

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

**Civil Writ Petition No. 14919 of 2011**

**Date of Decision: 18.03. 2015**

**Satish Kumar Aggarwal**

..... Petitioner

Vs.

**Punjab & Haryana High Court and others**

..... Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER**

**HON'BLE MR. JUSTICE JASWANT SINGH**

Present: Mr. Akshay Bhan, Senior Advocate assisted by  
Mr. Animesh Sharma, Advocate for the petitioner.

Mr. Vikas Bahl, Senior Advocate assisted by  
Mr. Parminder Singh, Advocate for respondent No.1-High Court.

Mr. Rajiv Atma Ram, Senior Advocate assisted by  
Mr. Sube Sharma, Advocate for private respondent Nos.2 to 4.

None for respondent No.5.

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**JASWANT SINGH, J.**

1. The petitioner, who is a member of the Punjab Superior Judicial Service, by filing the present writ petition has sought the quashing of the order dated 03.06.2011 (**Annexure P-8**) whereby his representation dated 14.01.2010 (**Annexure P-4**) seeking the quashing of the seniority list dated 14.11.2007 placing him below the private respondents-direct recruits, has been communicated to be rejected.

The said rejection is based on the decision of Hon'ble Full Court

taken in the meeting held on 30.05.2011 accepting and approving the report dated 20.04.2011 of a Committee of three Hon'ble Judges, constituted in that regard. Further prayer is for a direction to treat the petitioner as a member of the Punjab Superior Judicial Service since the date of his promotion vide order dated 12.05.2000 (**Annexure P-1**) with consequential seniority.

2. The brief facts are that the petitioner was directly recruited as Civil Judge (Junior Division) on 21.02.1990. The High Court of Punjab and Haryana made a recommendation dated 12.05.2000 (**Annexure P-1**) to the State of Punjab, on the basis of decision taken in Full Court meeting held on 28.04.2000, recommending six Judicial Officers including the petitioner for appointment by promotion as Additional District & Sessions Judges in the State of Punjab. These recommendations were conditional and it was stated that "the appointment of these Officers shall be subject to the rights of their respective seniors, namely Sarvshri M.S.Walia, D.R.Arora, Dharam Singh and Gobinder Singh". It was also stated in these recommendations that there are in all 88 posts in the cadre of Punjab Superior Judicial Service out of which 66 are manned by promoted Officers and 22 for direct recruits as per amended provision of Rule 8(2) of the Punjab Superior Judicial Service Rules, 1963. On the basis of these recommendations, the promotion order dated 05.08.2000 (**Annexure P-12**) was issued appointing the six Judicial Officers including the petitioner in the rank of Additional District Judge by promotion on provisional basis subject to the aforesaid condition of the right of their respective seniors.

It is not in dispute that the private respondent Nos. 2, 3 and 4 joined as Additional District & Sessions Judges on 31.05.2001 as direct recruits pursuant to the Notification dated 11.04.2001 (**Annexure R-2/4**)

issued by the Government of Punjab appointing them on probation by way of direct recruitment.

A Seniority List of the Officers of Punjab Superior Judicial Service came to be notified by this Court vide Notification dated 18.12.2004 (**Annexure P-2**) wherein the petitioner was placed above the direct recruits-respondent Nos.2 to 4 and promotee-Sh. Gobinder Singh/respondent No.5.

It transpires that on upgradation of the ACR for the year 1997-98 of the overlooked senior Sh. D.S.Malwai, and on conclusion of the pending disciplinary proceedings against the seniors Sh. Dharam Singh, Sh. Gobinder Singh etc., the said Officers were promoted to the post of Additional District & Sessions Judges and assigned consequential seniority with retrospective effect from the date person junior to them i.e. the petitioner had been promoted.

Resultantly, a revised seniority list was notified vide Notification dated 14.11.2007 (**Annexure P-3**) whereby the petitioner was placed junior to the private respondents on account of the fact that vacancies meant for promotees as per their quota were consumed by the senior persons to the petitioner namely Sarvshri M.S.Walia, Dharam Singh, D.R.Arora and Gobinder Singh (respondent No.5). Accordingly, the petitioner had to be pushed down to a place in the seniority where a vacancy within the promotee quota as per his entitlement was available, and hence the petitioner has been given a deemed date of promotion as 01.11.2001 in the rank of Additional District & Sessions Judge.

It is not in dispute that on the basis of the aforesaid placement as per **Annexure P-3**, the private respondents and the petitioner were re-

designated as District & Sessions Judges and no grievance was made till the petitioner submitted a representation dated 14.01.2010 (**Annexure P-4**) for quashing of seniority list dated 14.11.2007 and re-fixing his seniority viz-a-viz direct recruits in the cadre of Punjab Superior Judicial Service.

The Hon'ble High Court vide letter dated 05.08.2010 (**Annexure P-5** collectively) invited the objections from the Judicial Officers (including the petitioner) likely to be affected against the proposed dates of adjustment of the Officers. The petitioner filed his objections dated 08.08.2010 (**Annexure P-7**). The representation of the petitioner and the objections filed were considered by the Hon'ble Recruitment/Promotion Committee for Superior Judicial Officers of the State of Punjab in its meeting held on 20.04.2011, wherein it was found that Sarvshri Dharam Singh, D.S.Malwai, Surinder Gupta and Gobinder Singh were held to be seniors to the petitioner in a Full Court meeting held on 22.01.2007 and 01.11.2007 and accordingly, the place of the petitioner had to be pushed down in the seniority list below the direct recruits/private respondents Nos.2 to 4 (who were adjusted in their quota of direct recruits) since a vacancy for the petitioner in his own quota would become available after the dates of appointment of direct recruits. The recommendations of the Hon'ble Committee rejecting the representation dated 14.01.2010 (**Annexure P-4**) were approved and accepted by the Hon'ble Full Court of this Court in its meeting held on 30.05.2011 leading to communication of the decision vide impugned letter/order dated 03.06.2011 (**Annexure P-8**). Hence, the instant writ petition.

3. Upon notice, respondent No.1 has filed its reply dated 14.10.2011 along with documents **Annexures R-1/1 to R-1/5**. A joint reply dated 05.12.2011

along with documents **Annexures R-2/1 to R-2/7** has been filed by the direct recruits-respondent Nos.2 to 4. No reply has been filed by the promotee-respondent No.5. Petitioner has filed no replication to both of the aforesaid replies.

4. Learned Counsel for the petitioner submitted that the total cadre strength of Additional District & Sessions Judges was 88 out of which share of promotee was 66 while share of direct recruits was 22. The petitioner was promoted as Additional District & Sessions Judge on 05.08.2000 on which date he was within the promotee quota of 66 posts. Accordingly, the petitioner is entitled to maintain his seniority with effect from the date of promotion viz. 05.08.2000. **Secondly**, it is submitted that in the recommendation (**P-1**) of the High Court 14 vacancies are shown and the petitioner is 4<sup>th</sup> in the order of seniority of stated six Judicial Officers. Since as per amended sub Rule 2 of Rule 8 of the Punjab Superior Judicial Service Rules, 1963 (for short "1963 Rules"), 3/4<sup>th</sup> of the 14 vacancies are meant for promotees and hence 10 posts would fall to the share of promotees. Accordingly, it is again reiterated that the petitioner is within the quota meant for promotees and thus would rank senior to the direct recruits/respondent Nos.2 to 4 who concededly were appointed later on 31.05.2001. It is **lastly** submitted that the petitioner was appointed by promotion to Superior Judicial Service in accordance with the 1963 Rules and is entitled to count his seniority w.e.f. 05.08.2000 on the principle of continuous length of service in terms of Rule 12 of the 1963 Rules. In support, reliance is placed on the judgment of the Hon'ble Supreme Court in **Rudra Kumar Sain Vs. Union of India, 2000 (8) SCC 45**.

5. On the other hand, it has been submitted on behalf of the

respondents that it is apparent from a perusal of Rule 8(2) of the 1963 Rules that in terms thereof 3/4<sup>th</sup> of the cadre posts are required to be manned by promotees and 1/4<sup>th</sup> by direct recruits. It is submitted that the petitioner is seeking to apply the quota on vacancies whereas in actual fact it is to be worked out on posts. It is accordingly submitted that not more than 66 posts in the cadre of Additional District & Sessions Judges can be manned by promotee at any given point of time (66 being 3/4<sup>th</sup> of the total cadre strength of 88). It is further submitted that consequent upon the acceptance of the representations of Sarvshri Gobinder Singh, Dharam Singh, D.S.Malwai (all of whom were senior to the petitioner) after notice to the petitioner, they were promoted retrospectively w.e.f. 05.08.2000 (when the petitioner was promoted).

The orders of retrospective promotion were passed after hearing and have not been challenged by the petitioner. The said persons consumed all vacancies available in the promotee quota of 66 posts and accordingly the petitioner has been rightly pushed down. Further objection has been taken that the claim of the petitioner is belated as the seniority list dated 14.11.2007 is challenged whereas only representation filed by the petitioner (**Annexure P-4**) is dated 14.01.2010. It has been further argued on behalf of the respondents that seniority under Rule 12 is to be determined of members of the service. Member of the service is defined in Rule 2(6) of the Punjab Superior Service Rules, 1963 as a person who is appointed to a cadre post in accordance with the provisions of these Rules and Rule 8(2) provides that all the total number of cadre posts 3/4<sup>th</sup> shall be manned by promotee officers and 1/4<sup>th</sup> shall be manned by direct recruits.

The said Rule prohibits a regular appointment of a promotee as

Additional District & Sessions Judge against a vacancy manned for direct recruits but does not debar an officiating appointment till such time as a direct recruit is appointed.

It is accordingly submitted that the petitioner cannot claim seniority over the respondents as he did not become a member of the service till 1.11.2001 because his appointment cannot be taken to be an appointment in accordance with Rules till a cadre post within the promotee quota was available for him. Finally, it has been submitted that the judgment in **Rudra Kumar Sain** is totally distinguishable on facts as the Rules applicable to the Delhi Judicial Service are materially different from the Punjab Superior Judicial Service Rules. In this regard, it has also been stated that the judgment in **Rudra Kumar Sain** was earlier considered in the context of inter se seniority dispute between the promotees and direct recruits from both the States (Punjab as well as Haryana) by three Judges Committee of the Hon'ble High Court which led to report dated 06.12.2004 (**Annexure R-2/5**). The Committee considered the judgment in **Rudra Kumar Sain (supra)** and also compared the Delhi Higher Judicial Service Rules, 1970 viz-a-viz the Punjab Superior Judicial Service Rules, 1963, and held that the judgment in **Rudra Kumar Sain's case (supra)** would not be applicable. It was further of the opinion that the promotees who were officiating against the cadre post cannot score in the matter of seniority only on the basis of continuous length of their service and that the seniority of promotees shall commence from the date they become members of the service which is possible only if they occupy the cadre post. The petitioner was also a party to these proceedings as is apparent from the report itself which specifically states a notice of hearing to all the

affected or likely to be affected promotees or direct recruits.

The private respondents have also placed on record compilation of 66 promotees who were initially placed above them as on 31.05.2001 (before the grant of retrospective promotion to 3 other promotee Officers viz. Sarvshri Gobinder Singh, D.S.Malwai and Dharam Singh, based on the admitted gradation list for the year 2000 till the filing of the reply and by referring to Notification dated 18.12.2004 (**Annexure P-2**) and Notification dated 14.11.2007 (**P-3**) as well as document (**P-5**). In this list (**Annexure R-2/7**), the petitioner figures at Sr. No.65. It has been stated that with the retrospective promotion of 3 other promotee Officers namely Sarvshri Gobinder Singh, Dharam Singh and D.S.Malwai, who were all seniors to the petitioner in PCS (Judicial Branch). The petitioner was pushed down from slot No.65 to slot No.68 and accordingly, the petitioner was placed below the private respondents. This document **Annexure R-2/7** has not been disputed by the petitioner by filing any replication.

6. After giving our anxious thoughts to the rival submissions and perusing the documents placed on record, we are of the considered opinion that the contentions raised on behalf of the petitioner are not tenable and are liable to be rejected.

7. Before proceeding to deal with the contentions, it would be appropriate to reproduce the relevant provisions of the 1963 Rules (as amended vide notification dated 31.01.1976 and notification dated 28.01.1991) for better understanding of the dispute between the parties. The relevant Rules 2(6), 2(8), 7, 8(2) and 12 read as under:-

“ **Rule 2.(6) Member of Service** – means a person:

a) who, immediately before the commencement of these Rules, holds a



cadre post, whether permanent, temporary or officiating basis or on probation

or

b) who is appointed to a cadre post in accordance with the provisions of these Rules.

**Rule 2.(8)** 'Service' means the Punjab Superior Judicial Service:

**Rule 7 Posts in Service:** The Service shall comprise the posts specified in Appendix 'A' to these rules:

**Rule 8(2). Recruitment in service:-**

(1). xxx            xxx            xxxx            xxx

(2). Of the total number of cadre posts,  $\frac{3}{4}$  shall be manned by promoted officers and  $\frac{1}{4}^{\text{th}}$  by direct recruits.

Provided that nothing in these sub rule shall prevent the officiating appointment of a member of the Punjab Civil Service (Judicial branch) on any post which is to be filled in by Direct Recruitment, till a direct recruit is appointed.

**Rule 12. Seniority**

1. The seniority, *inter se*, of the members of the Service, shall be determined by the length of continuous service on a post in the Service irrespective of the date of confirmation. ”

A conjoint reading of the aforesaid relevant Rules makes it explicit that a person becomes a member of the Punjab Superior Judicial Service on his appointment to a cadre post in accordance with Rule 8 of the 1963 Rules. Sub Rule 2 of Rule 8 mandates that out of total number of cadre posts in the service,  $\frac{3}{4}^{\text{th}}$  shall always be manned by the promoted Officers and  $\frac{1}{4}^{\text{th}}$  by direct recruits, However, a promotee can be appointed on officiating basis against a post meant for a direct recruitment till a direct recruit becomes available and gets appointed.

It is thus evident that a promotee does not become a member of the service till a substantive vacancy/post within the  $\frac{3}{4}^{\text{th}}$  prescribed promotional quota becomes available for his adjustment/ appointment, because only then he can be considered to be appointed to a cadre post in accordance

with the provisions of the Rules. Although the said promotee may have worked on the promoted post beyond the promotional quota but the same has to be treated on officiating basis and thus such officiating period is not to be counted towards determination of seniority since the *inter se* seniority between promotees and direct recruits is relatable to their respective appointment against substantive vacancy/post within their prescribed quota and thus become members of service.

8. Now adverting to the contention in the backdrop of the interplay of the provisions of 1963 Rules, we find in our considered opinion that the claim of the petitioner that he was promoted within the quota of 66 posts to be misconceived. It is the admitted position that the total cadre of Additional District & Sessions Judges is 88 posts and in terms of Rule 8(2) (supra), 3/4<sup>th</sup> share of the posts (66 posts) are to be manned by promotee Officers whereas the remaining posts (22) are to be manned by the direct recruits. It is further the conceded position that after the grant of retrospective promotion to Sarvshri Gobinder Singh, Dharam Singh and D.S.Malwai, the name of the petitioner does not figure in the list of first 66 promotees. Accordingly, the petitioner had to be pushed down to a slot where vacancy was available to him in the promotee quota. Accordingly, the petitioner has been given deemed date of promotion as 01.11.2001 on which date post in promotee quota becomes available for him. Further the petitioner cannot obtain any benefit of his continuous length of service for the reasons that his service as Additional District & Sessions Judge from 05.08.2000 to 01.11.2001 was fortuitous and against a vacancy meant for direct recruit. Still further it is apparent from a perusal of the recommendations of the High Court **Annexure P-1** dated 12.05.2000 and the order of promotion of

the petitioner dated 05.08.2000 (**Annexure P-12**) that his promotion was provisional and conditional subject to the rights of his seniors. Persons senior to him have been rendered justice by their retrospective promotions hence they have to supersede the petitioner. Respondent No.5-Gobinder Singh was one of them and was concededly senior to the petitioner in the PCS (Judicial Branch). Thus the petitioner cannot claim seniority in the cadre of Additional District & Sessions Judges over him. Beside his promotion being both provisional/conditional and fortuitous as shown above, he cannot claim seniority over the direct recruits respondent Nos.2 to 4, who were appointed substantially within their quota.

The petitioner's other argument is that 14 vacancies were available as per the High Court recommendations (**Annexure P-1**) out of which 10 have to go to promotee (he being entitled to the 4<sup>th</sup>) is again misconceived.

As is apparent from perusal of Rule 8 (2) (*supra*) the quota has to be worked out on posts. The Rule itself contemplates that 3/4<sup>th</sup> of the posts **shall be manned** by promotee Officers (emphasis supplied). Thus availability of vacancy is meaningless as the quota has to be worked out on the total number of cadre posts i.e. 3/4<sup>th</sup> to be manned by promotees and 1/4<sup>th</sup> to be manned by direct recruits. Reliance on the judgment in **Rudra Kumar Sain** is also misconceived. The position in law has been explicitly detailed in the report of the 3 Judges' Committee dated 06.12.2004 (**Annexure R-2/5**) where the Delhi Higher Judicial Service Rules, 1970 have been compared in *extenso* with the Punjab Superior Judicial Service Rules, 1963 to hold that the ratio of law laid down in **Rudra Kumar Sain's case (supra)** would not apply as the

provision of the 1963 Rules are materially different.

The Committee has further held that in terms of Rule 12 of the 1963 Rules, the seniority is to be determined of members of the service.

Member of the service as per Rule 2(6) is a person holding a cadre post. That apart by virtue of Rule 8(2) a member of the PCS (Judicial Branch) can only officiate on a post meant for direct recruit Additional District & Sessions Judge till such time as the direct recruit becomes available.

Thus promotees who were officiating against the cadre posts cannot score in the matter of seniority over direct recruits only on the basis of their continuous length of service. Their seniority will be computed from the date they become members of the service which is possible only if they occupy the cadre post within their prescribed quota.

We are in respectful agreement with the findings of the Hon'ble Committee.

Thus the petitioner is not entitled to count his seniority w.e.f. 05.08.2000 as his appointment by promotion from the said date cannot be accepted to be against a cadre post within the 3/4<sup>th</sup> promotional quota, and has to be treated on officiating basis till a post/substantive vacancy w.e.f. 01.11.2001 became available for his adjustment within the promotional quota. Hence, his claim for seniority over private respondent Nos.2 to 4, direct recruits appointed on 31.05.2001, cannot be accepted.

9. As regards respondent No.5-Gobinder Singh is concerned, he was granted retrospective promotion after hearing the petitioner, which decision has not been challenged by the petitioner even in this petition.

Even otherwise, the recommendations dated 12.05.2000 (**P-1**) of the High Court and consequent promotion of the petitioner vide order dated 05.08.2000 (**P-12**) were both provisional and conditional subject to rights of his seniors including Sarvshri Gobinder Singh (respondent No.5), Dharam Singh and D.S.Malwai. Therefore, the claim of seniority over respondent No.5/Gobinder Singh is also rejected.

The challenge is also belated as seniority of 2007 is challenged in the year 2011 but since we are deciding the matter on merits, the issue of delay and latches, though certainly fatal to the petitioner, would now pale into insignificance.

For the reasons recorded above, the writ petition is dismissed with no order as to costs.

**(MAHESH GROVER)**  
**JUDGE**

**(JASWANT SINGH)**  
**JUDGE**

**March 18<sup>th</sup>, 2015**  
**Gagan**