rejected by the Hon'ble Single Judge.

4. The two issues which fell for determination by the Hon'ble Single Bench were as follows :

i) Whether the Diesel Pump Attendants who were re-designated as **Clerks** in 1999 should have been placed at the *tail end of the seniority list*, particularly when their pay scales were

equivalent, once a conscious decision was taken by the government to merge the post of Diesel Pump Attendants with that of **Clerks** ?

ii) Whether the State was permitted to make any recovery from the appellants in view of the fact that most of them had already retired ?

5. The Hon'ble Single Judge extracted Rule 9(1)(f) and (h) of the 1977 Rules to demonstrate that 90% of the vacancies to the post of **Clerks** (including Ledger Keepers) were to be filled by direct recruitment, whereas 10% were to be filled by way of promotion from amongst; a) *Diesel Pump Attendants* b) *Restorers* c) *Daftries* d) *Peons*. In the event suitable candidates could not be found by way of aforesaid two processes then appointments could have been made by way of transfer or deputation.

6. In case of DPAs, appointments could have been made by way of direct recruitment or by way of transfer, or deputation of an officer already in service of government of a State or Government of India if suitable candidates were not available by the method of direct appointment.

7. Pursuant to government instructions dated October 06, 1994, the posts of a) *Cashier*, b) *Assistant Cashier*, c) *Assistant Accountant*, d) *Store Keeper*, e) *Assistant Store Keeper* were re-designated to the post of **Clerk**, whereas the post of Diesel Pump Attendants was merged with the post of **Clerk** with effect from January 27, 1999. The writ petitioners/appellants worked as Diesel Pump Attendants and it was contended on their behalf that the benefits to the post of **Clerk** should have been given from 1994 as their qualifications and pay scale were at par with that of the **Clerks** prior to 1994. The said stand was disputed by the State as well as by the private respondents before the writ Court, by referring to the service Rules governing the DPAs.

8. Vide notification dated January 27, 1999, the 1977 Rules were amended and Rules 8 and 9 were substituted whereby it was recognized that the post of Cashier, Assistant Cashier, Store Keeper, Assistant Store Keeper and Assistant Account were re-designated as **Clerks** from 1994 pursuant to the government instructions and DPAs were to be re-designated as **Clerks** from the date of the said notification in 1999.

9. The Hon'ble Single Judge came to the finding that even though in 1999 there was a decision to merge the post of Diesel Pump Attendants with that of **Clerks**, there was no infirmity in the conscious decision taken by the government to put them at a lower pedestal in hierarchy, in the list compared to the people already working as **Clerks**. The Hon'ble Single Judge held that there was no arbitrariness or perversity in placing the Diesel Pump Attendants at the *tail end* of the seniority list in the post of **Clerk** as there was no infringement of any provisions of a service rule/regulation by the said decision. The post of DPAs was merged with the post of **Clerk** for the first time in 1999 and the appellants could not claim that their services as DPAs should have been counted as service to the post of **Clerk** since the initial date of appointment as DPAs, as post of DPAs was feeder cadre to the post of **Clerk** prior to 1999. Consequently, the appellants failed on the first issue.

10. On the second issue of purported recovery from the members of the appellants' association, the writ petition No.16737 of 1990 was allowed by restraining the respondents from recovering any amount from the appellants who worked as Class-III employees and mostly retired from service, relying on Apex Court's decision in "*State of Punjab and others v. Rafiq Masih (White Washer)* 2014 (8) SCC 883.

11 This Court has heard the arguments of the parties and perused the materials placed on record and it transpires that the Ledger keepers, Assistant Accountants, Assistant Cashiers, Cashiers, Store keepers and Assistant Store Keepers who had been working in Punjab Roadways were re-designated and allowed the scale of **Clerk** with effect from October 06, 1994 and placed in the **Clerk** cadre-seniority list from October 06, 1994. In view of the Punjab Roadways (Ministerial) Service Class-III (1st Amendment) Rules 1999 vide notification dated January 27, 1999, Diesel Pump Attendants were re-designated as **Clerks** and were placed in **Clerk** cadre/seniority list from January 27, 1999. DPAs were held to be entitled to claim benefits in the **Clerk** Cadre from the date of placing them in the said cadre i.e January 27, 1999. Admittedly, no challenge to the amended Rules was made by the appellants in 1999 or the office instructions of 1994.

13. By an office order dated February 24, 2004 (Annexure P-12) three copies each of gradation lists were sent by the office of Director State Transport Punjab, Chandigarh to all the General Managers of Punjab Roadways, Driver Training School, Punjab, Chandigarh and Government Central Workshops, Punjab, Chandigarh, out of which one copy was directed to be pasted on the notice boards for information of the concerned employees. On one copy, the officers were directed to take signatures of all the employees concerned, working in their office with regard to their approval to the aforesaid two gradation lists dated October 06, 1994 and January 27, 1999. Thereafter, copies of gradation lists were directed to be sent back to the office of Director, State Transport, Punjab. An opportunity was given to the employees who had objections with regard to said seniority lists to raise the same within 15 days from the date of issuance of the said lists. It was

unambiguously stated that no action would be entertained on any objection received by the State Transport Department after the prescribed period for raising such objections.

14. Challenging the seniority list published on February 24, 2004 around some 60 Diesel Pump Attendants filed a writ petition being CWP No.8048 of 2004. The said writ petition was disposed of vide order dated May 25, 2004 at the motion stage by directing the Director State Transport to dispose of the representations/objections of the writ petitioners dated March 08, 2004 within a reasonable time and by giving a personal hearing to them and others likely to be affected by the decision. The appellants however took no steps to challenge the provisional seniority list in 2004.

15. Upon the said direction being passed, a personal hearing was given on July 16, 2004 to the incumbents and a speaking order was passed on December 02, 2005. The Director State Transport upon taking advice from the Principal Secretary, Transport Department, Punjab Government opined that the seniority list dated February 24, 2004 was drawn up in accordance with instructions/Rules issued by the government and the claim of the Diesel Pump Attendants to grant them seniority in accordance with the length of their initial service, was dismissed. The final seniority list was published on August 21, 2006.

16. Despite the final seniority list being published way back on August 21, 2006 after considering all the objections raised by the candidates, the appellants chose not to raise any objections to the same or to take any steps to challenge the same. It is only in 2014 that the present appellants for the first time agitated for their rights by challenging the office order dated March 04, 2003, seniority list dated February 24, 2004 and speaking order

dated December 02, 2005 by filing CWP No. 12196 of 2014, after the Coordinate Bench directed CWP No.16737 of 1990 to be heard afresh. The appellants being fence sitters throughout have sought to take advantage of the abovementioned order of the Coordinate bench dated March 20, 2014 directing fresh hearing of CWP No.16737 of 1990 and the same cannot be permitted at such a belated stage.

17. In “*K. S. Vora and others v. State of Gujarat and others*” reported in *AIR 1987 SC 2348*, it has been held that once the State decides at stages to switch over to a common cadre for the purpose of increasing efficiency by introducing a spirit of total competition, the Rules of seniority were to be framed by the employer and even if prospects of promotion of certain groups of employees, in future maybe likely to be prejudiced by introduction of such a policy, still no entertainable grievance could be made, if the Rules were made in a *bona fide* manner and to meet the exigencies of service.

18. The factual background in *K.S. Vora (supra)* was that the State of Gujarat had decided at stages to switch over to the continuous cadre in respect of all the four grades of the Subordinate Secretariat Services in 1974 and before common cadre had been formed promotion was granted department-wise. In 1974, a common cadre came into existence by merging the posts of i) Clerk-cum-Typist, ii) Junior Assistant, iii) Senior Assistant and iv) Superintendent. The Gujarat Subordinate Secretariat Services (Seniority and Assistance) Rules, 1977 were framed under the proviso to Article 309 of Constitution of India with retrospective effect from May 1, 1960 whereby the principles of determining seniority was provided by stipulating that seniority *inter se* amongst the Assistants based on their length of service in the joint

cadre of Clerk-cum-Typist in all the departments of Secretariat as a whole. After a common cadre was formed, the general feeling of dissatisfaction on account of seniority not being given as in the respective departments and the same was challenged. The Apex Court held that the 1977 Rules were introduced to ease the issue of disparity amongst the employees after being born in the common cadre and no challenge to the said Rules was allowed by the Apex Court.

19. Similarly, this Court finds on the peculiar facts and circumstances of the present case that there was no infirmity in putting the Diesel Pump Attendants at the *tail end* of the cadre of **Clerks**. Furthermore, it finds that under the 1977 Rules, the scale of pay of the DPAs were less than the Clerks as can be discerned from the chart herein below :

Sr. No.	Description of the Post	Scale of Pay	Special Pay
01	Clerk	110-250	-
02	Cashier	110-250	Rs.25/-
03	Assistant Cashier	110-250	Rs.10/-
04	Ledger Keeper	110-250	
05	Store Keeper	110-250	
06	Assistant Store Keeper	110-250	
07	Diesel Pump Attendants	110-200	

20. From the tabulated chart, it becomes clear that all the posts which were merged to the post of Clerk in 1994 bore the same pay scale. In fact, *Cashiers* and *Assistant Cashiers* had special pay of Rs.25/- and Rs.10/- respectively payable to them along with their regular pay scale. However, the *Diesel Pump Attendants* had a lower pay scale compare to the **Clerks**. Taking the financial issue into consideration and also taking into consideration the administrative exigencies, the respondents/executives took a decision to merge the post of *Diesel Pump Attendants* with that of **Clerks** with effect from 1999. The said decision cannot be said to be either perverse or discriminatory or shocking to the conscience of the court.

21. The appellants have been fence sitters since the publication of the final seniority list in 2006, if not the provisional list in 2004 and sought to take advantage when a co-ordinate Bench in LPA No.1847 of 2010 directed CWP No.16737 of 1990 to be decided afresh, in 2014. The writ petition filed by the present appellants is barred by gross delay, laches and acquiescence. A beneficial reference can be made to “*P.S. Sadasivaswamy v. State of Tamil Nadu*” 1975 (1) SCC 152, wherein it has been held by the Apex Court that any challenge to a promotional list should be within a period of six months and definitely not beyond the period of one year.

22. Resultantly, this Court finds that the judgment and order passed by Hon’ble Single Judge suffers from no infirmity and merits no interference, for the reasons other than the ones given by him. There is no arbitrariness or perversity in the decision making process culminating into the speaking order dated December 02, 2005. Accordingly, present latter patent appeal is dismissed. Connected applications, if any, are also hereby disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

APRIL 22, 2024
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Whether speaking/reasoned : Yes
Whether reportable : No