
(2021) 01 P&H CK 0308

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11 Of 2020 (O&M)

Mahipal Singh & Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(4), 16(4A), 226, 227, 335

Citation : (2021) 01 P&H CK 0308

Hon'ble Judges : Fateh Deep Singh, J

Bench : Single Bench

Advocate : Sanjiv Gupta, Shruti Jain, Ramesh Goyat

Final Decision : Dismissed

Judgement

Fateh Deep Singh, J

The petitioners, in all numbering seven, have come up in this Civil Writ Petition under Articles 226/227 of the Constitution of India seeking directions

by way of certiorari thereby quashing the seniority list dated 27.12.2019 (Annexure P16) and further seeking mandamus to consider the case of the

petitioners for promotion to the posts of Sub Divisional Agriculture Officer (SDAO) or equivalent by virtue of communication dated 04.10.2018

(Annexure P12) claiming that their cases have already been forwarded for promotion and thus seeking stay of implementation of purported seniority

list (Annexure P16).

The petitioners claim that they are working as Block Agriculture Officers/ Technical Assistants (BAO/TA) details of which have been duly detailed in

the petition and which need not be reproduced here. Earlier the petitioners were governed by the Haryana Subordinate Agriculture (Group â??Câ??)

Rules, 1993 as well as Haryana Horticulture (Group â??Câ??) Service Rules, 1998, which have been put up under nomenclature of HAS-II with

effect from 17.08.2010 (Annexure P1). The feeder post of the petitioners was Agriculture Development Officer and then to the post of Block

Agriculture Officer and Technical Assistant. It is claimed that the respondent State without amendment in the Service Rules, is trying to tinker with

the same through the office orders and claimed that there has been restructuring of pay-structure without altering nomenclature of these posts through

Service Rules. The petitioners are aggrieved over the fact that they belong to â?? Scheduled Caste categoryâ? and have been denied their ultimate

right to promotional avenues. It is claimed that earlier as per the Government instructions there was benefit of reservation to Group â??Câ?? and

Group â??Dâ?? employees of the members of the Scheduled Castes, Backward Classes and Ex-servicemen by virtue of which reliance is placed on

(Annexure P3). It is claimed that the Government issued instructions dated 15.05.2015 as to grant of reservation to the members of the Scheduled

Caste category whereby the Government had decided to give 20 per cent reservation in promotion with consequential seniority to the officials from

these categories of employees in Class III and Class IV posts with effect from 01.04.2013 relying on the roster point contained in instructions dated

15.05.2015 (Annexure P5).

The principal grouse of the petitioners is that the vacancies which are meant for the petitioners in their quota coupled with the roster point, were not

allowed to be filled up despite Government instructions/judgment issued on 20.02.2013 (Annexure P9). The petitioners claim that though seniority list

of BAO/TA was drawn on 01.11.2016 and after considering objections, the seniority list was circulated vide letter dated 24.03.2017 (Annexure P10),

but the same was subject to pendency of CWP No.11073 of 2015 which could be reviewed subject to the ultimate final decision in the writ petition

which is still pending. There have been allegations of heart-burning amongst the staff of the Department for having made wrong advice and drawn

wrong presumption and thus causing immense prejudice to the seniority of the petitioners and ultimately which is going to affect their subsequent

promotions to higher echelons. The petitioners have claimed that once seniority has been finalized, the same cannot be tinkered with and that the

respondents by issuing such fresh communications are trying to undo the effects of the same contrary to the settled law and thereby have by drawing

the provisional seniority list, ended up preparing two parallel seniority lists which is not permissible under the law and has termed (Annexure P16) to be

malafide, illegal, contrary to the settled proposition of law and hence the relief in question is being sought.

Two different sets of written statements, one by respondents No.1 and 2, the State, and the other by private respondents No.3 to 8 were filed. The net

effect of these replies is that the State claims that though 85th amendment in the Constitution of India was notified on 04.01.2002 whereby Article

16(4-A) was made and in consequence of which, instructions were issued by the answering respondents State promoting the petitioners who belong to

the reserved categories, as BAO/TA in the year 2009 whereby the petitioners managed to secure accelerated promotion with seniority; as a result of

which general category candidates who were senior to the petitioners and were working as Agriculture Development Officers were prejudiced in their

seniority.

The State has taken the plea that the Haryana Government Agriculture Department vide notification dated 17.08.2010 (Annexure P1) had declared

the posts of Agriculture Development Officers, Block Agriculture Officers and Technical Assistants of the Agriculture Department including

Horticulture Development Officers, Technical Assistants, Assistant Project Officers and Demonstrators of the Horticulture Department earlier

governed under the Haryana Subordinate Agricultural (Group 'C') Service Rules, 1993 and the Haryana Horticultural (Group 'C')

Service Rules, 1998 respectively as HAS-II in the case of Agriculture Development Officers etc. in the Agriculture Department and Class-II in the

case of Horticulture Development Officers etc. in the Horticulture Department. Further it is the stand of the State that the Department issued the

gradation list of BAO/TA (Admn.

Cadre) as it stood on 01.09.2013 and that as per the Government instructions dated 14.10.1999 the names of Scheduled Caste candidates be shown in

the gradation list of feeder cadre posts i.e. ADO as it stood on 01.01.2002 because the senior candidates belonging to the general category were not

promoted. It is further stated that subsequently Department issued the seniority

list of BAO/TA as stood on 01.07.2014 and the Scheduled Caste

candidates shown in the above gradation list from serial no. 170 to 195 and that in the gradation list following remarks have been given in the column

against the Scheduled Caste candidates:-

“The seniority number shall continue to remain tentative and the official shall not be promoted till the general category senior in the feeder post of

ADO gets promoted as BAO, TA and then as Subject Matter Specialist/APPO and equivalent.”

It is alleged that as a consequence of revision/modification of the pay-scale/pay-structure by the Haryana Government on the basis of Haryana

Finance Department’s notification, nomenclatures were changed whereby the revision/modification in the same was on the condition that the posts

of Agriculture Development Officer/Horticulture Development Officer and BAO/TA/Demonstrator were merged in one cadre and thus post of

BAO/TA and Demonstrator would not remain promotional post of ADO/HDO. The respondents no.1 and 2 have pleaded further that in pursuance of

acceptance of report of P. Raghvender Rao Committee on 31.01.2015, the Government of Haryana have decided to give 20% reservation in

promotion with consequential seniority to Scheduled Caste category employees in Class III and Class IV posts with effect from 01.04.2013 and that

the roster points contained in instructions dated 15.01.2014 for relevant category shall hold good. It is on the basis of this decision, seniority list was

prepared by the answering respondents as an outcome of the writ petition bearing CWP No.11073 of 2015 titled as “Dinesh Kumar Sharma and

another vs. State of Haryana and others”. It is claimed that the Department had examined the whole seniority list of all cadres in the Agriculture

Department and after examination of the same it was found that undue benefit of accelerated promotion/seniority was given to the employees of the

Scheduled Caste category employees which was not per-se admissible in view of the judgment of Supreme Court in “Ajit Singh (II) vs. State of

Punjab and others reported in 2000(1) SCT 770; and as a consequence of which a provisional seniority list was prepared on 01.02.2019 which was

circulated vide letter dated 28.02.2019 and objections were invited. It is claimed that the petitioners did not file any objection to the tentative seniority

list so circulated and straightaway have come up in this writ petition which needs

to be dismissed.

It is further pleaded by the official respondents that the petitioners were promoted as Block Agriculture Officers/Technical Assistants in the year 2009

by giving benefit of accelerated promotion and accelerated seniority which was not otherwise admissible as per settled law and thereby the petitioners

were posted as Class II officers and the posts of Block Agriculture Officer/Technical Assistant are Group B posts when as per the rules and the law

benefit of accelerated promotion/roster system is admissible to the posts of Class III and Class IV and not Group B posts in the State of Haryana.

Each and every averment was denied to be factually incorrect and wrong interpretation of law and claimed that the seniority fixation is by virtue of the

settled law of the Apex Court and that CWP No.11073 of 2015 titled as "Dinesh Kumar Sharma and another vs. State of Haryana and others"

stands disposed off and that the SLP before the Supreme Court is still pending by way of SLP(C) No.P-30621 of 2011. Denying each and every

averment, sought dismissal of the writ petition.

Similarly, private respondents No.3 to 8 took the objections that though challenge to the final seniority list (Annexure P16) has come about but the

same is without impleading the necessary and affected persons as parties, and sought dismissal of the writ petition. It is further alleged that in the

State of Haryana as per the Government notification, reservation and promotion for Scheduled Caste category employees is permissible only to Class

III and Class IV posts and have sought to reiterate the law laid down by Constitution Bench of the Supreme Court in "Jarnail Singh and others vs.

Lachhmi Narain Gupta and others" reported in 2018 (4) SCT 445 and another view of the Supreme Court that no such directions for reservation in

promotion to post of Class I and Class II can be issued to the State. The answering respondents have claimed that they belong to the general category

and were initially appointed as Agriculture Development Officers much before the petitioners who belong to the Scheduled Caste category, and

have detailed the particulars with seniority and claimed that as per the Haryana Subordinate Agriculture (Group "C" Service Rules, 1993, next

promotional post from Agriculture Development Officer was the post of Technical Assistant/Block Agriculture Officer and which has to be filled

purely by seniority-cum-merit, and claimed that the petitioners who were junior

to the private respondents, were promoted as Technical Assistants/Block Agriculture Officers over and above the answering respondents against the roster point reserved for the Scheduled Caste employees in the year 2009. The answering respondents pleaded that it was subsequent, a letter dated 22.05.2014 (Annexure P2) was issued by the Finance Department, Haryana whereby the posts of Agriculture Development Officer and Technical Assistant/Block Agriculture Officer were merged with the posts of Technical Assistant/Block Agriculture Officer and accordingly, all the petitioners were designated as Technical Assistants/Block Agriculture Officers; claiming that order (Annexure P2) was never challenged by the petitioners as to the merger of the posts and therefore they are not entitled to claim any relief which is also not subject matter of challenge in the present petition as all the effected parties have not been arraigned so. The answering respondents have claimed that since the petitioners were selected/appointed much after the appointment of answering respondents, therefore they cannot seek accelerated seniority which is contrary to the settled proposition of law. It is claimed that the controversy in Dinesh Kumar Sharma's case (ibid) is much at variance from the present dispute and claimed that unwanted frivolous litigation is being filed by the Scheduled Caste/Backward Class candidates and thus, put to knots the main issue. Denying each and every averment of the petitioners to be wrong figment of their imagination, misconstruing of true facts and the law, had sought dismissal of the petition.

Heard Mr. Sanjiv Gupta, Advocate representing the petitioners; Ms. Shruti Jain, Dy. Advocate General, Haryana appearing on behalf of respondents No.1 and 2; Mr. Ramesh Goyat, Advocate for respondents No.3 to 8 and perused the records of the case.

It is a matter of common knowledge that fixation of seniority inter-se between the employees, be it of any department/cadre, has over a period of years gained much notoriety. In an effort to overrun the other, each side is trying to make valiant efforts, be it by distortion of the facts or misconstruing them. The Courts are being put to great burden as at mere drop of a hat any employee who feels it so comes and knocks at the doors of the Court. It is over a period of years that innumerable litigation with varying pronouncements by the High Courts and the Supreme Court, some

semblance of peace and tranquility has come about with the Constitution Bench judgment in the case of Jarnail Singh (ibid) which has done away with

the determination of "extent of reservation" based on backwardness, inadequacy of representation and overall administrative efficiency ensuring

that the States will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the

creamy layer or extend the reservation indefinitely, as was laid down in "M. Nagaraj & others vs. Union of India & others" reported in 2007 (4)

SCT 664. Since the law is now well settled the departments need to take such decisions on their own while fixing seniority rather than waiting for the

Courts to make such pronouncements again and again over an issue which stands resolved for times to come.

The interpretation of Articles 14 and 16 of the Constitution of India univocally demonstrates that though seniority is not a fundamental right but

certainly is a civil right which cannot be obliterated as it would lead to anarchy and heart-burning, impacting the very efficiency and working of a

system. For this, as has been laid down in the case of Ajit Singh-II (ibid), seniority qua reserved category and general category candidates has to be

maintained and one cannot lose sight of the fact that rendering of adhoc service is not to be considered for the purposes of seniority. There has been

much debate these years upon the pronouncement of M. Nagaraj's case (ibid) in 2006 followed by the principle of catch-up enunciated in "S.

Panneer Selvam & others vs. Government of Tamil Nadu & others" 2015 (10) SCC 292 pronounced in the year 2015 whereby the Apex Court

laid much stress on Article 16(4-A) of the Constitution of India holding that the same is only an enabling provision which specifically provides that the

concerned State may make any provision for providing reservation of appointments or posts in favour of any Backward Class citizen which is not

adequately represented in the services under the State. It was stressed that Articles 16(4) and 16(4-A) have to be conjointly read with Article 335 of

the Constitution of India and that claim of these reserved categories have to be taken into consideration consistently with the maintenance of

efficiency of administration and thereby have given boost to the catch-up rule. Thereafter, in "B.K. Pavitra & others vs. Union of India &

others" reported in 2017(2) SCT 192, pronounced in the year 2017, all the previous ratios were duly considered including the cases of "Indra

Sawhney v. Union of India 1993(1) SCT 448 and R.K. Sabharwal v. State of Punjab 1995 (2) SCT 646 followed by another Apex Court

view in Sudhakar Baburao Nangnure v. Noreshwar Raghunathrao Shende & others 2019(2) SCT 416 pronounced in the year 2019 after

Jarnail Singh's judgment (ibid) which was delivered in the year 2018.

From all these pronouncements that have come about from the Supreme Court, it permeates that for the determination of promotion/seniority in a

service the essential constituents that need to be kept in mind are the very date of appointment, the basis of confirmation, the basis of regularization of

service, the basis of length of service and any other reasonable basis which could assist in a legal and logical manner and further that though there can

be a case of accelerated promotion for an employee belonging to reserved category but there cannot be accelerated seniority as it was laid down in

R.K. Sabharwal's case (ibid) that no employee belonging to reserved category will be granted benefit of accelerated seniority and other

consequential benefits over and above those of seniors on account of his accelerated promotion from the feeder cadre under the policy of reservation

in Class III and Class IV posts. In the present case, the private respondents were in permanent service much prior in point of time when the

petitioners joined this service. Though in M. Nagaraj's case (ibid) while upholding the constitutional validity of the Eighty Fifth amendment of the

Constitution of India, it was laid down that the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of

promotion and if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness

of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335 of the Constitution of India,

which was not upheld in the subsequent view of a Constitutional Bench in Jarnail Singh's case (ibid) where the Supreme Court while discussing

the concept of creamy layer for the first time propounded in Indra Sawhney's case (ibid) held that the creamy layer has to be identified and

excluded as the Supreme Court was of the view that the affluent section of the Backward Class though may not have acquired a higher level of

education, is able to move in the society without being discriminated socially and rather practice discrimination against others in that group who are

comparatively less rich. Thus, to ensure that these persons do not chew-up the benefits meant for true Backward Class, certain ceilings were fixed as cut off benefits of reservation to such classes.

Taking a unified view in B.K. Pavitra's case (ibid) which came much prior to Jarnail Singh's view (ibid), the law laid down in the two ratios of

Ajit Singh Janjua, Indra Sawhney's case, M. Nagaraj's case, R.K. Sabharwal's case and S. Paneer Selvam's case (ibid) besides

other ratios including that of Union of India v. Virpal Chauhan 1995(4) SCT 695, it was held that one aspect which needs to be taken care of

is that of social justice, i.e. distribution of benefits and burden. Laying much stress on Constitutional principle of equality which was asserted to

be inherent in the rule of law, it was held that the basis of distribution is the area of conflict between the rights, needs and means; and therefore sub-

divided into two concepts of equality as formal equality and proportional equality; holding further that the concept of egalitarian

equality is the concept of proportional equality and it expects the States to take affirmative action in favour of disadvantaged sections of society

within the framework of democratic polity. In B.K. Pavitra's case (ibid), the principle enunciated in Indra Sawhney's case (ibid) that

reservation under Article 16(4) of the Constitution of India can only be at the stage of entry into service and not in promotion as reservation in

promotion is bound to generate acute heart-burning and lead to inefficiency in administration, was also discussed; to which this Court adheres to while

arriving at conclusion in this case.

In the instant case, it is by no means differed by the counsel representing the two sides that the posts to which the petitioners are working presently

i.e. ADO/BAO and TA in the Agriculture Department were earlier clearly covered under the Haryana Subordinate Agriculture (Group C)

Service Rules 1993 and now are termed as HAS-II i.e. a Group B post as per the Finance Department notification dated 22.05.2014, whereby

the pay-scale of all these posts have been brought at par subject to the condition that the posts of ADO and BAO/TA are merged into one cadre and

post of BAO/TA will not remain promotional post of ADO. It is not denied that the private respondents joined service much prior in time and were

appointed so on permanent basis before the petitioners entered the service and

thus, even by the rule of catch-up enunciated in S. Panneer Selvam's ratio (ibid) cannot claim seniority by virtue of their reservation over and above the private respondents who undisputedly were there in the service much before the petitioners joined the department. In view of R.K. Sabharwal's case (ibid) though there can be an occasion of accelerated promotion but there cannot be an occasion of accelerated seniority with other benefits as is sought to be raised by the petitioners in the present petition. More so, the petitioners at no point of time prior to the present petition have ever challenged the notification dated 17.08.2010 or subsequent order dated 22.05.2014 whereby the cadres were merged by the State and thus, are deemed to have acquiesced to this arrangement and now at this belated stage are certainly barred from raking up this stale issue.

The fervent arguments that have come from the side of the State by Ms. Shruti Jain, Deputy Advocate General, Haryana that the tentative seniority was circulated amongst the employees but the petitioners never filed any objections to the same and even to the query of the Court Mr. Sanjiv Gupta, learned counsel representing the petitioners, could not show by what means as they claim that there was representation against this tentative fixation, they have raised their voice and now in this petition cannot set up another aggrivement over it. So, as a consequence of these discussions it ensues that in spite of there being a clear cut clarity of fixation of seniority amongst the general category candidates and the reserved category candidates, the petitioners have unduly brought about this lis when in a recent view in the case of Sudhakar Baburao Nangnure (ibid) it was laid down by the Apex Court that Reservation Act, 2004 does not deal with the principle of consequential seniority, holding further that it would be impermissible to read this Act as having superseded applicable Government order on consequential seniority in the absence of clear words providing for such an effect. Even to the arguments of learned counsel for the private respondents that none of the effected persons were arraigned as parties and therefore, in view of the law laid down in Jagdish Kumar vs. State of Punjab reported in 1992 (1) SCT 356 there cannot be any redressal of grievances of the petitioners at the back of the affected parties as it would not be permissible to pass any adverse order without opportunity or show cause to them.

In view of the foregoing discussions as has been detailed and discussed above,

squarely answers and sufficiently rebuts the points raised by learned counsel for the petitioners that once a benefit is given it cannot be withdrawn, as such a question of fixation of seniority is always a recurring cause of action and since it is by virtue of Government notification that there would not be reservation to Class II and Class I posts in the State and therefore, the posts of the petitioners being Group 'B' posts, there cannot be either accelerated promotion or accelerated seniority as per the rules applicable to the petitioners so enacted by the State of Haryana.

In light of these discussions and the cumulative effect, there apparently is no perceivable merit in the instant petition which being wholly meritless and grounds which are untenable and as such the petition stands dismissed.