

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

102

CWP-8683-2016

RESERVED ON: 14.10.2025

PRONOUNCED ON: 04.11.2025

OM PRAKASH AND ANOTHER

...PETITIONERS

VERSUS

STATE OF HARYANA AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ravinder Malik(Ravi), Advocate with  
Mr. Garvit Mittal, Advocate and  
Mr. Ritender Rathee, Advocate  
for the petitioners

Mr. Sushil Bhardwaj, Addl. AG Haryana

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SANDEEP MOUDGIL, J

**1. Prayer**

The present writ petition, filed under Articles 226 and 227 of the Constitution of India, calls in question the action of the respondent-department in denying retrospective promotion to the petitioners to the posts of Deputy Superintendent (w.e.f. 21.09.2010) and Superintendent (w.e.f. 31.05.2013), despite their due seniority and eligibility under the Haryana Health Department Subordinate Offices Ministerial Staff (Group-C) Service Rules, 1997 and the Group-B Service Rules, 1982. The denial rests upon the Department's subsequent application of reservation in promotion purportedly on the basis of judicial pronouncements without any corresponding amendment in the statutory service rules.

**2. Brief Facts**

The petitioners entered service as a Clerk in the Health Department of Haryana and rose through the ranks to the post of Assistant in due course.

Upon becoming eligible for promotion to the post of Deputy Superintendent, their names were duly included in the seniority list prepared under the 1997 Rules.

However, in the promotion process conducted on 21.09.2010, certain junior officers were promoted under the category of Scheduled Caste reservation in promotion. The petitioners, being senior and eligible, were ignored. A similar pattern followed in the subsequent promotion to the post of Superintendent on 31.05.2013, where again, juniors were preferred by extending the benefit of reservation in promotion.

The petitioners made several representations pointing out that the service rules did not provide for reservation in promotion, and that no statutory amendment had been carried out to authorize such reservation. Receiving no redress, the petitioners approached this Court seeking quashing of the orders dated 13.09.2010 and 26.04.2011, and consequential directions for grant of promotion with retrospective effect.

**3. Contentions**  
**On behalf of Petitioners**

The learned counsel for the petitioners contended that the action of the respondent-department in denying them promotion while extending reservation benefits to their juniors is wholly arbitrary, illegal, and contrary to the statutory framework governing promotions in the Haryana Health Department. It is submitted that the Haryana Health Department Subordinate Offices Ministerial Staff (Group-C) Service Rules, 1997 and the Group-B Service Rules, 1982, which regulate promotions to the posts of Deputy Superintendent and Superintendent, contain no provision for reservation in promotion. In the absence of any such enabling clause, the Department could not have lawfully implemented reservation in promotion merely on the strength of judicial observations or executive instructions.

It is further argued that statutory rules framed under Article 309 of the Constitution can be amended only through a notification carrying the force of law; they cannot be modified or superseded by administrative orders. By applying reservation in promotion without amending the rules, the Department acted beyond its jurisdiction and in violation of Articles 14 and 16(1) of the Constitution, which guarantee equality of opportunity in public employment. The counsel also relies upon the judgments in *M. Nagaraj v. Union of India (2006) 8 SCC 212* and *Jarnail Singh v. Lachhmi Narain Gupta (2018) 10 SCC 396*, which lay down that reservation in promotion can be implemented only upon satisfaction of constitutional preconditions such as quantifiable data regarding backwardness and inadequacy of representation, and through proper statutory framework. Since no such exercise or amendment was carried out, the promotions granted to juniors under the reserved category are ultra vires the law.

**On behalf of Respondents**

The respondents, on the other hand, justify their action by submitting that the promotions in question were made in accordance with the State Government's policy decisions and judicial pronouncements recognizing the right to reservation in promotion for Scheduled Castes and Scheduled Tribes. They contend that after the Supreme Court upheld the constitutional validity of Articles 16(4A) and 16(4B) in *M. Nagaraj (supra)* and later clarified the position in *Jarnail Singh (supra)*, the State was under an obligation to extend the benefit of reservation in promotion to eligible employees belonging to reserved categories.

It is argued that the Department merely implemented the policy directions issued by the State Government to ensure compliance with the constitutional mandate of social justice and adequate representation of

Scheduled Castes in higher posts. The respondents further submit that the petitioners cannot claim a vested right to promotion merely based on seniority, as promotion is always subject to fulfilment of eligibility conditions and the existing reservation policy. They maintain that the Department acted bona fide, in accordance with the Government's understanding of the law as interpreted by the Supreme Court, and that no illegality or *malafides* can be attributed to the action taken. Therefore, the writ petition, being devoid of merit, deserves to be dismissed.

Heard counsel for both parties.

#### **4. Analysis**

In the opinion of this court, it is apposite to discuss the legal spectrum revolving reservation in promotion before adverting to the facts of the present case. Reservation as a constitutional mechanism was conceived to correct historical injustice and structural inequality. Article 16(4) of the Constitution empowers the State to make provisions for reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in public services in the opinion of the State,. However, this power pertains to initial appointments the entry point to public employment. The extension of reservation to the sphere of promotions is not automatic.

The Supreme Court in ***“Indra Sawhney v. Union of India 1992 Supp (3) SCC 217”***, while upholding the constitutional validity of reservations under Article 16(4), expressly held that reservation in promotion is impermissible unless constitutionally sanctioned. This led to the insertion of Article 16(4A), which confers a power on the State but it does not impose a compulsion. It flows from a distinct constitutional source being Article 16(4A) which was inserted by the Seventy-Seventh Amendment in the year 1995 to

enable reservation in matters of promotion for Scheduled Castes and Scheduled Tribes, but only where the State, on the basis of quantifiable data, determines their inadequate representation. Article 16 (4A) has been reproduced as follows:

*“16(4A) Nothing in this article shall **prevent the State from making any provision for reservation in matters of promotion**, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State.”*

Although Article 16(4A) expressly empowers the State to provide for reservation in promotions, including consequential seniority, for Scheduled Castes and Scheduled Tribes that are not adequately represented in State services, such reservation must arise from specific provisions or rules framed by the State to give effect to this objective.

Thus, while reservation in general appointment serves as a gateway to inclusion, reservation in promotion affects existing service structures, seniority, and the rights of those already within the cadre. Therefore it must be applied with greater circumspection and only through specific statutory authorization. The power must be exercised only after satisfying the tests of backwardness, inadequate representation, and maintenance of administrative efficiency, as later reiterated by the apex court in *M. Nagaraj* (supra), relevant extract is as follows:

*“87. Clause (4A) follows the pattern specified in clauses (3) and (4) of Article 16. Clause (4A) of Article 16 emphasizes the opinion of the States in the matter of adequacy of representation. It gives freedom to the State in an appropriate case depending upon the ground reality to provide for reservation in matters of promotion to any class or classes of posts in the services. The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. **It gives freedom to the State to provide for reservation in matters of promotion.** Clause (4A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4).*

*Therefore, clause (4A) will be governed by the two compelling reasons - "backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist then the enabling provision cannot come into force."*

In the present case, the respondent-department sought to introduce reservation in promotion by executive action by drawing inspiration from judicial decision without any amendment to the statutory rules. Such an approach disregards the balance that the framers of the Constitution, and later the Supreme Court, have sought to maintain between social justice and administrative merit.

It must be reiterated that promotion in public service is not merely a procedural elevation and it represents institutional recognition of merit, experience, and dedication. When employees who have consistently performed well are displaced due to earlier accelerated promotions granted under the umbrella of reservation, the equilibrium between inclusion and fairness is disturbed.

Adverting to the facts of the instant case, this Court is of the considered view that the pivotal question requiring determination is that: *Whether the respondent-department was justified in granting reservation in promotion in the absence of a statutory amendment to the service rules?*

The facts presented before this Court indicate that the petitioners initially joined the Health Department as Clerks and subsequently became eligible for promotion to the post of Deputy Superintendent. Their names were duly included in the seniority list prepared under the 1997 Rules. However, during the promotion process conducted on 21.09.2010, several junior officers were promoted under the Scheduled Caste reservation in promotions, while the petitioners belonging to the general category and being senior were overlooked.

Dealing with the question at hand, it is settled beyond cavil that the power to frame, amend, or rescind service rules lies exclusively with the rule-making authority under Article 309 of the Constitution. Unless and until the statutory rules are amended, promotions have to be made strictly in accordance with the extant provisions.

In the present case, neither the Haryana Health Department Subordinate Offices Ministerial Staff (Group-C) Service Rules, 1997 nor the Group-B Service Rules, 1982 contained any clause providing for reservation in promotion. The respondents nonetheless extended such benefit on the supposed strength of judicial pronouncements. However, this Court finds such reliance misplaced as judicial pronouncements are interpretative tools, not vehicles of amendment. They do not substitute legislative or statutory action. The principle of separation of powers forbids reading into the Rules what the legislature or the competent authority has consciously omitted. Instead of initiating amendment to the 1997 and 1982 Rules, The respondents proceeded to implement reservation by administrative instructions. Hence, the promotions so made are *ultra vires* and contrary to the service rules then in force.

At the time when promotions were effected on 21.09.2010 and 31.05.2013, the applicable rules did not provide for reservation in promotion. The petitioners, belonging to the general category and being senior and eligible, had a legitimate expectation of being considered on merit in accordance with the statutory scheme. Their exclusion, based on an inapplicable and extra-statutory reservation policy, amounts to arbitrary deprivation of service rights.

The omission to consider a senior for promotion while elevating their juniors in violation of the existing service rules constitutes a patent violation of natural justice and the principles of fair play, as reaffirmed by the apex court in “*Union of India v. Hemraj Singh Chauhan, (2010) 4 SCC 290*” wherein it was held as follows:

*“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.  
39. In The Manager, Government Branch Press and Anr. v. D.B. Belliappa - (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomised under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486).”*

Where an individual's rightful promotion or seniority has been withheld due to departmental misinterpretation of law, it would be wholly unjust to allow the State to profit from that default. The doctrine of fairness in public employment thus obliges the administration to rectify its error and to grant the employee the relief they were otherwise entitled to, even if such relief must take the form of notional or retrospective promotion.

Before parting, this Court deems it appropriate to observe that the Constitution is not a charter of privilege but a framework of justice. The protection of disadvantaged sections is an enduring constitutional mandate, yet it must be pursued through lawful means, consistent with the larger principles of equality and efficiency. The courts, as guardians of constitutional morality, must ensure that in seeking to uplift one section, the State does not inadvertently alienate another. Justice, to be just, must remain fair to all.

#### 4. Conclusion

Accordingly, the present writ petition is **allowed**. The petitioners are therefore entitled to be promoted retrospectively to the posts of Deputy Superintendent and Superintendent, together with all consequential benefits of



seniority, pay fixation, and arrears. Such relief not only restores legality but also vindicates the constitutional principle that no employee shall suffer because of an authority's misapplication of law and judicious mind.

Ordered accordingly.

Pending application(s), if any shall be disposed off, accordingly.

**(SANDEEP MOUDGIL)**  
**JUDGE**

**04.11.2025**

*Meenu*

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