

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

Civil Writ Petition No.16340 of 2010

Date of decision: 1.12.2015

Rajiv Aggarwal

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Harinder Sharma, Advocate,
for the petitioner.

Mr.Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The short controversy involved in this petition relates to the fixation of *inter se* seniority between the petitioner and the persons who were lower in merit than him in the select list but were appointed to service as ETT teachers while he was denied appointment for an unjustified reason. Aggrieved by the action of the respondents in not offering appointment to the petitioner as per his merit, the petitioner approached the Hon. Lokpal, Punjab for redressing his grievance and to secure for himself an appointment on merit since he was higher in merit rank than many of the direct recruits tested through the same open competition

and recruitment process.

2. The Hon. Lokpal [Late Hon'ble Mr. Justice D.V.Sehgal (Retd)] entertained the request/complaint of the petitioner who heard parties and proceeded to make an elaborate report a copy of which is placed on record as P-1.

3. The Hon. Lokpal found a lapse on the part of the then District Education Officer [Primary], Kapurthala, the district for which the petitioner had applied for appointment, the selection being district-wise, and recommended that the conduct of the officer may be inquired into by the competent authority in the Government in the role played in the case of the petitioner.

4. The Hon. Lokpal noticed the allegations made by the complainant, the present petitioner, of demand of illegal gratification of ` 1 lac to offer an appointment and this aspect was adversely commented upon and the Government was asked to investigate the matter. In the main, the Hon. Lokpal in his order dated September 25, 2002 recommended to the Government that it should offer appointment to the petitioner as an ETT teacher and the complainant should be allowed to join duties. It was specifically recommended that his seniority would stand above 3 candidates namely Sarvshri Sanjeev Kumar, Pawan Kumar and Thakar Singh who stood below the complainant in the order of merit determined by the recruiting authority.

5. The State Government accepted the recommendations of the Hon. Lokpal and offered an appointment to the petitioner vide appointment letter dated 8.1.2003 which he accepted and

joined service on 14.1.2003 as a regular recruit. Though the appointment was made but the seniority position of the petitioner in the seniority list issued on May 1, 2004 was placed at serial No.481 and on revision of seniority list on September 1, 2005, his name was shown at serial No.419 above Sanjiv Kumar, Pawan Kumar and Thakar Singh. However, in the seniority list, the date of appointment was reflected as January 14, 2003 which meant for all intents and purposes that the petitioner's name was placed higher than the three candidates but it was not practically so done. This position was exposed when two persons junior to him were promoted to State cadre from District cadre on April 19, 2006 vide Annexure P-7 whose names are Rahul Walia and Baljit Singh at serial No.153 and 157 of the seniority list.

6. Sarvshri Sanjiv Kumar, Pawan Kumar and Thakar Singh were also promoted to the State cadre at the same time as the above two though they belonged to different districts. It may be noted that all of them came to be appointed under the same recruitment process but had applied for in different subjects advertised in the school cadre.

7. Aggrieved by the promotion of persons lower in merit to him, the petitioner approached this Court in CWP No.482 of 2007 claiming promotion as Hindi Master from ETT cadre from the date his juniors namely Hardip Singh, Rahul Walia and Baljit Singh were promoted. The writ petition was disposed of on 17.9.2008 with a direction to the respondents to consider his representation dated September 23, 2006 in accordance with law within six

months from the date of receipt of a certified copy of this order.

8. In response to the directions of this Court, DPI [SE], Punjab, Chandigarh passed the impugned order dated June 26, 2009 [P-9] rejecting the claim of the petitioner on the specious plea that since the petitioner had joined duty on regular basis on 14.1.2003, he had no claim for seniority since the aforesaid teachers had joined service on 16.1.2002 and stand promoted in District Kapurthala which is the petitioner's parent service district.

9. In the considered view of this Court in making the impugned order the DPI [SE], Punjab, Chandigarh has fallen in grave error in not deciding the inter se seniority issue on the basis of date of appointment which is a fortuitous circumstance and cannot be the governing principle of fixation of seniority. The error quite apparently has resulted from the malafide actions of the then DPI [SE], Punjab, Chandigarh which are findings recorded in the order of the Hon. Lokpal, Punjab. The petitioner had been denied promotion by active malfeasance of the then DPI [SE], Punjab, Chandigarh and had it not been so the petitioner would have been appointed along with the rest of his batch mates and the present problem would not have arisen.

10. It is well settled that seniority cannot be based on principles such as date of appointment or confirmation which are vagaries of service. The seniority rule is prescribed in rule 11 of the Punjab State Education (Primary School Cadre) Class III Service Rules, 1978 which provides the method of determination of seniority on the basis of continuous length of service on a post in

that cadre of the service. The continuous service in rule 11 is tempered with proviso (i) thereto which provides that in case of members recruited by direct appointment, the order of merit determined by the Commission, shall not be disturbed. Therefore, the merit rank is the seniority point in the service rule.

11. Since the petitioner was deprived of appointment on the due date and his rights wrongfully postponed, he had a subsisting claim to be granted seniority with effect from the date his juniors were promoted as per merit rank determined by the recruiting agency i.e. 8.1.2002 and the impugned which speaks to the contrary is untenable being contrary to rule. In any case, the Hon. Lokpal had recommended seniority issue in favour of the petitioner. The recommendations of the Hon. Lokpal were accepted by the State Government without demur or challenge evidently for the rationale contained in the report as its logical best.

12. Besides, the impugned order still smarts under the report of the Hon. Lokpal as it castigates the predecessor-in-interest and perpetuates an illegality committed by the then DPI [SE], Punjab, Chandigarh in denying appointment to the petitioner and delaying it by one year without any rhyme or reason, just cause or legal justification.

13. As a result of the above discussion, the petition is allowed. The impugned order cannot be sustained and deserves to be set aside. A writ of certiorari is issued and the impugned order is quashed. The seniority of the petitioner will be reckoned from

8.1.2002 by deeming his date of appointment from 8.1.2002, when persons lower in merit than the petitioner came to be appointed as ETT teachers.

14. A writ of mandamus is issued to the respondents to re-draw the seniority by reflecting the position as explained in this order strictly according to proviso (i) to rule 11 supra and thereafter, consider the case of the petitioner for promotion to the State cadre as Hindi Master on the basis of his accrued seniority with effect from 8.1.2002 as ETT teacher in district cadre, Kapurthala.

15. Since the State admits that the juniors have been promoted in Kapurthala in the impugned order itself and in the seniority list, then no difficulty is presented in ordering the implementing of this order forthwith from the date of receipt of a certified copy of this order as the petitioner's rights have been deprived for far too long and his case has been obfuscated by successive DPI [SE], Punjab, Chandigarh who seem to have made it their personal mission to trip the petitioner. Therefore, the petitioner shall be entitled to all the consequential benefits including monetary flowing therefrom. The State will be at liberty to fix responsibility on erring officers who have caused this unfair discrimination and to recover full or part of the financial implications of this order from appropriate official pockets so that the exchequer does not suffer loss for the malafide actions of its functionaries. It is not enough to say; "Here is the order now go and get it set aside." Not to forget; the constitutional court sits as a

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sentinel on the qui vive.

(RAJIV NARAIN RAINA)
JUDGE

December 1, 2015
Paritosh Kumar