





**HARPREET SINGH BRAR, J. (ORAL)**

1. This common order shall dispose of all the abovementioned writ petitions as they arise from a similar factual matrix and revolve around a common question of law. However, for the sake of brevity, the facts are taken from CWP No.18220 of 2017.

2. The present writ petition is preferred under Article 226 of the Constitution of India seeking issuance of writ in the nature of *certiorari* for quashing of order dated 08.06.2017 endorsement dated 20.07.2017 (Annexure P-1) whereby the petitioner(s) were reverted to the position of Safai Karamchari.

**FACTUAL BACKGROUND**

3. Briefly, the facts are that the petitioner was appointed as Safai Karamchari vide order dated 09.01.1997 by respondent No.3- Executive Officer, Municipal Council, Narnaul, and he joined service on 10.01.1997. In the year 2004, two vacancies for the post of Clerk were sought to be filled by respondent No.3 in accordance with Rule 10 of the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 1982 (hereinafter 'Rules of 1982') which states that 20% of the promotion ought to be made from within the establishment if the candidates have- (i) matriculated, (ii) 05 years of experience and (iii) a pay scale less than that of a Clerk. Accordingly, the petitioner, being in the zone of consideration, was promoted to the post of clerk vide order dated 02.04.2004 (Annexure P-3).

4. The said promotion was challenged by another employee namely Hari Kishan resulting in setting aside of order of promotion dated 02.04.2004 (Annexure P-3) vide decree dated 28.07.2010 by learned Civil Judge (Junior



Division), Mahendergarh. However, this decision was reversed by learned Additional District Judge, Narnaul vide judgment and decree dated 31.01.2013 (Annexure P-4 and P-5), allowing the appeal filed by the respondent-Corporation. Thereafter, in the year 2013, one Vijay Kumar moved this Court for promotion to the post of Clerk against 20% promotion quota. However, he failed to show the relevant Rules that provide for the same, which resulted in dismissal of his petition vide order dated 12.03.2013 (Annexure P-6). In this context, respondent No.2-Director, Urban Local Bodies, Haryana issued a letter dated 14.08.2013 (Annexure P-9) whereby all employees promoted from the post of Safai Karamchari to that of Clerk, were reverted to the former.

5. Subsequently, the petitioner approached this Court by means of CWP-462-2015 wherein his reversion to Safai Karamchari was stayed vide order dated 13.01.2015. The matter was disposed of vide order dated 18.11.2016 (Annexure P-10) with a direction to consider the case of the petitioner after affording him an opportunity of hearing. The petitioner submitted a supplementary representation dated 17.01.2017 (Annexure P-11), however, he was still reverted to the post of Safai Karamchari vide impugned order dated 08.06.2017 (Annexure P-1).

### **CONTENTIONS**

6. Learned counsel for the petitioner(s) contends that the promotion of Safai Karamcharis to the post of Clerk is governed by the Rules of 1982 as it contains a specific provision for promotion to the post of Clerk from Safai Karmachari while the Haryana Municipal Safai Mazdoor Service Rules, 1976 (hereinafter 'Rules of 1976') do not contain any provisions regarding said promotion. On 02.04.2004 i.e. the date of the promotion of the petitioner as



Clerk, the petitioner satisfied all the conditions laid down in the Rules of 1982 as he was matric-certified, had about 07 years of experience as a Safai Karamchari and worked at a pay scale of Rs.2500-3200, which is lesser than that for a Clerk (Rs.3050-4350) and therefore, he was correctly promoted. Further, the impugned order dated 08.06.2017 (Annexure P-1) has been passed in violation of the principles of natural justice as it failed to deal with the specific submissions made by the petitioner regarding applicability of the amended Rules. Further still, the promotion order of the petitioner was also tested by the learned Civil Courts and the matter had attained finality vide judgment and decree dated 31.01.2013 passed by learned Additional District Judge, Narnaul. Learned counsel further places reliance on the judgment rendered by the Hon'ble Supreme Court in ***M.P. Rural Road Development Authority vs. M/s L.G. Chaudhary Engineers (2012) 3 SCC 495*** and this Court in ***Rajendra Kumar vs. Municipal Corporation, Chandigarh 2008(2) SCT 454***.

7. *Per contra*, learned counsel for the respondent-Corporation submits that the Rules of 1982 do not apply to the case of the petitioner as employees of the sanitation branch of the respondent-Corporation are governed by Rules of 1976. Further, the Government Instruction dated 03.05.1991, under which the petitioner was eligible for the promotion to the post of Clerk, were withdrawn in view of the orders passed by this Court. Further, the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 2010 (hereinafter 'Rules of 2010') also do not provide any promotional channel for the post occupied by the petitioner as per Rule 9(1)(xiv), the avenue is only available to Peon, Head Mali, Mali-cum-Chowkidar or Chowkidar. As such, the



reversion to the post of Safai Karamchari was correct in law since the promotion was made in contravention of the applicable Rules.

### **OBSERVATIONS AND ANALYSIS**

8. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the following provisions ought to be studied for just adjudication of the case:

#### **The Rules of 1976**

##### ***9. Promotion.-***

*The members of the Service appointed against permanent posts having the knowledge of Hindi shall be eligible for promotion to the post of Head Sweeper/ Sanitation Mates/ Daroga-Sanitation/ Conservatory Mates/ Sanitary Petrol/ Jamadar/ Sanitation Jamadar/ Sanitary Orderlies (Jamadar) on the basis of seniority cum merit.*

#### **The Rules of 1982**

*6. No person shall be appointed to any post in a Service unless he is in possession of qualifications and experience specified in column 4 of Appendix B to these rules in the case of direct recruitment and those specified in column 5 of the aforesaid Appendix in the case of recruitment by promotion.*

##### ***APPENDIX B***

<b><i>Sr. No.</i></b>	<b><i>Name of Service</i></b>	<b><i>Class of Municipal Committee</i></b>	<b><i>Qualifications and experience for direct recruitment</i></b>	<b><i>Qualifications and experience for promotions</i></b>
35.	<i>Clerk (including Accounts... Perokars)</i>	<i>A, B &amp; C</i>	<i>Matriculate</i>	<i>..</i>

#### **Amendment of 1983 (vide notification dated 15.12.1983)**

*2. In the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 1982 (hereinafter referred to as the said rules) in rule 10, in the table, under the head "District Level Services" against serial No. (i), the figure and sign "35", shall be omitted, and after serial No. (iii) the following entry shall be inserted, namely:*

*"(iv) 80 per cent by direct recruitment Serial No.35 and **20 per cent by promotion**"*

*3. In the said rules, in Appendix B, against serial No. 35, in column 5, the following entry shall be inserted, namely:--*

***"Five years' experience on any post whose scale of pay is less than that of a clerk, provided such employee is matriculate. Promotion shall be made on seniority-cum-fitness basis."** (emphasis added)*



**The Rules of 2010**

**9.(1) Recruitment to the Service shall be made,-**

xxx

xxx

xxx

**DISTRICT LEVEL POST**

*(xiv) in the case of Clerk-*

3. 80% by direct recruitment ; and
4. 20% by promotion from amongst Peon/ Head Mali/ Mali-cum-Chowkidar/ Chowkidar;

**20. Repeal and Savings**

*The Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 1982 are hereby repealed:*

**Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.** (emphasis added)

**APPENDIX B**

<b>Sr. No.</b>	<b>Name of post</b>	<b>Academic Qualifications and experience, if any, for direct recruitment</b>	<b>Academic Qualifications and experience, if any, Appointment other than by direct recruitment</b>
14.	Clerk	Matric or Higher education with Hindi/Sanskrit	<b>By promotion:</b> Should be Matric with Hindi/Sanskrit and five years experience as Peon/Head Mali/Mali-cum-Chowkidar/Chowkidar

9. While the Rules of 1976 did not provide any avenues for promotion for employees working at the post of Safai Karamchari, the Rules of 1982 state that one cannot be appointed to the post of Clerk by promotion. However, an amendment was ushered vide notification dated 15.12.1983 whereby it was clarified that employees working at **any post** for at least 05 years where the pay scale is less than that of a clerk are eligible for said promotion if they are matriculate. Since no specifications have been made excluding any particular post or class of employees, the Safai Karamcharis cannot be deemed to have been excluded merely because Rules of 1976 exist. Further still, the petitioner cannot be denied an opportunity of career



progression especially when he is found eligible for the same under Rules of 1982 (as amended).

10. The Rules of 2010 may have presented a new set of qualifications by specifying the posts which are eligible for promotion to that of Clerk, however, the same cannot be construed to have retrospective application, especially in view of Clause 20 of the said Rules. Further, once benefits have been bestowed upon an employee in accordance with the prevailing rules and regulations, the same cannot be withdrawn for the reason of any subsequent changes made to them. Reliance in this regard can be placed on the judgment rendered by a Full Bench of this Court in *Kaka vs. Hassan Bano, 1998(1) RCR (Criminal) 484*, wherein, speaking through Justice Swatanter Kumar, the following was opined:

“28. ...This rule is however, subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the test of Articles 14 and 16(1) of the constitution : *State of Mysore v. M.N. Krishna Murty, (1973) 2 SCR 575 : AIR 1973 Supreme Court 1146, B.S. Yadav v. State of Punjab, (1981) 1 SCR 1024 : AIR 1981 Supreme Court 561, State of Gujarat v. Ramanlal Keshavlal Soni, (1983) 2 SCR 287 : AIR 1984 Supreme Court 161 and KC Arora v. State of Haryana, (1984) 3 SCR 623: 1984 Lab. IC 1015.*” (emphasis added)

11. The petitioner had been promoted to the post of Clerk in line with the provisions of Rules of 1982, as amended vide notification dated 15.12.1983. Moreover, a perusal of the impugned order indicates that the same has been passed in view of the directions given by this Court, without considering the application of the Rules of 1982 (as amended). As such, this Court is of the



considered opinion that the petitioner was correctly promoted and his reversion to the post of Safai Karamchari is against settled law as well as violative of principles of equity and natural justice.

### **CONCLUSION**

12. In view of the discussion above, all the abovementioned petitions are allowed. Accordingly, the impugned order dated 08.06.2017 endorsement dated 20.07.2017 (Annexure P-1) whereby the petitioner(s) were reverted to the position of Safai Karamchari, is hereby set aside. Consequential benefits be released in favour of the petitioner(s) within three months of receipt of a certified copy of this order.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

14. A photo copy of this order be placed on the file of connected cases.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**09.09.2025**

*Neha*

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No