
(2015) 07 P&H CK 0289
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 830 of 2015 (OandM)

Prem Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)

Citation : (2015) 4 SCT 578

Hon'ble Judges : Surya Kant and P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : Som Nath Saini, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

P.B. Bajanthri, J.—The appellants, who were private respondents in CWP Nos. 17012 of 2012 and 20892 of 2013, are aggrieved by order of the learned Single Judge dated 6.1.2015 passed in the aforesaid writ petitions. The Haryana Staff Selection Commission, for short "the Commission", invited applications from the eligible candidates to the post of Clerks in various departments in the State of Haryana, in the year 1989. The appellants and private respondents were candidates for that recruitment. They were selected and allotted to different departments. The writ petitioners among others were more merited than the appellants and they were allotted to different departments other than the one to which appellants were allotted. The writ petitioners (private respondents) allotment to certain departments process was incomplete for the reason that there were no vacancies. Consequently, they were compelled to approach the Court and obtain/direction. In pursuance of directions of this Court, private respondents were appointed in the year 1999, whereas the appellants were appointed in the year 1989-90.

2. The service conditions of private respondents were not settled having regard to their date of appointment i.e. in the year 1999. Consequently, the concerned department placed them below the lessor merited persons like appellants in the

provisional seniority list of Clerks. In this background, the appellants were promoted on officiating basis to the post of Accountant/Kanungo (Sales) on 14.1.2011.

3. The private respondents feeling aggrieved by the promotions of appellants served legal notice to the official respondents on 8.2.2012. Due to non-consideration of their legal notice, they were compelled to approach this Court in CWP No. 6685 of 2012, which was disposed of on 16.4.2012, wherein the official respondents were directed to consider and decide the grievance of the private respondents raised in the legal notice within a period of two months from the date of receipt of certified copy of the order.

4. On 14.8.2010, the Financial Commissioner and Principal Secretary to Government of Haryana, Revenue and Disaster Management, Department (Rehabilitation Branch), Chandigarh, rejected the claim of private respondents. Feeling aggrieved by non preparation of seniority as per the merit list dated 15.10.1989 prepared by the Commission, CWP Nos. 17012 of 2012 and 20892 of 2013 were filed.

5. The official respondents and appellants' contentions before the learned Single Judge were that the private respondents even though selected on 15.10.1989, however, they were appointed only in the year 1999, therefore, the private respondents cannot be placed over and above the appellants who were appointed in the year 1989-90. It was further contended that there is an inordinate delay in seeking the relief in so far as seniority is concerned.

6. The appellants and official respondents are not disputing that private respondents are more merited than the appellants. The learned Single Judge considered the grievance raised in the aforesaid CWP elaborately to hold that the private respondents are entitled to ranking over and above the appellants with reference to the merit select list of Clerks prepared on 15.10.1989 by the Commission. Even the question of delay has been dealt in detail. Thus, the learned Single Judge quashed the promotion orders of appellants and rejected their claim by the official respondents and further declared that the private respondents are senior to the appellants with reference to the merit list dated 15.10.1989.

7. The aggrieved appellants contend that seniority is to be fixed with reference to the date of appointment since they were appointed in the year 1989-90 and private respondents were appointed Only in the year 1999, therefore, the learned Single Judge erred in holding that the private respondents would be ranked over and above the appellants. It is contended that there is inordinate delay in seeking relief by private respondents in so far as seniority is concerned. The said issue has not been considered with reference to various decisions cited before the learned Single Judge. Consequently, quashing the promotion order of the appellants by the learned Single Judge is incorrect.

8. Before adverting to the merits of the case, it is necessary to take note of

Article 16(1) of the Constitution which mandates that -

"The right guaranteed by Article 16(1) includes a) right to make an application for any post under the Government; (b) Article 16(1) further guarantees a right to be considered on merits for the post for which an application has been made; but not the right to be appointed."

Therefore, right to a post is to be considered on the basis of merits for the post.

9. Each Department in the State of Haryana is bound by service rules, for example, the Haryana Revenue Department District Subordinate (Group "C") Service Rules, 1988. Rule 11 of the aforesaid rules reads as follows:--

"11. Seniority.--Seniority, inter se of members of the service shall be determined by the length of continuous service on any post in the service:

Provided that where there are different cadre in the service, the seniority shall be determined separately for each cadre;

Provided further that in the case of members appointed by the direct recruitment, the order of merit determined by the Board, shall not be disturbed in fixing the seniority;

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

(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

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

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

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in the previous appointment and if the rates of pay drawn are also the same, then by their length of such service and if the length of service is also the same, the older member shall be senior to the younger member."

10. "Seniority" provision in almost all the Departments are identical. The 2nd proviso to the aforesaid Rules provides for the members appointed by direct recruitment, the order of merit determined by the Board, shall not be disturbed in fixing the seniority. The aforesaid provision is very much relevant for the purpose of the case in hand.

11. It is undisputed that appellants and private respondents were candidates to the post of Clerk in pursuance to the advertisement issued by the Commission in

the year 1989, both appellants and private respondents were in the merit list and the private respondents were more merited than the appellants, they were allotted to different departments. In so far as private respondents are concerned,, even though they were allotted to a different department, unfortunately vacancies were not available to accommodate them in the allotted department. Consequently, their appointment process was got delayed at the behest of official respondents. At this juncture, it is to be noted that for no fault of the private respondents, their appointment process was got delayed. In other words, due to communication gap between the Commission and the Departments), the Commission committed a serious error in allotting the private respondents to a Department where vacancies of Clerks were not available, for which the private respondents should not be penalised.

12. Thereafter the concerned Department and the Commission could have settled the issue of appointment of the private respondents being Model authorities of the State. On the contrary private respondents were compelled to approach this Court seeking for appointment with reference to their merit. Ultimately, on the directions of this Court, the private respondents were appointed in the year 1999. In this background, it was the duty cast on the Department or concerned official respondents to rectify the service conditions of the private respondents, like granting notional service benefits. On the contrary, the appellants who were appointed in the year 1991, even though they were lower in merit list than the private respondents, have been placed over and above the private respondents and further granted the benefit of promotions. The official respondents compelled the private respondents to approach this Court for each and every grievance/ service conditions, which were legally due to them in accordance with law. Thus the private respondents, aggrieved by the order of promotion and seniority got legal notice issued to the official respondents. Even at that stage, the official respondents neither rectified the mistake committed, nor conveyed any decision to private respondents. Consequently, once again the private respondents were compelled to approach this Court seeking for a direction to consider their grievance. This Court directed the official respondents to consider such grievances within a period of two months. Thereafter, the official respondents rejected the claim of private respondents. The dates and events would reveal that the official respondents are least bothered to settle the grievance of private respondents with reference to the merit list dated 15.10.1989, read with Article 16(1) of the Constitution of India and Rule 11 of the Haryana Revenue Department District Subordinate (Group C) Service Rules, 1988.

13. It is to be noticed that in identical cases, namely, Satvir Singh and Smt. Sukanya, who were also candidates for the aforesaid recruitment, who were also similarly placed on par with the private respondents, their seniority dispute was settled through this Court vide CWP No. 20868 of 2011 and CWP No. 7061 of 2009. Therefore, there was no impediment in determining the seniority of private respondents over and above the appellants, who were lessor merited than the private respondents and to extend consequential benefits like promotion on par

with appellants.

14. The contention of the appellants that they were appointed earlier to the private respondents, their seniority was settled and they were promoted to the next higher cadre, namely, Accountant/Kanungo (Sales) and there is inordinate delay and latches on part of private respondents, seeking relief in respect of seniority is concerned, is without any merits, firstly, at the instance of department/Government, the private respondents were denied appointment on par with the appellants. Due to fault of the department/Government, the private respondents should not be penalised in denying the service conditions on par with those who are lessor merited than the private respondents.

15. There is no delay on the part of the private respondents in seeking to set right of seniority for the reasons that on 14.1.2011, promotion orders were issued to the appellants, thereafter the private respondents approached the authorities in the month of February 2012 and their grievances were rejected on 14.8.2012 only. The private respondents approached this Court in the year 2012 itself, therefore, there is no delay or latches on the part of the private respondents in seeking to set right their seniority with reference to the merit list. In fact mistakes committed by the official respondents in each and every stage of the private respondents service conditions, for which they should not be blamed. Now it is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of fair consideration in matter of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution as held by Supreme Court in the case of Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others, . "Promotion" based on equal opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1) as held by the Supreme Court in the case of Ajit Singh and Others Vs. The State of Punjab and Others, . Thus the private respondents, who were better merited than the appellants, their fundamental right to seniority and promotion cannot be denied.

16. In view of the facts and circumstances of the case, we declined to interfere with the order of the learned Single Judge dated 16.1.2015.

17. Accordingly, the LPA is dismissed. No order, as to costs.