

Rakesh Bhardwaj and another Vs Punjab and Haryana High Court Chandigarh and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 9, 2012

Acts Referred: Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 " Rule 10

Citation: (2012) 166 PLR 94

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K. Kannan, J.

The petitioners 1 and 2, who were presently working as Steno typists at the District & Sessions Division, Ambala, have a

grievance that in the manner of preparation of seniority and promotion, the 3rd respondent had been placed above the petitioners and promoted to

the post as Judgment Writer (Junior Division), purportedly against the relevant rules relating to the transfer from one division to another. There is no

dispute about the fact that in the hierarchy from the post of Steno-typist, a still higher post is Judgment Writer (Junior Division), the next in order is

Stenographer Grade-I and the further promotion post is to the post of Judgment Writer (Senior Grade). The promotion to the post of Judgment

Writer (Junior Division) is on the basis of seniority-cum-merit after completion of 3 years in the post as a Steno typist.

2. The 3rd respondent was a Steno typist at Gurgaon, having been appointed originally on 09.10.1996 and promoted as a Judgment Writer

(Junior Division) on 24.08.2000 at the Sessions Division at Gurgaon. The 3rd respondent came on a voluntary transfer to Ambala and he had been

placed junior most in the cadre of Judgment Writers. In terms of Rule 10 of the Haryana Subordinate Courts Establishment (Recruitment and

General Conditions of Service) Rules of 1997, a member of service may be transferred to any equivalent post within the Sessions Division by the

District & Sessions Judge; Every member of the service shall be liable to transfer under the order of the Chief Justice anywhere within the State;

and on a written request by the employee, a person could be transferred anywhere within the State by the High Court if the post was available

subject to the condition, inter alia, that he would not claim any seniority over and above the officials already working in the cadre of the Sessions

Division to which he was seeking transfer.

3. The counsel for the petitioners would contend that there are two objections for treating the 3rd respondent in the order of seniority above the

petitioners. One, on the day when the transfer was made at the request of the 3rd respondent, the petitioners had completed 3 years as Steno

typist and they had, therefore, become eligible for consideration of promotion to the next higher post as Judgment Writers. When the 3rd

respondent had been transferred, it was on a wrong assumption that the post was available at the Sessions Division at Ambala. There were only

two posts as Judgment Writers at Ambala and the petitioners were entitled to consideration in the other post. The second objection that the

petitioners would have, is that the reference to the fact that a person coming on a transfer would be placed lowest in the cadre of the Sessions

Division to which he was seeking a transfer must be understood from the context that Steno typist and Judgment Writers (Junior Grade) had all

been placed in the same cadre and in terms of the seniority list relied on by the official respondents (Annexure R-2/7), both the Steno typist and

Judgment Writers (Junior Division) had been placed in the same cadre.

4. It could be seen that the relevant Rules recognize the scope for a transfer from one Sessions Division to another under two circumstances: one

by the orders of the Chief Justice of the High Court and another at the request of the employee himself. There cannot be, therefore, anything

inherently wrong or untenable for the 3rd respondent, who has requested for a transfer and secured a posting at Sessions Division at Ambala. The

argument that the 3rd respondent must have been placed even below the petitioners in the lower post as Steno typist is on the basis that the

gradation list which is relied on by the official respondents referred to the Judgment Writers and Steno typist in the same category. I cannot accept

this contention for the only reason that in the list which is provided, there is no breach to the seniority principle. The list has been prepared only on

the basis of seniority in the order from higher to lower posts as Executive Assistant, Stenographer Grade-I, Judgment Writer (Grade-I) and Steno

typist. If the argument of the petitioner were to be accepted that the Judgment Writer (Junior Grade) and the Steno typist had been treated as

belonging the same cadre, by extension of the same logic, it should also be taken that the Stenographer Grade-I and the Executive Assistant were

also in the same cadre. In the manner of preparation of the seniority list, the persons occupying the various posts in the hierarchy have been shown

only in the order of seniority. Merely because the Executive Assistant, Stenographers and Judgment Writers (Junior Division) had all been shown

along with Steno typist, to say that all of them must be taken to be of the same cadre makes meaningless the admitted position that the Judgment

Writers (Junior Division) is a promotion post for a person, who was in the Steno typist post.

5. The learned counsel for the petitioner points out that there have been executive instructions issued subsequently that a person shall not be

transferred on request from one Sessions Division to another Sessions Division which would upset the promotion possibilities of persons in the

transferee division. It could have been a method of reckoning for future practices in view of the difficulties experienced by the employees where

there were limited posts available in the promotional avenue and any inter division transfer had a mischief to corner even the limited posts to

persons coming from other divisions. I will not still allow the executive instructions to prevail on the bare reading of the relevant provisions and how

the seniority is to be reckoned. The two vacant posts for Judgment Writers (Junior Division) were kept in abeyance when the judicial officers were

in training period and only when one of the judicial officers assumed charge, the 3rd respondent had been appointed on transfer as a Judgment

Writer. I would hold that both the fundamental premises, namely, the availability of posts as Judgment Writers and the cadre of the Judgment

Writers as distinct from the Steno typist were correctly appreciated for posting the 3rd respondent in the post as Judgment Writer (Junior Grade)

and the contention of the petitioners that the 3rd respondent must have been placed even below than the Stenographer's post cannot be

countenanced. The challenge to the order of transfer and the posting offered to the 3rd respondent is, therefore, rejected and the writ petition is

dismissed.