

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2176-2015 (O&M)
Date of Decision: 13.02.2024

PUNJAB SINGH AND OTHERS

.....*Petitioners*

V/s.

**STATE OF HARYANA THROUGH FINANCIAL COMMISSIONER
AND PRINCIPAL SECRETARY TO THE GOVERNMENT OF
HARYANA, INDUSTRIAL TRAINING AND VOCATIONAL
EDUCATION DEPARTMENT, CIVIL SECRETARIAT, HARYANA
CHANDIGARH AND OTHERS.**

.....*Respondents*

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. A.S. Pannu, Advocate for petitioners No.32 and 34.

Mr. Hitesh Pandit, Addl. A.G., Haryana

Ms. Divya Sharma, Advocate
for respondents No.5, 6, 8, 9 and 10.

Mr. T.S. Sidhu, Advocate for the interveners.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioners, by way of this Writ Petition, assail the notification dated 04.01.2013 whereby ‘The Industrial Training Department, Haryana, Field Offices (Group-C) Service Rules, 2013’ (hereinafter referred to as “the Rules of 2013”) were notified in place of ‘the Haryana Industrial Training and Vocational Education Department (Field Offices “Group-C”) Service Rules, 1998’ (hereinafter referred to as “the Rules of 1998”).

2. Learned counsel for the petitioners submits that in terms of the Schedule appended to the Rules of 1998, the post of Assistant and Assistant-cum-Accountant was available for promotion to the post of Deputy

Superintendent by way following methods mentioned against the relevant posts:-

Sr. No.	Designation of the Posts	Academic Qualifications and experience, if any for direct recruitment	Academic qualifications and experience, if any for appointment other than by direct recruitment
1	2	3	4
Ministerial Staff of all Field Offices (Common Cadre)			
1.	Deputy Superintendent		<u>By Promotion:</u> (i) Eight years experience as Assistant/Assistant-cum-Accountant or Senior Scale Stenographer who has worked for a period of two years as Assistant <u>By Transfer:</u> (i) Eight years experience as Assistant/Assistant-cum-Accountant. (ii) Knowledge of Hindi upto matric Standard.
2.	Statistical Assistant	XXXXX	XXXXX
3.	Research Assistant	XXXXX	XXXXX
4.	Assistant-Assistant-cum-Accountant		<u>By Promotion:</u> Two years experience as Accountant OR Five years experience as Clerk or Assistant Storekeeper or Hostel Clerk or Storekeeper-cum-Clerks. <u>By Transfer:</u> (i) Two years experience as Accountant. OR Five years experience as Clerk or Assistant Store Keeper-cum-Clerks. (ii) Knowledge of Hindi upto matric Standard.
5.	Store Keeper	(i) B.A./B.Sc. from recognized University; (ii) Two years experience of handling Engineering Store, Posting of Stock Books and ledgers etc. in Government/Private reputed Engineering Institute/Firm. (iii) Knowledge of Hindi upto matric Standard.	(i) B.A./B.Sc. from a recognized University; (ii) Two years experience of handling Engineering Store, Posting of Stock Books and ledgers etc. in Government Institute; (iii) Knowledge of Hindi upto matric Standard

3. Learned counsel submits that the posts were, therefore, available for being filled from amongst the posts of Assistant alone, and now by the amendment made in the Rules, 80% posts are ear-marked for promotion to

the post of Deputy Superintendent amongst Assistants and 20% posts of Deputy Superintendent have been left for promotion from amongst Store Keepers in terms of the Rule 9 (1) (A) (a) of the Rules of 2013.

4. Learned counsel submits that the new Rule, which has been added under the Rules of 2013, is *per se* discriminatory and seeks to reduce the avenues of promotion available for the Assistants while at the same time, it seeks to add avenues for promotion to the Store Keepers which could not have been done.

5. Learned counsel submits that the post of Store Keeper, as per the earlier Rules of 1998, was a direct recruitment post and the same requires a separate set of educational qualifications and experience, and was not meant to fill the post of Assistant and Deputy Superintendent, while the Deputy Superintendent's posts were exclusively meant for the Assistants/Assistant-cum-Accountant or Senior Scale Stenographer under the extant Rules of 1998.

6. In support of his submissions learned counsel for the petitioners has relied upon the judgement rendered by the Supreme Court in the case of Shakuntala Sharma Vs. High Court of Himachal Pradesh at Shimla in Civil Appeal No.532 of 1994 decided of 02.02.1994.

7. Learned State counsel and the private respondents, who are the Store Keepers, have vehemently opposed the submissions of the learned counsel for the petitioners and have pointed out that the amended Rule cannot be termed as discriminatory and it has a nexus to the purpose sought to be achieved, and it is not that the avenue for the promotion of the petitioners have been taken away. On the other hand, the Store Keepers, who did not

have earlier any promotional avenue, have been provided with one additional promotional avenue to the post of Deputy Superintendent. The Rules of 2013, therefore, cannot be said to be illegal, arbitrary or unjustified.

8. We have carefully considered the submissions of the learned counsel for the parties.

9. For examining the *vires* of the Rules, this Court would have to follow the following principles to consider its validity:-

- (a) Whether the Rules have been framed with a particular purpose and whether the Rules ultimately have a nexus to the purpose sought to be achieved?***
- (b) Whether it seeks to create discrimination 'per se' between the existing employees by the Department or it seeks to create artificial discrimination?***
- (c) This Court would also see whether the Rule has in any manner taken away a substantive right of the existing employees.***

10. Taking into consideration the aforesaid criteria, if we examine the new Rules of 2013, which have been notified on 04.01.2013 while repealing the earlier Rules of 1998, this Court finds that the posts, as mentioned earlier in the Rules of 1998, have been re-designated, and presently, the posts of Deputy Superintendent, Assistant, Store Keeper, Librarian and Junior Scale Stenographer, Steno Typist and Clerks have been encadared instead of the earlier posts mentioned in the Rules of 1998 which included apart from above, Assistant, Store Keeper, Hostel Clerk, Store Keeper-cum-Clerk, Accountant, Assistant Store Keeper-cum-Clerk.

11. In the earlier Rules of 1998, while there was one cadre of Assistant/Assistant-cum-Accountant whereas, in the present Rules of 2013, the post has been enumerated as Assistant alone. The post of Store Keeper,

which was existed in Column No.5 of Appendix-B of the Rules of 1998, provided for filling the same by direct recruitment, and there was no channel available for the Store Keepers for further promotion. In the present Rules of 2013, the Appendix-B has laid down the academic qualifications and experience for the appointment by way of direct recruitment as well as for the appointment other than by direct recruitment, the same are reproduced as under:-

Sr. No.	Designation of the Posts	Academic Qualifications and experience, if any for direct recruitment	Academic qualifications and experience, if any for appointment other than by direct recruitment
1	2	3	4
A. Ministerial Staff of all Field Offices (Common Cadre)			
1.	Deputy Superintendent		<u>By Promotion:</u> Seven years experience as Assistant or Seven years experience as Store Keeper. <u>By Transfer/Deputation:</u> (iii) Seven years experience as Assistant/Store Keeper in State/Government of India Office and possessing Bachelor Degree in any stream from recognized University; (iv) Hindi/Sanskrit upto Matric Standard or higher education.
2	Assistant		<u>By Promotion:</u> (i) Five years experience as Clerk/Steno Typist; OR Five years combined experience as Steno Typist and Junior Scale Stenographer; (ii) Hindi/Sanskrit upto Matric Standard or higher education. <u>By Transfer/Deputation:</u> (i) One year experience as Assistant; (ii) Hindi/Sanskrit upto Matric Standard or higher education.
3.	Store Keeper	(i) Full time, regular mode bachelor degree in Business Administration or Commerce or bachelor degree in Arts with Math/Economics subject, passed with minimum 55% marks from any recognized University; (ii) One year experience in handling Engineering Store, Posting of Stock	(i) Full time, regular mode bachelor degree in Business Administration or Commerce or bachelor degree in Arts with Math/Economics subject, passed with minimum 55% marks from any recognized University; (ii) One year experience in handling Engineering Store, Posting of Stock Books and ledgers or in accounts work in Government or Private reputed Engineering Institute/Firm/ Company registered under

		<i>Books and ledgers or in accounts work in Government/Private reputed Engineering Institute/Firm / Company registered under Apprenticeship Act.</i> <i>(iii)Hindi/Sanskrit upto Matric Standard or higher education.</i>	<i>Apprenticeship Act.</i> <i>(iii)Hindi/Sanskrit upto Matric Standard or higher education.</i>
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12. As regards Rule 9 (1) (A) (a) of the Rules of 2013, this Court finds that the Rule making authority has provided a channel for promotion to the post of Deputy Superintendent from two different methods. The first one is by promotion from amongst the Assistants and other is by way of promotion amongst the Store Keepers; 80% of the posts of Deputy Superintendents are to be filled by way of promotion amongst the Assistants which including the petitioners, while 20% of the said posts are to be kept available for promotion from amongst the Store Keepers i.e. the private respondents. Thus, there is no *lis* amongst both of them and there is a separate selection process which is required to be followed. The experience criteria are also different for both the posts. In view thereof, both the posts are separately classified and hence, the case for discrimination cannot be said to be made out as they do not form a same class. It is not the first case where the channel of promotion is provided to one post from different cadres. The petitioners' cadre, being that of Assistant, is distinctive to the cadre of the private respondents namely Store Keepers.

13. The facts of the judgment rendered by the Supreme Court in the case of Shakuntala Sharma(Supra), relied on by the learned counsel for the petitioners, are completely different as it was a case where the Rules provided not only promotion from two cadres, but also from a lower cadre from which the promotion was available, first to the post of Deputy

Superintendent and Revisor. Thus, the Court, therefore, directed the High Court to frame fresh Rules. In the present case, the facts are being totally different, therefore, the said judgment cannot be applied in the instant case. Even otherwise, there is not right available for promotion and on that account, if a new provision is added, the same is not liable to be quashed as no substantive right of an employee can be said to be taken away.

14. In view of the aforesaid three criteria, as singled out hereinabove, this Court does not find any reason to interfere or to set aside the Rules of 2013. The Writ Petition is misconceived and the same is dismissed accordingly.

15. All pending applications filed in this case shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

February 13, 2024
Ess Kay

[SUDEEPTI SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No