

Before Gurdev Singh, J.

MRS. SHAKUNTLA BHANOT AND OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 10540 of 1991

13th May, 2011

Constitution of India, 1950—Arts. 14, 16 and 226/227—Punjab Agricultural Produce Markets Act, 1961—S. 41-A, 42 and 43 Haryana State Agricultural Marketing Board Service Rules, 1974—Rl. 14—Punjab Civil Services (Promotion of Stenographers/Steno-typist) Rules, 1961—Rl. 5—Whether steno-typist are entitled to promotion on clerical side—Mandamus issued—Preparation of notional seniority list of eligible steno-typist and clerk ordered—provide consequential benefits.

Held, that in the result, this petition is hereby accepted. The Board is directed to consider the case of petitioners No. 2 and 4 for the purposes of their promotion as Sub-Divisional Clerk by preparing a notional seniority list of the eligible Steno-Typist and Clerks in order to determine their *vis-a-vis* seniority and, if found eligible, to promote them from the date, the Clerks junior to them were promoted and to give them the consequential benefit of fixing their pay with effect from the date they are found eligible for promotion. This benefit shall also ensue for the purposes of pension. However, they shall not be entitled to any arrears etc.

(Para 8)

Anurag Goyal, Advocate, *for petitioner No. 2*

C.M. Chopra, Advocate, *for petitioners No. 3 and 4*

K.C. Bhatia, Additional Advocate General, Haryana *for respondent No. 1*

C.B. Goel, Advocate, *for respondents No. 2 and 3*

GURDEV SINGH, J.

(1) This civil writ petition has been filed by Smt. Shakuntla Bhanot, Jai Kishan Sharma, Bijendar Singh and Bodh Raj, petitioners, who were initially appointed as Steno-typists in respondent No. 2-Board, for issuance of a mandamus directing the respondent to consider them for the post of Sub-Divisional Clerks from the date when the Clerks, who were junior to them, were promoted and for releasing the consequential benefits accruing therefrom, including the seniority, salary and interest thereon. According to the petitioners, they are being governed by Haryana State Agricultural Marketing Board Service Rules, 1974 (in brief "the Rules") and as per those Rules, the next promotion from the post of Steno-typist is to the post of Junior Scale Stenographer in steno's cadre. The Steno-typists working in Haryana State are also eligible for promotion on clerical side i.e. to the post of Sub-Divisional Clerk. The Board has provided promotion avenues to the Clerks. There is no specific provision in the Rules for the promotion of the Steno-typists to the post of Sub-Divisional Clerks. However, as per Rule 14 of those Rules, in respect of the employees, not expressly provided in the Rules, are to be dealt with under the Punjab Civil Services Rules, as application in the State of Haryana. As per those Rules, they are entitled for promotion on the clerical side. In the Month of March, 1987, the Board resolved to provide promotion to the Steno-typists on the clerical side to the extent of 75%. They are interested in their promotion on the clerical side. On account of shortage of Clerks in the Board, some of the candidates, who were selected as Steno-typists in the year 1980, were appointed as Clerks and they have been promoted as Sub-Divisional Clerks whereas, they have been ignored, though they joined the Board before them. They made a number of representations for their promotion as Sub-Divisional Clerks, but to no effect. The act of the Board in not promoting them as Sub-Divisional Clerks, on the ground that they are ineligible, being Steno-typists, is violative of Articles 14 and 16 of the Constitution of India.

(2) The claim of the petitioners was resisted by the Board. In the written statement, it has been contended that the petitioners had the alternative remedy under Section 42 of the Punjab Agricultural Produce Markets Act, 1961 (in brief "the Act") and the writ petition deserved to be dismissed on that ground alone. As per the service rules applicable to the employees of the Board, there are different channels of promotion and the channel of

promotion from the post of Steno-typist is to the Junior Scale Stenographer. The Punjab Civil Services Rule, 1961, have no applicability to the service condition of the employees of the Board and under Section 43 of the Act, it is the State Government, which is empowered to make the rules for those employees. The Board on its own cannot make any such rules. A recommendation was made for making provision in the services rules by passing a Resolution but that proposal/Resolution has not been accepted by the State Government. There are different cadres of Steno-typists and Clerks and they are entitled to different scales and special pay and for that joint seniority list of Steno-typist and Clerks cannot be prepared. In fact, the petitioner has tried to confuse the issue by making reference to the appointment of the Clerks and the Steno-typists. As there are separate seniority lists, so the petitioners cannot claim any seniority *vis-a-vis* the Clerks.

(3) This petition was withdrawn on behalf of petitioner No. 1 and the same was dismissed as such *qua* that petitioner, *vide* order dated 20th January, 2002. Counsel for petitioner No. 3 has not pressed this petition on behalf of that petitioner, as according to him, he has been promoted to the post of Personal Assistant. This writ petition has been pressed on behalf of petitioners No. 2 and 4 only.

I have heard learned counsel for both the sides.

(4) It has been submitted by learned counsel for these petitioners that in respect of the matter on which the Rules are silent, they are being governed by Punjab Civil Services Rules as applicable to the State of Haryana and as per the direction issued by the State Government, *vide* Annexure P-2, they became eligible for promotion as Assistant and for that purpose, the Board was required to prepare the seniority list of the Steno-Typists to be counted with the Clerks for considering them for promotion. The Board failed to do so and that in flagrant violation of that direction of the State Government, promoted the Clerks, who were appointed much after these petitioners, to the post of Sub-Divisional Clerks. Even without the amendment of the Rules, the petitioners were entitled to the promotion as Sub-Divisional Clerks, in view of the instructions issued, *vide* Annexure P-2, as the Punjab Civil Services Rules were to apply by virtue of the fact that Rule 14 of the Rules provides that on the matters, the Rules are silent,

the Punjab Civil Services Rules, as applicable to the State of Haryana, were to apply. In these circumstances, writ of *mandamus* be issued to the Board to consider petitioners No. 2 and 4, for the purposes of promotion as Sub-Divisional Clerks and to promote them from the date, the persons junior to them were promoted.

(5) On the other hand, it has been submitted by counsel for respondent Nos. 2 and 3 that the Board was not bound by the instructions issued by the State Government, vide Annexure P-2, as the proposal made by the Board for the amendment of the Rules, as per those instructions, was never accepted by the State Government and no amendment was made in the service rules. He also submitted that the Steno-typists constitute a separate cadre as compared to the Clerks and there are different channels for promotion and the Steno-typists are entitled to promotion as Stenographers and only the Clerks are entitled to be promoted as Sub-Divisional Clerks. Therefore, the petitioners cannot claim their promotion as Sub-Divisional Clerks.

(6) The submissions made by respondents No. 2 and 3 that the Board is not bound by the instructions issued by the State Government, stand countered by the contentions made in the written statement, wherein it has been pleaded that under Section 43 of the Act, only State Government is empowered to make the rules. Even the other contention made by the counsel that the instructions, so issued and accepted by the Board, have not been transformed into the rules, cannot be applied/accepted. Those instructions were to the effect that as per Rule 5 of the Punjab Civil Services (Promotion of Stenographers/Steno-typists) Rules, 1961, the Clerks/Steno-typists/Stenographers are equated and made eligible for promotion as Assistant and as such the seniority list of Steno-typists to be counted with the clerks to be considered for promotion. The position was clarified,—vide Annexure P-3, after the Secretary of the Board discussed the case regarding the amendment of the Rules of the Board employees. It was made clear that at that time there was no necessity of amending the service rules of the Board employees as the Government had already made rules for that purpose and intimated the Board.—vide Annexure P-2. If subsequently, the Board tried to make correspondence with the State Government,—vide Annexure P-4, for amending the service rules, in view of the Resolution passed by it so as to incorporate the above said instructions and rules, that

was just an exercise in futility and the same appears to have been done in order to linger on the matter and to deprive the employees of their due. As per Rule 14 of the Rules, the matter on which the Rules are silent, the Board is to be governed by the Punjab Civil Services Rules as applicable in the State of Haryana. As per the above said rules, as incorporated in Annexure P-2, the Steno-typists were to be equated with the Clerks for promotion as Assistant and for that purpose, the Board was to prepare a notional joint seniority list of the Stenographers and the Clerks in order to determine which of them was senior for the purposes of promotion. The Board failed to follow the instructions issued by the State Government and which instructions are binding upon it by virtue of Section 41-A of the Act.

(7) According to counsel for respondents No. 2 and 3, the writ of mandamus cannot be issued as the representation for promotion was not made by all the petitioners. Annexure P-5, is the representation and it was made by petitioners No. 1 and 2. When a representation had been made by similarly situated employees, and it was brought to the notice of the Board that as per the instructions/Rules, the Steno-typists were to be treated at par with the Clerks for the purposes of promotion to the post of Sub-Divisional Clerks, it does not make any difference if such a representation was not made by petitioners No. 3 and 4. The Board was to follow the instructions/Rules after the matter was brought to its notice by petitioners No. 1 and 2 by making a written representation. The non-making of such representation by similarly situated petitioners is no bar to the issuance of writ of mandamus.

(8) In the result, this petition is hereby accepted. The Board is directed to consider the case of petitioners No. 2 and 4 for the purposes of their promotion as Sub-Divisional Clerks by preparing a notional seniority list of the eligible Steno-typists and Clerks in order to determine their *vis-a-vis* seniority and, if found eligible, to promote them from the date, the Clerks junior to them were promoted and to give them the consequential benefit of fixing their pay with effect from the date they are found eligible for promotion. This benefit shall also ensue for the purposes of pension. However, they shall not be entitled to any arrears etc. This exercise be done by the Board within a period of six months from the date of receipt of copy of this order.