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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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CWP-586-2014 (O & M)

Date of decision: 09.01.2025

Harpreet Singh and others

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Onkar Singh, Advocate, for the petitioners.

Mr. Amarpeet Singh Bains, AAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing the final seniority list dated 27.09.2021 for the posts of Clerk/Junior Assistant, which was formulated based on the date of birth, without taking into account the length of service rendered by the petitioners.

2. It can be gleaned from the facts that the petitioners were selected and appointed as clerks through a selection committee in the office of Director, Technical Education during 01.01.0996- 30.01.1996 on 89-days basis, with their services later regularized through Punjab Government's instructions dated 26.05.2003. Upon circulation, the tentative seniority list in 2009, was objected to on the ground that inter-se seniority should be based on their initial appointment and total service length as per Punjab Civil Services Rules, not from the date of regularization. Despite the Personnel Department later opining in their favor as per Para 3(e) of the 2003 Instructions, the department proceeded with finalizing the list without considering the aforesaid, compelling the petitioners to file the present petition before confirmation of their adverse seniority position.



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3. In an endeavour to evaluate the aforesaid issue, a profitable reference is being made to **Daljit Kumar vs. State of Punjab and another**¹, a case preferred at the hands of petitioners who were regularized on the same date but were accorded *inter se* seniority based on their extended tenure of service within the department, contention, branding such a criterion as arbitrary, sought seniority to be determined by age precedence, was not the accepted and consequently dismissed on 09.09.2024 of which no LPA had arisen. It was held therein that even in clause 14(d) of the Punjab State Board of Technical Education and Industrial Training Service Rules, 2007, instances where individuals are amalgamated from diverse departmental entities, the determination of hierarchical precedence shall be predicated upon the temporal duration of their professional tenure. The findings as summarised in the aforesaid judgement, as relatable to the present case read thus:

12. The argument which has been raised by the learned counsel for the petitioner in the present petition is that taking into account the length of service of contractual appointment in order to frame seniority of the employees will amount to grant the benefit of adhoc service towards seniority, which is not permissible and keeping in view the fact that the State Government in similar circumstances where the services of the employees have been regularized on the same date, *inter se* seniority has been decided on the basis of the age of the employees on the date of regularization of service, hence, the petitioner being senior to the private respondents in age on the date when the services of the petitioner as well as private respondents.

13. It may be noticed that in case, the argument of the learned counsel for the petitioner is accepted, the same will lead to a very anomalous situation.

14. It is a conceded position that private respondents have longer length of service on contractual basis as compared to the petitioner. The employee, who has longer length of service has a better claim for regularization of

¹ CWP-27451, decided on 09.09.2024



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service as compared to an employee, who has lesser length of service on contractual basis.

15. The respondent-department in order to streamline, decided to regularize the services of all the employees irrespective to their length of service, on the same date. Once, the services of all the employees including the petitioner as well as private respondents have been regularized on the same date, the criteria has rightly been chosen by the respondent-Board that employee, who has longer length of service on contractual basis will be given benefit of seniority while framing inter se seniority despite the fact that the services of the petitioner as well as private respondents were regularized on the same date.

16. The claim of the petitioner that the seniority should be decided on the basis of age and not on the basis of length of service rendered on contractual basis will cause prejudice to large number of employees, who despite serving the respondent-Board for number of years will be treated junior to the employees, who have lesser length of service on contractual basis but are elder in age. For instance, in case, an employee has 10 years of service to his credit and another employee has 03 years of service to his credit and the regularization policy demands minimum 03 years of service, and both the employees having 10 years and 03 years of service are regularized on the same date, merely that an employee, who has 03 years of service to his/her credit but is elder in age cannot be granted seniority over and above the employee having 10 years of service to his/her credit on date when their services are regularized.

17. The criteria adopted by the respondent-Board to decide the inter se seniority between all the employees whose services were regularized on the same date i.e. 29.07.2009 is perfectly valid and legal so as to avoid the eventuality that the employee, who has lesser length of service on contractual basis but is elder in age as compared to another employee, who has more length of service, is to be treated as senior merely that services of both the employees were regularized on the same date.

18. Further, the argument of the learned counsel for the petitioner that treating an employee, who has more length of service on contractual basis to be senior will amount to giving benefit of adhoc service, which is arbitrary and illegal, is totally fallacious as the services of all the employees have been regularized on the same date and it is only for the purpose of fixing the inter se seniority of the employees, who were regularized on the same date, a criteria has been adopted by the respondents to frame the inter se seniority on the basis of the length of service on contractual basis and benefit of adhoc/contractual service has not been given to any employee.



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19. It is not the case of the petitioner that the private respondents have been regularized from retrospective effect as compared to the petitioner, who has been regularized prospectively. All the employees including the petitioner as well as private respondents have been regularized prospectively and hence, argument of the learned counsel for the petitioner that the criteria to decide the inter se seniority between all the employees whose services were regularized on 29.07.2009 on the basis of the total length of service rendered by them on contractual basis will amount to grant of benefit of adhoc service, cannot be accepted.

. 20. As far as the reliance which is being placed upon the judgment of the Division Bench of this Court in Harpal Singh (supra), the same is also misplaced. In the said case, the benefit of seniority was being claimed with regard to the contractual/adhoc service rendered by the petitioners therein. In the present case, there is no such grant of benefit to the private respondents. Further, in the said case, though, the services of the particular set of employees were regularized on later date but they were claiming benefit of seniority from their initial date of appointment i.e. on adhoc basis, which claim was rejected.

21. In the present case, benefit of adhoc service has neither been given to the petitioner nor to private respondents but the same has only been taken into account to decide the inter se seniority of all the employees, who have been regularized on the same date. Hence, in the facts and circumstances of the present case, the judgment in the case of Harpal Singh (supra) cannot be made applicable upon the case of the petitioner.

22. At this stage, learned counsel for the petitioner submits that the grant of seniority to the private respondents by taking into account the length of service rendered on contractual basis will violate Rule-14 (d) of the Punjab State Board of Technical Education and Industrial Service Rules, 2007.

For better understanding, the said Rule-14 is reproduced as under:-

“14. Seniority:-The seniority inter se of persons appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post in that cadre of the Service.

Provided that in case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed.



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Provided further that in case any person of the next selection has joined a post in the cadre of the concerned service before the person referred to in the preceding proviso joins the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows:-

- (a) a person appointed by direct appointment shall be senior to a person appointed otherwise;
- (b) a person appointed by promotion shall be senior to a person appointed by transfer;
- (c) in the case of person appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and
- (d) in the case of persons appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment, and if the rates of pay drawn are also the same, then by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to a younger person.

Note:- Seniority of persons appointed on purely provisional basis or on adhoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.

23. A bare perusal of the above rule would show that adhoc service is not to be taken into account and seniority has to be given from the date when the regular appointment is given. In the present case, it is a conceded position that the petitioner as well as private respondents have been given seniority from 29.07.2009, which is the date of regularization of their service and hence, argument of the learned counsel for the petitioner that the benefit of adhoc service was given to the private respondents is incorrect.

24. In the present case, even the note given to Rule 14 has not at all been violated as asserted by the learned counsel for the petitioner.

25. It is noticed that as per Clause (d) of Rule 14 how the seniority of employees, who have appointed by way of transfer from different cadres, is to be decided. The said clause is not applicable upon the case of the petitioner as neither the petitioner nor the private respondents have been appointed by way of transfer as they were working on



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contractual basis in the same cadre and their services have been regularized on the same date hence, Clause 14(d) will also not come into operation in the case of the petitioner.

26. Further, even in clause 14 (d), it has been mentioned that where the persons are brought on the same date from the different department, their seniority is to be decided on the basis of longer length of service. It is only in the case where the length of service is same, than, age criteria is to be adopted.

27. In the present case, it is a conceded position that private respondents have more length of service on contractual basis as compared to the petitioner and hence, even if, Clause 14(d) is made applicable then also, the private respondents who have more length of service will be treated senior to the petitioner under all circumstances.

28. At this stage, learned counsel for the petitioner submits that respondents No.4 and 13 could not have been regularized as Information Assistant by converting them from the post of Data Entry Operator to that of Information Assistant and hence, the grant of seniority to them over and above the petitioner is arbitrary and illegal.

29. It may be noticed that the petitioner has attached the regularization order dated 29.07.2009 (Annexure P/4) with the present petition by which, the service of the petitioner as well as respondents No.4 and 13 were regularized. In the said order, private respondents No.4 and 13 have been regularized as Information Assistant. The said order was available with the petitioner when the objection to seniority list was filed and in case, the petitioner was aggrieved qua the regularization of the private respondents as Information Assistant, nothing stopped him to challenge the said order at any given point of time. Even in the present petition, the said order of regularization of services of respondents No.4 and 13 is not under challenge. The only argument is that they cannot be given seniority over and above the petitioner.

30. It may be further noticed that the seniority is only a reflection of appointment of an employee. Once, the regularization of respondents No.4 and 13 is not under challenge, it cannot be said that they cannot be granted seniority in pursuance to the order of their regularization i.e. Annexure P/4 hence, the said argument of the learned counsel for the petitioner cannot be accepted.

31. Learned counsel for the petitioner submits that the said plea was raised while filing objection to the seniority list, which was not being decided by the respondents.

32. As noticed hereinabove, once, the regularization order of private respondents as Information Assistant is not under challenge, the grant of seniority to them in the said cadre cannot be objected too. Mere raising an objection once, appointment of the private respondents is not being



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challenged, grant of seniority cannot be objected by the petitioner.

33. No other argument has been raised.

34. Keeping in view the facts and circumstances as noticed hereinbefore, no ground for interference by this Court is made out and the writ petition is accordingly dismissed.”

4. The case of the petitioner for reformulating the *inter se* seniority list in consonance with the principles enunciated in the aforementioned judgment is clearly made out, to which the learned State counsel despite best efforts was unable raise any demurrer, as such, the present petition is hereby disposed of, with a direction to do the needful in 6 months, in accordance with law, after grant of opportunity to the concerned.

09.01.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No