

(2013) 02 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16978 of 1996 (O and M)

Seth Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2013) LabIC 3832

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : R.K. Malik and Vijay Dahiya, for the Appellant; Randhir Singh, Addl. A.G., for the Respondent

Judgement

Rakesh Kumar Jain, J.—The petitioners have challenged the validity of Rule 9(1) (b)(ii)(d) & (e) of the Haryana Development and Panchayats Department (Group B) Services Rules, 1988 (for short "the 1988 Rules") and have also prayed for considering the claim of the petitioners for promotion as Block Development and Panchayat Officers (for short "the BDPO") from the date when the private respondents were promoted on the basis of seniority-cum-merit and be granted all the consequential benefits. The petitioners are the Head Clerks, who are senior to Respondents No. 2 to 4, who have been promoted prior to them as BDPOs. The service conditions to the posts of Assistants/Accountants/Head Clerks are governed by the Statutory Rules called Haryana Panchayats Department State Service (Group "C") Rules, 1979 (for short "the 1979 Rules") under which the posts of Head Clerks are filled up by way of promotion from amongst the Assistants/Accountants having five years of experience. The post of Assistant/Accountant is a lower feeder cadre post and post of Head Clerk is a higher promotional post and there is no provision to fill up the post of Head Clerk by direct recruitment. The relevant extract of Appendix "B" of the 1979 Rules is reproduced as under:--

2. According to the petitioners, pay scale for the post of Accountant/Assistant is Rs. 1400-2600/-, Head Clerk is Rs. 1640-2900/- and BDPO is Rs. 2000-3500/-.

3. Rule 9 of the 1988 Rules governing the service conditions of the post of BDPO is reproduced as under:--

9. Method of Recruitment:

1. Recruitment to the service shall be made:

(a) ...

(b) in the case of Block Development and Panchayats Officers/Cattle Fare Officers:--

(i) 50% by direct recruitment; and

(ii) 50% by promotion as under;

a) 33% by promotion from amongst Social Education and Panchayat Officers;

b) 4?% by the promotion from amongst Head Clerks working in the office of Block Development and Panchayat Officers;

c) 1% by promotion from amongst Head Clerks working in the office of District Development and Panchayat Officers;

d) 10% by promotion from amongst Accountants working in the office of Block Development and Panchayat officers;

e) 1?% by promotion from amongst accountants working in the office of District Development and Panchayat Officers; or

(iii) By transfer or deputation of an official already in the service of any State Government or the Government of India.

The relevant extracts of appendix "B" to the above rules is reproduced below for ready reference:

4. The grievance of the petitioners is regarding the validity of Rule 9(1)(b)(ii)(d) & (e) wherein 10% quota is provided for promotion from amongst Accountants working in the office of BDPO and 1?% by promotion from amongst Accountants working in the office of DDPO to the post of BDPO though according to Appendix "B" of 1979 Rules, Assistant and Accountant is a feeder cadre to the post of Head Clerk in the case of promotion. It is, thus, submitted that in the absence of any competitive examination for accelerating the promotion from Assistant/Accountant to BDPO, jumping over such of Head Clerk and where the criteria for promotion is only seniority-cum-merit provision of 10% by promotion from amongst Accountants in the office of BDPO and 1?% from Accountants in the office of DDPO for further promotion to the post of BDPO consuming the quota of Head Clerks, who have been given 4?% quota in promotion while working in the office of BDPO and 1% in the office of DDPO is unreasonable, arbitrary and violative of Article 14 of the Constitution of India as private respondents, who are junior to the petitioners, who have not even been promoted as Head Clerks, have

been promoted as BDPOs.

5. Counsel for the petitioners has also relied upon a decision of the Supreme Court in the case of Shakuntala Sharma (Mrs) Vs. High Court of H.P. at Shimla and Another, , in support of his submissions.

6. In reply, counsel for the State has argued that all the petitioners and the private respondents have since retired. In order to provide promotional avenues to both the categories namely, Assistants and Head Clerks separate quota i.e. 1% and 1½% have been kept in the Rules and persons from both the categories have been promoted to the posts of BDPO separately in their own quota. However, it is admitted that the posts of Accountant/Assistant is a lower cadre post than that of the Head Clerk.

7. We have heard counsel for the parties and perused the record.

8. Admittedly, the post of Assistant/Accountant is a feeder cadre post for promotion to the post of Head Clerk. The pay scale of the Assistant/Accountant is also lower than the pay scale of the Head Clerk as Assistant/Accountant is getting pay scale of Rs. 1400-2600/- whereas Head Clerk is getting the pay scale of Rs. 1640-2900/- and discharging higher responsibility. Similarly, the post of BDPO is in the pay scales of Rs. 2000-3500/- and is a promotional post from the feeder cadre of the Head Clerk. As per Rule 9(1)(b) of the 1988 Rules, 50% posts of the BDPO/Cattle Fair Officers is kept for direct recruits whereas 50% by way of promotion out of which 33% has been given to the Social Education and Panchayat Officers and only 5½% to the Head Clerks working in the office of Block Development and Panchayat Officers and District Development and Panchayat Officers. On the other hand 11½% posts by way of promotion have been earmarked for Accountants working in the office of BDPO and DDPO though they are the feeder cadre of the cadre of Head Clerks.

9. In the case of Shakuntala Sharma (Mrs) Vs. High Court of H.P. at Shimla and Another, , there were two sets of equivalent hierarchical posts in the High Court namely, Clerks, Translators and Revisors on the one hand and Clerks, Senior Assistants and Deputy Superintendents on the other. Above the posts of Revisors and Deputy Superintendents is the post of Superintendent which is common promotional post to both the sets. In the said case the appellant was appointed as clerk on 24.7.1972 and promoted as Translator on 30.7.1979. She was further promoted to the post of Revisor on 26.2.1992 whereas Respondent No. 2 therein was appointed as Clerk on 7.1.1974 and was promoted as Senior Assistant on 14.8.1986. The pay scale of the Translator and Senior Assistant at that time was same i.e. Rs. 600-1120/-. Meaning thereby both were at par. There was also no dispute that post of Revisor was at par with the post of Deputy Superintendent. The appellant was senior to Respondent No. 2 as she was promoted to the post of Revisor which was equivalent to the post of Deputy Superintendent and Respondent No. 2 was not promoted to the post of Deputy Superintendent in that time of promotion. There was a combined seniority list in which appellant

stood at Sr. No. 13 whereas Respondent No. 2 at Sr. No. 17 and the post of Superintendent is the next promotional post available both to Revisors and Deputy Superintendents. However, overlooking the claim of the appellant, Respondent No. 2 was promoted as Superintendent in terms of Rule 10 of the High Court of Himachal Pradesh Recruitment (Conditions of Service) Rules, 1992 (for short "the 1992 Rules"). In this background, the following observations were made by the Apex Court while holding Rule 10 of the 1992 Rules to be violative of the Constitution of India:--

In this case, it is not necessary for us to go into the question whether Rule 11 of 1990 Rules which provided for the promotion to the post of the Superintendent was valid or not. Even assuming that the validity of the 1990 Rules was not challenged, that fact by itself would not validate the present Rule 10 if it suffers from an inherent infirmity. The basic weakness in the present Rule 10 is that it places two unequal sets of posts on a par with each other and also prescribes qualifying service for the higher post as well. The posts of Deputy Superintendents and Revisors admittedly are posts higher than those of Senior Assistants and Translators respectively. If the incumbents of both the sets of posts are to be made eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for the incumbents of the posts of Deputy Superintendents and Revisors. If Senior Assistants and Translators are to be provided with promotional avenue, more posts of Deputy Superintendents and Revisors which are above the posts of Senior Assistants and Translators respectively, should be created, and first the Senior Assistants and Translators have to be promoted to the said posts. In fact, the appellant who was a Translator was first promoted to the post of Revisor. We are informed that no eligible Deputy Superintendent was available for being considered to the post of Superintendent and hence Respondent 2 who was holding the post of Senior Assistant (post below that of Deputy Superintendent) had to be promoted to the said post as he had put in six years" service as required by the said Rule 10. Rule 10 of the 1992 Rules is thus iniquitous and indefensibly unjust. It violates Article 14 of the Constitution since it treats unequals as equals and what is more gives unwarranted advantage to the incumbents of the lower posts over the incumbents of the higher posts.

10. Similarly, counsel for the petitioners have relied upon an order of this Court passed in CWP No. 3399 of 2002 titled as "Rajesh Sangwan and others v. State of Haryana and others" decided on 29.11.2007, in which Rule 9(1)(c) of the Haryana Welfare of Scheduled Caste and Backward Class Department (Group-B) Service Rules, 1985 was challenged wherein almost similar issue was involved in which following observations were made by this Court:--

If it may be that position for promotion to the post of District Welfare Officer, seven years experience is required as Tehsil Welfare Officer and 15 years experience is required for Male Social Workers but when a Male Social Worker against 20% posts is promoted after 15 years experience on that post without

getting promotion to the post of Tehsil Welfare Officer, then he will get double promotion and may even become senior to the persons, who had been with him as Male Social Workers and were earlier promoted as Tehsil Welfare Officer. Rule 9(1)(c), as such, of the Haryana Welfare of Scheduled Caste and Backward Classes Department (Group-B) Service Rules, 1985 to the extent of providing for filling up 20% posts of District Welfare Officer from amongst "Male Social Workers", cannot stand scrutiny and is liable to be struck down.

It will be appropriate that promotions to the post of District Welfare Officer be made only from Tehsil Welfare Officer and not from Male Social Workers. Promotion to the post of District Welfare Officer can be made from Male Social Workers only if Tehsil Welfare Officer with seven years experience are not available.

In view of the aforesaid discussion, we are of the considered opinion that the writ petition filed by the petitioners is meritorious and hence the same is hereby allowed. The Rule 9(1)(b)(ii)(d) & (e) of the Rules 1988 is hereby declared arbitrary and in violation of Article 14 of the Constitution of India and is accordingly struck down. Further a direction is issued to the respondents to consider the case of the petitioners for promotion to the post of BDPO from the date when private Respondents No. 2 to 4 were promoted, on the basis of seniority-cum-merit and they be accorded consequential benefits accordingly.