

(2013) 10 P&H CK 0306

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8784 of 2011 (O and M)

Hem Lata and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) 1 SCT 564

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : R.K. Arora, for the Appellant; Sunil Nehra, D.A.G., Haryana and Mr. G.S. Bal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—The eight petitioners before this Court belong to the Ministerial cadre of the Haryana Public Relations Department. They were initially appointed as Clerks and, thereafter, earned promotion as Assistants. Presently, there are working on different posts including those of Accountant, Section In-charge, Press Facility Assistant, Auditor, Sales Manager etc. Their conditions of service are governed by the rules framed under proviso to Article 309 of the Constitution of India promulgated vide notification dated 24.4.1998 and called the Haryana Public Relations Department Headquarters Establishment-Ministerial Wing (Group-C) Service Rules, 1998. Rule 9(1)(II) of these rules provides the method of recruitment to different posts including the post of Deputy Superintendent, Section Incharge, Assistant Production Officer (Distribution), Production Incharge, Personal Assistant etc. The recruitment to the post of Deputy Superintendent is either by promotion from amongst the specified categories or by transfer or by deputation out of the officials who is already in service of the State Government or the Government of India. The post of Senior Scale Stenographers is not mentioned as feeder cadre under Rule 9 (1) (II) which prescribes the method of recruitment. The 3rd and 4th private respondents are both working as Senior Scale Stenographers. The Senior Scale

Stenographers have a right to promotion under Rule 9(1)(VI) to the higher post of Personal Assistant. The further promotional post of Personal Assistant in their channel can be filled either by way of promotion from amongst Senior Scale Stenographers or by transfer or deputation from outside departments of State and Central Government.

2. The pay scale of Deputy Superintendents under Appendix A to Rule 3 is Rs. 1640-60-2600-EB-75-2900 (unrevised) as mentioned at Serial No. 2 of the Appendix. The post of Personal Assistant at Serial No. 6 carries the pay scales of Rs. 1600-50-2300-EB-60-2660+150 Special Pay (unrevised). Appendix B of the rules lay down academic qualifications and experience for both direct recruitment/transfer or for appointment by way of promotion. It is the case of the petitioners that Senior Scale Stenographers like respondents No. 3 and 4 have their own channel of promotion as Personal Assistant but have no right to promotion to the post of Deputy Superintendents under the notified rules of service and other posts mentioned in Rule 9(1)(II). However, Senior Scale Stenographers were included in the seniority list dated 31.3.2008 by placing their names in the list of Assistants/Cashiers. According to the petitioners, a joint seniority list could not be prepared and this act of the Department is unlawful. In this combined seniority list, respondents No. 3 and 4 are placed higher to them. The petitioners state that they protested against the seniority list. They, however, did not litigate. They approached this Court in May, 2011 complaining at that time that 5 more persons have been promoted as Senior Scale Stenographers vide order dated 11.3.2011 and their names have also to find mention in the joint seniority list consequential to the joint seniority list circulated in 2008 based on the same principle. This would further diminish the chances of promotion of the petitioners in their own channel as Deputy Superintendents and cause them heart burn, loss of seniority and delayed chances of promotion to their disadvantage by altering their conditions of service laid down in the rules.

3. The order dated 11.3.2011 (P-6) has been passed in the wake of the directions issued by this Court in CWP No. 8375 of 1991 decided on 30.6.2010, in which, it was ordered that the petitioners therein shall be considered for promotion to the post of Senior Scale Stenographers with effect from the date, the private respondents in that case were promoted and if they do not suffer any disqualification, they shall be so promoted. They, however, would not be entitled to monetary benefits except notional fixation of their salary etc. at par with the private respondents. This is how O.P. Bhagat, Neelam Jindal, Ishwar Singh, Kanta Devi and Balwinder Singh, Junior Scale Stenographers stand promoted as Senior Scale Stenographers. Their ante dated promotion was given effect from 26.2.1991. It is, in these circumstances, that the petitioners have approached this Court praying for a writ of certiorari quashing the action assigning seniority to the Senior Scale Stenographers including respondents No. 3 and 4 in the seniority/gradation list of Assistants/Cashiers etc. so that they do not stake claim on the ministerial cadre posts of Deputy Superintendents etc. It is conversely prayed that the name of the Senior Scale Stenographers should be ordered to be

deleted from the seniority list/gradation list as on 31.3.2008 of Assistants and no further inclusions be made since the Senior Scale Stenographers have no right of consideration for promotion in the line of the petitioners under the Service Rules, 1998. They could be considered only on their next higher post of Personal Assistants. The 1998 Rules are a complete code of promotion within the department applicable to both the parties. The private respondents arrayed in the aforesaid writ petition were two in number and were Senior Scale Stenographers. The petitioners were not party to that writ petition nor was any member from the clerical cadre represented or heard by this Court on the touch stone of the Punjab Civil Services (Promotion of Stenographers and Steno-Typist) Rules, 1961 the provisions of which are being used adverse to their interest. These old rules provide for promotion of Stenographers and Steno-Typist on the clerical side if they fulfilled the conditions laid down in the said rules. One of the conditions precedent for promotion laid down in the 1961 rules meant for Stenographers and Steno-Typist is that they need to have worked as an Assistant for a period of two years on some existing vacancy or by sharing the work of an Assistant. Rule 8 of these rules prescribes an overriding effect. Rule 8 reads as follows:-

8. The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any rules for the time being in force regulating the recruitment and conditions of service of persons appointment to public services and posts, in connection with the affairs of the State.

These rules were notified in the joint Punjab and the State of Haryana was born on 1st November, 1966 following re-organization of States. The rules promulgated in the State of Punjab continued to apply to the State of Haryana by virtue of the provisions of the Punjab Reorganization Act, 1966. The expression "for the time being in force" employed in rule 8 was articulately adopted by Mr. G.S. Bal, learned counsel appearing for the petitioner in the defence of his clients and the interpretation placed on that expression by the Supreme Court in Union Territory of Chandigarh and Others Vs. Rajesh Kumar Basandhi and Another, , to which, this Court would return later after noticing few further seminal facts.

4. On notice of motion having been issued, the respondent department has contested the case by filing the written statement of the Director General, Information, Public Relations and Cultural Affairs Department, Haryana, Chandigarh.

5. Private respondents No. 3 and 4 have filed a separate written statement and appear through Mr. G.S. Bal, Advocate. The State has tried to justify its action in drawing up the offending joint seniority list but with riders as further explained.

6. The State has taken the stand that respondents No. 3 and 4 after promotion as Senior Scale Stenographers had opted for further promotion as Personal Assistants. Therefore, they are not eligible for promotion on the clerical side. The State explains that the rules of 1961 provide that Steno-Typists and Junior Scale

Stenographers are eligible for promotion as Assistants in the manner provided. Besides, Stenographers can opt for promotion in the line of Personal Assistants as well as towards clerical side at par with Assistants as the rules of 1961 provide for inter-se seniority of Stenographers and Assistants for promotion towards clerical side. However, an option once exercised cannot be changed to get an undue benefit to the disadvantageous position of others. It is the categorical stand of the State that respondents No. 3 and 4 once having opted for promotion from the post of Stenographers to the post of Personal Assistants cannot claim further promotion in the clerical side like Superintendents etc. by giving them provisional promotion as Deputy Superintendents. An undertaking has been given to the Court in para. 3 of the preliminary objections that inter-se seniority will be prepared strictly as per rules but, at the same time, the State says in the same para. that it has not been granting any promotions contrary to both the 1998 rules and 1961 rules. The State obviously appears to be in quandary.

7. There can be no doubt that the 1998 rules notified on 24.4.1998 are the special rules of service. The State was conscious of the existence of 1961 Punjab rules while enacting the new set of rules of service. However, before we proceed further, it would profit to notice that on 25.6.1971, the Haryana Government in the Home Department (General Service) Branch enacted rules under proviso to Article 309 of the Constitution to further amend the Punjab Civil Services (Promotion of Stenographers and Steno-Typist) Rules, 1961. By this notification, the applicability of 1961 rules was extended to all Stenographers and Steno-Typists working in all the departments of the State of Haryana excepting those of the Haryana Civil Secretariat and the Punjab and Haryana High Court, a copy of which has been placed at R-4/2 with the reply of the private respondents. Mr. Bal would further refer to the first amendment carried out in 1961 rules by the Haryana Government called Punjab Civil Services (Promotion of Stenographers and Steno-typists) Haryana First Amendment Rules, 1971. In rule 3 of sub rule (I), the following sub rule was substituted:-

(I) In offices where the scale of pay of Stenographers is identical to that of Assistants, the Stenographers shall, before becoming eligible for promotion to a higher post on the clerical side, have to work as Assistant for a period of two years on some existing vacancy or by sharing the work of an Assistant.

Explanation 1.--The period during which a Stenographer has before the date of issue of these rules, performed the duties of an Assistant whether in addition to his own duties or otherwise will be taken into consideration in computing the period of his training as Assistant.

Explanation 2.--Where there is no available vacancy of the post of Assistant for imparting training to the Stenographer, he shall be given at least one-third of the work of some Assistant in addition to his own duties. The Assistant who is thus relieved of some of his work will in turn help the Stenographer in his routine duties.

3. In the said rules, in sub-rule (I) of rule 4, the words "after they have qualified in the departmental test prescribed for the post of Assistant" shall be omitted.

4. In the said rules, in sub-rule (I) of rule 5, the words "after they have qualified in the departmental test prescribed for the post of Assistant" shall be omitted.

5. In the said rules, the proviso to sub-rule (I) of rule 6 shall be omitted.

6. In the said rules, after rule 8, the following rule shall be added, namely:-

9. Power of relaxation--Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons.

S.D. Bhambri, Chief Secretary to Government, Haryana

On these premises, the private respondents urge on the strength of the 1961 rules as amended in 1971 and 1978 (both inexplicably called the first amendment rules) that they have a right of consideration for promotion on the clerical side on the basis of the work sharing on the seat of an Assistant for a period of 2 years.

8. Prior to the drawing up the impugned seniority list in 2008, the Director Public Relations and Cultural Affairs Department, Haryana wrote to the Financial Commissioner and Principal Secretary to Government of Haryana, Public Relations & Cultural Affairs Department, Haryana expressing his concern in his search for an answer to two questions posed in the letter. He sought advice from Government on the following two matters:-

i) Whether Punjab Civil Services (Promotion of Stenographers and Steno typist) Rules, 1961 as amended from time to time are still applicable to the Senior Scale Stenographers of the department?

ii) If the answer to query No. 1 is in affirmative, then whether these rules are applicable only for promotion to the post of Deputy Superintendent or these are applicable to the higher rank posts of Assistants i.e. Sales Manager, Auditor, Accountant, Store-Asstt.-cum-Accountant, Press Facility Assistant, Section In-charge, Production In-charge and Dy. Supdt. etc. in the department. ?

9. The State Government wrote back on 16.3.2007 a letter containing the advice of the Chief Secretary in the General Services-I Branch as follows:-

Reference your memo No. PRDH (Estt-2) AMS. 4/2006/25649 dated 9.10.2006, on the subject noted above.

In this matter the advice of C.S. (In GS-I) Branch) has been obtained, which is reproduced below:-

It is observed that Punjab Civil Services (Promotion of Stenographers and Steno-typist) Rules, 1961 are still in vogue and have over-riding effect on the

provisions of departmental rules in terms of rule-8 of these rules, as such Stenographers of the Public Relations Department are entitled to claim promotion to other clerical posts in addition to the post of Deputy Superintendent under rule-2 of the relevant departmental rules.

On 11.11.2008, the State Government wrote to the Heads of the Department on the subject: "Representation against promotion allowed to Senior Scale Stenographers on the post of Section Incharge, Assistant Production Officer (Distribution), Production In-charge, Auditor, Accountant, Store Assistant-cum-Accountant, Press Facility Assistant, Distribution Assistant and Sales Manager" informing him of the advice of the Legal Remembrancer, Haryana who had tendered the following advice to Government on the subject which reads as follows:-

Keeping in view the overriding effect of Punjab Civil Services (Promotion of Stenographers and Steno-typists) Rules, 1961, as mentioned in rule 8 of the said rules and as also mentioned in the preamble to the rules, these rules shall apply for promotion of Stenographers and Steno-typists, in the Civil Services of the State, to higher posts on clerical side. Rule 2 of the aforesaid rules clarifies that Stenographers and Steno-typists shall be eligible for promotion to the post of Assistant, Head Assistant, Deputy Superintendent or Superintendent, as the case may be, in accordance with the provisions of these rules. The promotion of Stenographers/Steno-typists under these rules can therefore, be made only against the posts as mentioned in rule 2 of these rules and not against any other post.

On the strength of this material, Mr. Bal submits that the 1961 rules are still in force and have an overriding effect on the departmental rules framed later and as such, Stenographers in Public Relations Department are entitled to claim promotion in their own line and also to other clerical posts in addition to the post of Deputy Superintendents under rule 2 of the department rules provided the conditions precedent are met i.e. sharing of work of the post of Assistant for the period prescribed.

10. As a fall out adverse to them the petitioners feeling aggrieved filed CM No. 5294 of 2013 in this case claiming directions based on the admissions made in the written statement filed by the State that though the Stenographers are eligible for promotion to the post of Personal Assistants as per 1998 rules but the Stenographers who opted for promotion as Personal Assistants cannot turn back and claim promotion in the line of Deputy Superintendents, Superintendents etc. and Assistants like the petitioners are eligible for promotion to the higher post in their cadre/line including that of Deputy Superintendents. This application was filed in March, 2013 pointing out that petitioner No. 7 was due to retire on 30.6.2013 and that her name be cleared for promotion against the vacant post of Deputy Superintendent before she retires. Her representation dated 20.2.2013 and 26.2.2013 was placed on record as P-9 and P-10 in continuation of the annexures filed with the writ petition. This was apparently a damage control

exercise. The petitioners had also filed a replication to the written statement filed by the State, in which, it has been asserted that the rules of 1961 do not have overriding effect after promulgation of 1998 rules which deal specifically with appointments and promotion, but the 1961 rules would apply only to such other rules only as are "for the time being in force". It has been argued that the 1998 rules form a complete code for appointments and promotions and if the rule making authority had wanted to incorporate the benefit of the 1961 rules or the two amendments carried out by the Government of Haryana in 1971 and 1978, it could have easily and clearly said so in the 1998 rules. At R-4/4 is the decision of this Court rendered in CWP No. 8375 of 1991 in 2010 qua the disputes inter-se between the Stenographers and by granting retrospective promotion to some of the Stenographers, they cannot be permitted to steal a march over the petitioners on the clerical side detrimental to their interest.

11. On 10.5.2013, the following interim order was passed by this Court:-

Let a specific affidavit of the Director General Information, Public Relations and Cultural Affairs Department, State of Haryana be filed clarifying the position with regard to two issues:

(1) As to whether the private respondents no. 3 and 4 had ever submitted options seeking promotion from the post of Stenographer to the post of Personal Assistant.

(2) Even if such options were submitted would there be any bar under, the Statutory Service Rules for such Stenographer to claim benefit of promotion in the clerical cadre i.e. to the post of Deputy Superintendent.

Needful be done within a period of four weeks. List on 10.7.2013.

In response, an affidavit dated 10.7.2013 has been filed in this case by Shri Sudhir Rajpal, IAS, Director General of the respondent department, in which it has been sworn that respondent No. 3 had requested the Department seeking promotion from the post of Stenographer to the post of Personal Assistant. However, it is stated that no request from respondent No. 4 claiming promotion to the post of Personal Assistant is available in the office record. But both the respondents were asked to submit their options on 10.1.1991 vide R-1 (common letter to both) asking them to opt for promotion and inquiring whether they wanted promotion as Senior Scale Stenographer or as an Assistant in the clerical cadre. Respondent No. 3 opted for promotion on the post of Senior Scale Stenographer and not as an Assistant and further requested that he be promoted to the post of Personal Assistant vide letter dated 28.8.2005 (R-3). Respondent No. 4 replied on 16.1.1991 (R-4) and requested to be promoted to the post of Senior Scale Stenographer.

12. The dichotomy between 1998 rules and 1961 rules is writ large in this case calling for resolution of the vexed problem. The respondent State has taken a wishy-washy stand unable to state clearly and emphatically what the true legal

position is except to rely on advice tendered. The advice of the Chief Secretary and of the Legal Remembrancer can at best be regarded as opinions and not binding administrative decisions on the construction, interpretation and interplay of the two set of rules. They would at best demonstrate a past practice but not qualify as a statement of law. I do not see why the cases of respondents No. 3 and 4 should not be foreclosed on the strength of the options exercised consciously by them indicating choice to go ahead with promotion to the post of Senior Scale Stenographer and then onward to the post of Personal Assistant under the 1998 rules. Literally speaking, the post of Senior Scale Stenographer is not even mentioned in the 1961 rules where the nomenclature of Stenographers and Steno-Typist has been used. I do not see any good sense in accepting a convoluted argument based on the 1961 rules originally promulgated in Punjab though later adopted by the Haryana Government for the first time speaking through its notification in 1971 rules making them applicable to all departments of Haryana other than Haryana Civil Secretariat and the Punjab & Haryana High Court and later through amendment in 1978 which are so emphatically relied upon by Mr. Bal to persuade this Court as still existing on the statute book and enforceable.

13. The question is as to whether in the absence of any guiding principles on promotion would the 1961 rules as adopted by the State of Haryana in 1971 and 1978 would have to be read into 1998 rules just as we read the principles of natural justice into rules or for that matter, policies on reservation enabled by Article 16(4) of the Constitution into the statutory rules framed under proviso to Article 309 of the Constitution. To my mind the least heart burn would be occasioned if the 1998 rules are read in isolation to achieve the purpose they set out to do in implementation of the promotion policy laid down therein reading it as stand alone. After all, the 1998 rules were promulgated in the department 20 years after the 1978 amendment to the 1961 rules was carried out by the State of Haryana. When there are available avenues of promotion open to the Stenographer line, what is the need to give them additional benefit of the 1961 rules in this day and age and for what special or compelling reason? I find none. Nor is there anything on record tracing the history and philosophy of the 1961 rules or what prompted to rule making and cadre controlling authority in its wisdom to carve out an exception to the normal rule that each unit/cadre/department which has its own genius, ought to be governed by its own rules when enacted. The jurisprudential basis of all service rules is to make known the conditions of service to all members of the service to be applied uniformly to avoid disputes and if they arise to settle them in accordance with rules and on principles of appointment, recruitment, promotion, qualifications, experience required for different posts specified normally in appendices, seniority etc. laid down therein. If one set of rules consciously forms a complete code laying down the terms and conditions of service then importing a foreign concept not informed or published at the time of entry to service of a department under the State may be arbitrary and unreasonable. The purpose of framing rules is to

avoid conflict and not to fan it and that no one should be taken by surprise. This is also the sacred principle on which governance works. The precepts are for all to see and for individuals to shape their future conduct, their hopes and aspirations. Reading the 1961 rules into the 1998 rules leads only to chaos, disorderliness and broken promises and legitimate expectations. I am unable to reconcile myself to such devastating effects as I see in this case by approving the parasitical steno typist and stenographer sharing a seat with an Assistant for two years under compulsion of an administrative order passed by a superior, the Assistant watching helplessly and imparting training reluctantly to his opponent from the stenography line by sharing work only to be dethroned in future and as though he is incapable of doing the full work of his seat for which he is paid salary out of public funds. I think the scheme of the 1961 rules is anachronistic, unfair and capable of gross abuse. It seems to be out of tune with the times and appears quaint in this age of specialization, the Digital Age. I am also inclined to think that there is good sense in the old idiom, Live and let live and to apply it to this case.

14. This brings us to the next question whether the expression "for the time being in force" used in rule 8 of 1961 rules encompasses rules likely to be framed in the future as well. Mr. Arora appearing for the petitioners relies on the decision of this Court sitting in division rendered in CWP No. 18397-CAT of 2007; Ashok Kumar v. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others decided on 28.12.2010, in which this Court dealt with the effect of a dispute based on a difference in special and general instructions on the same subject in a case of promotion. In para. 12 of the judgment it was observed as follows:-

? The argument raised by the learned counsel for the petitioner based on the instructions dated 13.12.1976 (P-3) would not require any detailed consideration because these instructions issued by the Department of Personnel are general instructions, which would not have any application in the face of the specific instructions regulating the selection in the Department of Excise and Customs, which are dated 10.4.1989 and 10.3.1989 (P-5 & P-5/1). Therefore, the argument that the selection method provided by general instructions should have been followed, has to be rejected because such instructions cannot take the place of specific instructions issued by the Department of Excise and Customs governing the selection of Inspectors. Moreover, it is on the basis of the instructions dated 10.3.1989 and 10.4.1989 that the petitioner has eventually been selected and promoted as Inspector on 9.9.1991. Therefore, we find no merit in the aforesaid argument.

15. It is now the turn of examining the decision of the Supreme Court in Union Territory of Chandigarh and Others Vs. Rajesh Kumar Basandhi and Another, relied upon so heavily by the private respondents. The Supreme Court had occasion to deal with the expression "for the time being" employed in Union Territory of Chandigarh, Employees (Conditions of Service) Rules, 1992. These

rules provide that persons appointed to service of U.T., Chandigarh would be governed by the same rules and the orders as applicable for the time being to the corresponding posts of the Punjab Civil Services. The question was whether the amendment required adoption by U.T. or not. The Supreme Court held that no adoption of amended provisions was necessary and by assigning general meaning to the expression "for the time being" it would be applicable without being specifically adopted by the Chandigarh Administration. Mr. Bal would refer to paragraphs 11 and 17 of the report in his support. They read as under:-

A perusal of the meaning of the expression "for the time being" by different authors, based on decided cases makes it clear that it cannot be said that it must in every case indicate a single period of time. It may be for indefinite period of time depending upon the context in which the phrase is used. It is also evident that generally it denotes indefinite period of time, meaning thereby, the position as existing at the time of application of the rules, may be amended or un-amended. Therefore, to come to a conclusion as to whether it is for one time or for indefinite period of time, the context, purpose and the intention of the use of the phrase will have to be seen and examined.

17. The intention of the appellant also does not appear to be to confine the meaning of the phrase "for the time being" to a single time which would be demonstrated by the fact that in the notification issued for recruitment, one of the conditions was that the candidate should have experience of two years at the Bar. This condition was introduced by amendment to Section 87A on 24.12.1991 that is to say the amendment in the rule regarding two years experience was included in the requirement of eligibility. A specific query was made from the learned counsel for the appellant on the point, namely, in what manner the amendment in the relevant provision regarding two years practice was given effect to in the notification for recruitment, the learned counsel answered that the said amendment had been made before the issuance of the notification making the Punjab Rules applicable to the persons appointed in the service of Union Territory of Chandigarh. To be more specific the case of the appellant is that the provision of the Punjab Rules was amended on 24.12.1991 introducing the condition of two years practice at the Bar whereas the notification was issued by the Chandigarh Administration subsequently i.e. on 13.1.1992 therefore amended position of the Punjab Rules till that date namely 13.1.1992 was incorporated in the notification for recruitment. But it would be pertinent to point out that it was conveniently skipped by the appellant to notice that Punjab Rules were made applicable with effect from 1.4.1991 though the notification to that effect was issued on 13.1.1992. The consequence of giving effect to the notification dated 13.1.1992 w.e.f. 1.4.1991 would be that Punjab Rules as existing on 1.4.1991 would be applicable. If the argument of the appellant is accepted that the phrase "for the time being" was applicable for only one time and not for future amendments, Punjab Rules, as existed on 1.4.1991 alone would apply without taking note of the subsequent amendment in the rules i.e. as made on 24.12.91 regarding requirement of two years practice. But the

appellant did not adhere to that position which is being canvassed now but in the notification for recruitment the position as brought about by amendment in the Punjab Rules as on 24.12.1991 was incorporated and given effect to. The appellant cannot have it both ways. Once having given effect to the notification dated 13.1.1992 with effect from 1.4.1991 it should have adhered to the rules as existed on 1.4.1991 if it wanted to say that the phrase "for the time being" was meant for a single time and not for future varying situation and amendments. Thus the stand taken by the appellant becomes self-contradictory to its own conduct in incorporating the rule as amended on 24.12.1991 i.e. subsequent to 1.4.1991 with effect from which date the Punjab Rules were made applicable to the services of the Union Territory of Chandigarh. The mere fact that notification was issued on 13.1.1992 will not change the position if it were to be interpreted that the phrase "for the time being" was for a single time. The appellant having itself given effect to the rules amended after 1.4.1991, cuts against its own argument to say that amendment subsequent to 1.4.1991 would not be applicable unless specifically adopted by the Union Territory of Chandigarh. It may not be open for the appellant to pick one amendment in the Punjab Rules and implement the same and refuse to apply the other amendment. It is clear that no adoption of the amended provision was necessary and by assigning the general meaning to the expression "for the time being" it would be applicable without being specifically adopted by the Chandigarh Administration. The general meaning of the phrase "for the time being" seems to be reasonable since the position as existing at the time the rule is applied that would be taken into account unless of course context may indicate otherwise. We find no such context by reason of which we may assign meaning to the phrase other than the meaning understood in general sense that such an expression is indefinite in time and refers to state of facts which may arise and exist at the time rule is applied which may vary at different times. The same meaning as generally understood has also the approval of the decision of this Court in Jivendra Nath Kaul (supra).

16. The Supreme Court found that U.T. Chandigarh having given effect to the notification dated 13.1.1992 with retrospective effect from 1.4.1991, it should then have adhered to the rules as existed on 1.4.1991 if it wanted to say that the words "for the time being" was meant for a single time and not for future varying situations and amendments. Once the U.T. Chandigarh admitted giving effect to rules from an anterior date, it would cut its own argument to say that the amendment subsequent to 1.4.1991 would not be applicable unless specifically adopted. I do not see how Basandhi's case helps the private respondents. No such thing as had happened in that case has happened in the present once. The issue of adoption of rule does not arise in the instant case. In fact, the core issue decided helps the petitioners inasmuch as the general meaning of the words "for the time being" seems to be reasonable to the Supreme Court since the position as existing at the time the rule is applied, that would be taken into account unless of course context may indicate otherwise. In

the present case, it is indicative to the contrary since the 1998 rules do not make any mention of 1961 rules. Basandhi's case is distinguishable on the point that in the absence of rules of its own relevant category of employees the Chandigarh Administration shall be governed by the Punjab rules. If specific rule occupy the field, then I do not see why we need to muddle up the issue by trying to import or resurrect the decadent 1961 rules which appear not only to have outlived their utility, and inject its venom into 1998 rules paralyzing the petitioners as they are passed over one by one. If the 1998 rules make no provision for appointment of Senior Scale Stenographers to the post of Deputy Superintendents, nothing can help except a statutory amendment in favour of the respondents and earn them further promotions as Deputy Superintendents. The seniority rule laid down in the 1998 rules also does not come to the aid of the private respondents. The interpretation would run against Senior Scale Stenographers in the respondent department which may be sought to be promoted under rule 9(1)(II). I am neither swayed nor persuaded by the view expressed by the Chief Secretary, Haryana or Legal Remembrancer, Haryana. Rule 2 of 1961 rules may apply to Stenographers and Steno-Typists to seek further promotion in accordance with the provisions of rules but the Stenographer or Steno Typist who has given up promotion to the post of Assistant and sought promotion to the higher post of Senior Scale Stenographer in his own channel of promotion would remain as one who has traveled beyond the point of no return.

17. The 1961 rules, in my considered view, require literal interpretation which is the best tool of construction of statutes to serve the objects and purpose of legislation. If the designation/nomenclature/post of Senior Scale Stenographer is not mentioned in 1961 rules, it cannot be imported. Even assuming it was argued before me that the post of Senior Scale Stenographer had not been created prior to 26th December, 1961 when the 1961 rules were notified, I would still not hold that that post has to be read into the 1961 rules after its promulgation in absence of any further amendment either by the Punjab Government or by the Government of Haryana. The philosophy of 1961 rules appears to me to be to create a man who is two-in-one, a hybrid Steno-cum-Clerk which may have once made office work easier. Therefore, the rule making authority injected the principle of sharing of work of an assistant to be the key to unlock the problem. After 52 years, I am unable to resurrect decadent law, catch it by the scruff of its neck and put it into 1998 rules to the apparent injury of employees like the petitioners who would be delayed if not denied chances of promotion as Deputy Superintendents by enforcing a joint seniority list of Assistants. Maintaining a joint seniority list appears to me to be foul and one that alters the conditions of service contrary to 1998 rules. In the present case, if the interpretation of the Chief Secretary to Government of Haryana and the Legal Remembrancer, Haryana placed on the 1961 rules is accepted these rules would supplant the 1998 rules and amount to reading something which does not exist in the latter rules. It may not be wise or prudent to run both the rules parallel to each other giving an unfair advantage to the respondents and their likes

apparently inconsistent with the principles of service jurisprudence flowing from rights under constitutional article 14 re. discrimination, and article 16 re. equality of opportunity, as evolved tirelessly by Courts into full bloom during the intervening decades from the days of the 1961 rules. The 1961 rules are enabling rules which permit Government to change the track for stenographers and steno typists but do not confer any automatic right to appointments by promotion on them. It is an abstract right ignited at the will and caprice of the ruler of the day. These rules do not also lay down any guidelines as to which stenographer or steno typist will be deputed to share the work of an Assistant for the incubation period of two years or how he would be selected from his own peer group. It appears to be an exception to the rule of equality of opportunity. The rules leave a wide unbridled discretion in the head of the department to choose who to favour from amongst those it is designed to help. This is like the cuckoo, a brood parasite laying its dreaded egg in the crow's nest.

18. Resultantly, respondents No. 3 and 4 are held not entitled to promotion as Deputy Superintendents de hors their options or to other categories of post mentioned in rule 9(1)(II) of the 1998 rules firstly by accepting the reason mentioned in the written statement that they have no right to promotion on the clerical side having opted out. Insofar as other Senior Scale Stenographers are concerned who were promoted in 2011, I would only say that they should be restricted to their line of promotion as Personal Assistants etc. Rights inter se the parties will be limited to and governed by statutory rules framed in 1998 which form the complete code without any foreign aggression. The purpose of all statutory rules of service to repeat is to lay down clear terms and conditions of service in order to avoid litigation not promote it. I must record that Mr. Sunil Nehra, learned Senior DAG, Haryana took a very fair stand of neutrality in his address to the Court and left the heated debate on the troublesome issue effectively between the learned counsel for the petitioner and the private respondents. This stand becomes the State well to leave issues like seniority to be settled inter-se the contesting parties and to be resolved by Court. For the foregoing reasons, this writ petition is allowed. The seniority of the clerical line and the stenography line is directed to be separated. Promotions within Stenography and clerical line henceforth be made in accordance the 1998 rules alone. The seniority/gradation list as on 31.3.2008 is ordered to be re-cast. The promotion order dated 14.3.2011 would hold good for the promotions made but that would not give them right of seniority on the clerical side. Senior Scale Stenographer would remain restricted in their promotion in accordance with rule 9(1)(VI). The views expressed by the Chief Secretary, Haryana and the Legal Remembrancer, Haryana are declared not binding being inconsistent and contrary to the provisions of the Haryana Public Relations Department Headquarters Establishment-Ministerial Wing (Group-C) Service Rules, 1998.