
(2014) 01 P&H CK 0207

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 15875 of 1992 and C.W.P. No. 5675 of 1993

Santokh Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Citation : (2014) 2 SCT 268

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : K.L. Kohli, Advocate for the Appellant; Yatinder Sharma, Additional Advocate General, Punjab for the Respondent No. 1 to 3 in CWP No. 15875 of 1992 and Respondents in 1 to 4 in CWP No. 5675 of 1993, Mr. Bikramjit Singh Patwalia, Advocate for the Respondents No. 4 to 6 and Mr. Sanjeev Sharma, Advocate for the Respondent No. 8 in CWP No. 15875 of 1992 and Respondents in 8 and 9 in CWP No. 5675 of 1993, Advocate for the Respondent

Final Decision : Allowed

Judgement

Bharat Bhushan Parsoon, J.—Both these petitions have been taken up together for adjudication as the same are directed against a common order (Annexure P-20 in CWP No. 15875 of 1992 and Annexure P-14 in CWP No. 5675 of 1993) dated 11.11.1992 passed by the Additional Director (Admn.), Department of Industries, Punjab. For convenience and clarity, facts have been taken from writ petition No. 15875 of 1992. The petitioners working as Senior Scale Stenographers in the office of the Director of Industries, Punjab, Chandigarh seek quashing of memo (Annexure P-19) and office order (Annexure P-20) claiming that these suffer from a patent error of interpretation of the statutory provisions and are also in violation of principles of natural justice. The petitioners have sought restoration of seniority in terms of Annexure P-17.

2. The petitioners as also private respondents No. 4 to 8 after qualifying test in shorthand and typewriting were promoted and appointed as Junior Scale Stenographers maintaining their inter-se seniority as Steno- Typists. Whereas

the petitioners were confirmed as Junior Scale Stenographers, the private respondents continued to hold such post of Junior Scale Stenographer on officiating basis.

3. Appointment of the petitioners was subject to provisions of the Punjab Civil Service Rules as also of the Punjab Industries Department (State Service Class-III) Rules, 1956 (hereinafter referred to as "the 1956 Rules") as also subject to other orders and instructions issued by the Government or by the Department of Industries from time to time.

4. After having qualified test in shorthand and typewriting on different dates, the petitioner Nos. 1 to 3 joined as Steno-Typists vide letter of 17.2.1965, 23.11.1965 and 4.10.1966 respectively. After qualifying the departmental test for selection to the post of Junior Scale Stenographers on different dates, they were included in the list of Steno-Typists who had qualified the departmental test for promotion to the post of Junior Scale Stenographers. It was in order of their seniority.

5. The seniority of the petitioners over the private respondents was duly recognized. Petitioners No. 1 to 3 continued working as Junior Scale Stenographers and in order of their seniority they were placed one step below the other. They were confirmed as substantive Junior Scale Stenographers vide order of 6.11.1989 (Annexure P-18). Their inter-se seniority was finally drawn as per seniority list of 8.5.1989 (Annexure P-17). They had earned their further promotion as Senior Scale Stenographers as well. Whereas petitioners No. 1 and 2 were promoted w.e.f. 24.6.1978, petitioner No. 3 was promoted w.e.f. 7.7.1977.

6. Respondents No. 4 to 8 had joined as Steno-Typists after the petitioners. On the basis of their inter-se seniority among the Steno-Typists, respondent No. 4 was promoted as Junior Scale Stenographer in the year 1974 i.e. after the petitioners. Similarly, respondents No. 5 to 8 were promoted as Junior Scale Stenographers after the petitioners on their turn. Sequel, names of respondents No. 4 to 8 do not appear in the seniority list (Annexure P-17) of Junior Scale Stenographers. Their names, however, appeared in the seniority list on 29.10.1987 (Annexure P-15) of Steno- Typists.

7. The matter of inter-se seniority was engaging attention of the official respondents and it is evident from the fact that respondent No. 2 had referred the dispute of inter-se seniority for opinion to be followed in determining the inter-se seniority of Junior Scale Stenographers, to respondent No. 1 on 14.8.1974 (Annexure P-13). Consequently, respondent No. 1 had advised that action was to be taken under Rule 11 of the 1956 Rules. As per the said Rule, seniority of the members of the service belonging to the same class of posts was to be determined by the dates of their substantive appointments to such posts. This is communication of 23.10.1974 (Annexure P-14).

8. Pursuant to representations made by respondent No. 1, claiming seniority over

the petitioners No. 1 and 2, deciding such representations of respondent No. 4, holding that promotion of Steno-Typists to the posts of Junior Scale Stenographers/Senior Scale Stenographers is to be made on the basis of performance in qualifying test in shorthand and typewriting, impugned order (Annexure P-20) was made on 11.11.1992 disturbing the seniority already settled as per Annexure P-17. Basis for passing of impugned order (Annexure P-20) is claimed to be advice given by Personnel and Administrative Reforms Department of the Government of Punjab, Department of Industries vide memo dated 14.9.1992 (Annexure P-19).

9. It is claimed that neither the relevant rules were interpreted appropriately and legally nor the affected officials including the petitioners were provided any hearing to set up their claim before the competent authority.

10. Stand of the official respondents supporting the cause of the private respondents, however, is that the petitioners do not have merit in their grievance against the impugned order (Annexure P-20) as the said action was taken on the basis of advice (Annexure P-19) received from the Government. It was explained that seniority list was to be finalised only after providing hearing to the petitioners. Thus, claiming that writ petition was premature and asserting that action was taken in consonance with Rule 9(1)(f)(i) of the 1956 Rules, dismissal of the petition was sought.

11. Hearing has been provided to counsel for the parties while going through the paper book.

12. The moot point for determination in these writ petitions is as to whether shorthand and typewriting test for promotion to a post of Junior Scale Stenographer is merely qualifying test or adjudicatory of their merit on the basis of their performance in the said test.

13. It is claimed by the petitioners that the private respondents though were not even within the zone of selection at the relevant time yet they had been promoted retrospectively to the posts held by the petitioners, consequently, pushing down the petitioners without affording them any opportunity of hearing in the matter. It is claimed that the impugned orders are vitiated not only by a patent error in interpretation of the statutory rules to the prejudice of the petitioners but also for violation of the principles of natural justice.

14. Rule 9(1)(f)(i) of the 1956 Rules holds the field. Whether the test for promotion to the post of Junior Scale Stenographer was merely a qualifying test in shorthand and typewriting or whether best on the basis of their performance were to be promoted as per availability of the posts, was a question to be determined? Impugned order (Annexure P-20), however, is based on the advice rendered by respondent No. 1 to respondent No. 2.

15. At this stage, it is appropriate to refer to provisions of Rule 9(1)(f)(i) of the 1956 Rules as under:

9. Method of appointment-(1) Appointments to ministerial posts in the service shall be made-

(a) to (e) xxxxx

(f) in the case of Stenographers and Stenotypists:--

(i) by promotion of members of the Service by selection on the basis of a qualifying test in shorthand and typewriting.

16. It remains a fact that seniority as per Annexure P-17 existing prior to passing of order (Annexure P-20) has been affected, as it was disturbed pursuant to passing of impugned order (Annexure P-20). The matter of seniority is a vital issue. There could not have been any hidden or latent criteria.

17. Counsel for the respondents, official as also private, have absolutely no explanation to offer as to why before vital change in the seniority list (Annexure P-17) was brought vide Annexure P-20, no notice was given to the affected persons at the time of deciding representation of respondent No. 4. There is no reason for non-hearing of affected parties before order Annexure P-20 was passed by the competent authority. Assertion of the respondents that inter-se seniority was yet to be determined after providing opportunity of hearing inter alia to the petitioners is not at all convincing.

18. So far as memo (Annexure P-19 in CWP No. 15875 of 1992 and Annexure P-13 in CWP No. 5675 of 1993) is concerned, it is merely an opinion and does not bind the competent authority to act upon.

19. Consequently, impugned order (Annexure P-20 in CWP No. 15875 of 1992 and Annexure P-14 in CWP No. 5675 of 1993) having been passed without hearing the affected parties and thus being in violation of principles of natural justice is set aside. The respondents, however, are not debarred from passing any fresh order after hearing and deciding objections of the affected parties. Nothing contained in this order would be affecting merits of the decision to be rendered by the competent authority on hearing all the aggrieved persons. Both the writ petitions are allowed to the extent as earlier.