

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

CWP No.1633 of 2011

Date of Decision: 21.09.2015

Amrik Singh & anr.

... Petitioners

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. DV Sharma, Sr. Advocate, with
Ms. Eshjyot Walia, Advocate,
for the petitioners.

Mr. Harkesh Manuja, Addl.A.G., 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)

1. This case involves disputes of inter se seniority of Clerks and Steno Typists. The petitioners were appointed as Clerks in the Punjab Civil Secretariat, Chandigarh and joined on March 17, 1992 and March 16, 1992 respectively. A few posts of Steno-typists were lying vacant in the office at the time. The department took a decision that those Clerks who had one year experience to their credit can be appointed as Steno-typists as of whom qualify a test in shorthand and transcription in Punjabi at the speed of 80 and 15 w.p.m. respectively. A circular was issued on April 21, 1992 stipulating that those Clerks who had not completed one year of service in the Civil Secretariat, Punjab would be allowed to compete in the test but appointment orders would only be issued after completion of one year of service as clerks. The petitioners appeared and qualified the test on April 25, 1992. A merit list of the successful candidates was drawn but had to await appointment for lack of one year's

experience. Another circular was issued on June 8, 1992 inviting fresh applications from Clerks working in the Civil Secretariat, Punjab with one year experience to their credit.

2. In this fresh circular a change was made from the previous circular inasmuch as the appointments would follow qualifying the test by treating selection by way of direct appointment. However, those who joined would not be given benefit of past service as Clerks towards seniority in the stenography cadre and would remain at the tail end of the cadre. A memo was issued notifying that 6 persons including the petitioners have qualified the test held on April 25, 1992. An option was given to these 6 qualifiers to give their consent within two days thereof to be treated as direct appointees at par with other direct recruits. The petitioners exercised their option on July 27, 1992 and accordingly agreed to be treated as direct recruits at the tail end of the seniority list at the time. They were relieved from the post of Clerks and joined as Steno-typists on the same day.

3. On July 29, 1993, a tentative seniority list of steno-typists was circulated in the office and objections were invited. Minor objections were raised with respect to corrections, say, name of father, date of joining and dates of birth etc. The petitioners submit that no one objected to their placement in the tentative gradation list of steno-typists and thereby the final seniority list was issued on December 31, 1993. Petitioner No.1 was placed senior to respondent No.3 while petitioner No.2 was shown senior to respondents No.5 to 8. Their seniority was fixed on the basis of inter se merit determined in the stenography test.

The petitioners were appointed on July 28, 1992, whereas respondent

No.3 was appointed on May 25, 1992. But petitioner No.1 was shown senior to respondent No.3.

4. Rule 9 of the Punjab Civil Secretariat (State Service Class-III) Rules, 1976 (for short 'the Rules') which govern the service provides that members recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended subject to a maximum of four months, the merit determined by the recruiting authority shall not be disturbed. On the basis of the seniority-cum-gradation list the petitioners were further promoted as Junior Scale Stenographers in 1995 and Senior Scale Stenographers in 1999.

5. The Supreme Court pronounced judgment in **Ajit Singh Janjua-II** on 18.11.2003 declaring reserved roster points are not seniority points. The petitioners contend that the said judgment has no application in their case. Before the *Janjua* decision was rendered by the Constitution Bench the seniority list of Senior Scale Stenographers had been circulated on January 31, 2003 and objections invited. However, no objections were invited to the seniority list of Steno-typists which was finalized as far back as in 1993 as said before.

6. It is the petitioners' case that taking advantage of inviting objections, vide letter dated November 18, 2003 respondent No.3 along with others filed objections on December 1, 1993 stating that she had joined as Steno-typist on May 25, 1992 while petitioner No.1 joined later on July 27, 1992. Therefore, she should be declared senior to petitioner No.1 at Level-1 whereas objections were invited only against the gradation list of Senior Scale Stenographers in Level-2. The petitioners

impute favouritism on the part of then Additional Secretary, Secretariat Administration, Punjab Civil Secretariat in issuing show cause notice to give undue benefit to respondent No.3 in the matter of seniority and in the process disturbed the seniority of the steno-typists also finalized in the year 1993.

7. The petitioners objected to the show cause notice on May 4, 2004 pointing out that they are direct recruits as Steno-typists and merit determined by the Selection Committee cannot be disturbed in respect of their dates of joining. The show cause notice was a ritual to give unfair advantage to respondent No.3. The seniority list was disturbed in the cadre of Steno-typists on July 7, 2004 after 11 years of its finalization. A consequential correction was made in the higher post in the impugned letter reflecting the posts at Level I with the altered seniority. The petitioners represented on July 19, 2004 with reminders at Annexures P-22 to P-25 which are dated 18.2.2005, 23.2.2005 and 8.11.2005 respectively. However, the petitioners woke up on January 22, 2011 and approached this Court by way of this petition challenging the orders dated July 7, 2004 (P-18). They claim that their pending representations deserve to be decided and a time-bound direction be issued to the respondents authorities in this respect.

8. On summons issued, the State entered appearance and has contested the case by filing its written statement. The state has defended the impugned order dated July 7, 2004 as legal and valid and as per rules. The official respondents cite Rule 7(1) of the Rules, which deals with the method of recruitment of Steno-typists. The Rule prescribes that appointment to the post of Steno-typists is by selection from amongst

Clerks working in the Punjab Civil Secretariat. The minimum educational and other qualifications prescribed for post of Steno-typist are: (i) candidate qualifies in a departmental test of Steno-typist to be held by the Chief Secretary, (ii) has at least one year's service as regular clerk in the Punjab Civil Secretariat. As it is well settled that minimum qualifications cannot be relaxed. The State emphasizes that the seniority list at Annexure R-1 was altered and the seniority position of the petitioners and one other similarly situated person namely Hari Singh was changed when it was found that the seniority assigned to them at Level-I was ordered in an arbitrary manner in violation of service rules. The petitioners and Hari Singh has a common cause and worked in the same office under one roof. Hari Singh challenged the impugned order before the Civil Court taking up the same grouse as has been taken in this petition. The impugned order has been upheld and the suit has been dismissed by the learned Civil Judge (Sr. Division) Chandigarh vide judgment and decree dated May 16, 2009.

9. Dissatisfied with the decree against him, Hari Singh has filed appeal in the Court of learned Additional District Judge Chandigarh and the next date then fixed in appeal was November 7, 2011 as stated in the written statement dated November 28, 2011. The petitioners and Hari Singh are closely associated with respect to the common grouse since they worked shoulder to shoulder in the same organization. But the petitioners are silent of that case and have suppressed the result of the civil suit in the present petition and are trying to achieve a different result for themselves knowing fully well that Hari Singh has lost in the court of first instance on the same cause of action. Quite apart, the impugned

order is in the knowledge of the petitioners since January 12, 2011 as the same was communicated to the petitioners vide endorsement 1/9/2003-4 Seniority Cell/11035 dated 12.7.2004 and therefore Mr. Manuja learned Addl. AG, Punjab defending the State submits that they cannot pretend lack of knowledge of the civil court proceeding and they are estopped by constructive res judicata to raise the issue in the writ petition. Besides, the present petition suffers from enormous delay and laches and the claim, if any, is patently time barred.

10. In para. 3 of the preliminary objections, the State is on record to say that the representations filed by the petitioners were duly considered on file and the decision of the civil suit in the case of similarly situated person (Hari Singh), a colleague of the petitioners, was made applicable to the petitioners. The decision on the file was taken on December 14, 2005. The State admits that the decision could not be conveyed to the petitioners in a formal way although they were made aware of the decision orally by the dealing officials. They had assured the Court that orders passed in the civil suit in Hari Singh's case will be made applicable to the petitioners being similarly situated persons. The further progress of the appeal is not on record but the judgment of the trial Court is on record as Annexure R-9.

11. I have read the judgment of the trial Court and find that the Court has noticed the provisions of Rule 9 of the Rules which determines the method of determination of seniority which is dependent on the length of continuous service of the post in that cadre of the service. The first proviso to which rule determines seniority to be drawn on the basis of merit determined by the recruiting authority which is not open to be disturbed.

The trial Court while dismissing the suit has relied on the decision in **Inspector Kuldip Singh v. State of Punjab & ors.**, 2009(1) SCT 3 which reaffirms the well settled principle that Government can always correct at any stage a bona fide mistake committed by its officers, subject to compliance of principles of natural justice. The earliest case on the point of State's power to correct a mistake at any time in order to maintain purity of government record is in the Full Bench decision of this Court in **Sunder Lal v. State of Punjab**, 1970 SLR 59.

12. It is pointed out that the petitioners had only one month service to their credit as clerks when their request to be permitted to sit in the typing/Stenography test to be held on April 25, 1992 was allowed. They had made a representation on April 8, 1992 that they were efficient in stenography and should be given a chance to appear. The result of the test was made in two separate merit lists, one pertaining to direct recruits on the basis of mistakes made in the test and second, from Clerks on the basis of their length of service. It is, therefore, the result of the test in which they were successful would relate only from the date of completion of one year service. The distinction was kept between selection on merit as a direct recruit and by way of a selection of in service candidates in terms of the rules. There were 17 direct recruits selected on the basis of the common test held on April 25, 1992 but some more vacancies remained unfilled for which another test was fixed for direct recruits after calling applications from the employment exchanges etc.

13. The Clerks who completed one year's service and were appointed as steno typists could only be read by way of direct recruitment because they were treated at par with those candidates whose names were

forwarded by the Employment Exchange. State pleads that 22 direct recruits qualified the test on April 25, 1992 and all of them except candidates belonging to Backward Classes were issued appointment letters on 13.5.1992.

14. Resultantly, 17 persons out of 22 joined as Steno-typists between 19 to 25.5.1992. Another fresh batch of direct recruits was selected on the basis of another test held on June 3, 1992 and two candidates, who qualified the test joined as Steno-typists in the last week of June, 1992. On the strength of office record, the State asserts that till July 20, 1992 the case relating to recruitment of Steno-typists was dealt with as per rules. Since the provisions contained in the Rules were an impediment in giving appointment to the petitioners and others on the posts of Steno-typists till the completion of one year's regular service as Clerk i.e. up to March, 1993 therefore in order to circumvent these rules the then dealing official *suo motu* initiated a Note dated July 20, 1992 on the noting file. In this note, it was recorded that a test was conducted on April 25, 1992 for making recruitment of Steno-typists and in this test six Clerks working in the Punjab Civil Secretariat also passed the test. In order to save the petitioners' loss of seniority since they could not be appointed till March, 1993, the note reasoned that because open advertisement had been published and the selection process was in the pipe line then in case direct recruits came before the petitioners who have passed the test but were waiting for their right to appointment to mature till completion of one year of service they shall become junior to the incoming Steno-typists. The view taken by the office on the noting file was thus crystallized to accommodate the petitioners before their rights

mature by offering them an option that in case, the petitioners wish to be appointed as Steno-typists before completion of one year's service then they may send their consent letters within two days to the Punjab Civil Secretariat Administration (Establishment-2 Branch) by consenting to be placed at the tail end of the list of Stenographers and foregoing their service as Clerks to join the new cadre. It was also conveyed that the Secretariat Administration is making direct recruitment through advertisement and after that recruitment leads to appointments, they will be considered after completion of one year's service, subject to availability of posts. This suggestion of the dealing official was approved by the Deputy Secretary, Secretariat Administration. Therefore, the rules were bent as an act of favouritism and therefore, there was an error committed which undue benefit has been corrected as a mistake of fact and law, hence, the impugned order is legal and valid and ropes in Level-1.

15. The petitioners cannot seek protection of wrongful fixation of seniority as Steno-typists given in an illegal manner merely on the ground that the petitioners have been promoted subsequently as Junior Scale Stenographers and Senior Scale Stenographers. In any case the petitioners cannot depend on a tentative seniority list till it is not finalized. There would be nothing wrong or illegal in the action of the official respondents in correcting an apparent error which occurred at Level-I even though the exercise was for finalizing the seniority list in the higher cadres. An adjustment also was to be made to accommodate the law in *Ajit Singh Janjua's* case and to make necessary change in seniority according to principle amongst the reserved and the general

category candidates since reserved roster points had been declared not to be counted as seniority points. As a matter of fact, the last seniority list of Senior Scale Stenographers was published in the year 1993. Thereafter, the State asserts no such seniority list was ever published. Therefore, in order to finalize the seniority, the tentative seniority list was prepared and circulated for inviting objections. The State Government is empowered to correct the wrong and draw seniority in accordance with rules. Seniority in any case is not a fundamental right or a constitutional issue elevated to status of a constitutional value as I explained in **Kulwant Kumar Kalsan v. State of Haryana**, 2015 (3) SCT 730. It is submission of the State that revision of seniority is an administrative action and a managerial function and there is no provision to file an appeal against such an act. However, an employee can always file representations to the higher authorities but there are no statutory remedies available against a seniority list. Memorials to the highest authority can always be submitted.

16. In the light of these facts, Mr. D.V. Sharma, learned Senior counsel argues that the seniority cannot be disturbed after 11 years. He relies on the Supreme Court judgment in **Rajender Partap Singh Yadav v. State of UP & ors.**, 2011(3) SCT 697 to stress his point. The Supreme Court observed in para.52 as follows:-

“52. We deem it appropriate to reiterate that in service jurisprudence there is immense sanctity of a final seniority list. The seniority list once published cannot be disturbed at the behest of person who chose not to challenge it for four years. The sanctity of the seniority list must be maintained unless there are very compelling

reasons to do so in order to do substantial justice. This is imperative to avoid avoidable litigation and unrest and chaos in the services.”

17. Even in this case, the Supreme Court has carved out an exception that ordinarily a final seniority list is not to be disturbed unless there are very compelling reasons to do so in order to do substantial justice. It cannot be said that administrative chaos would result by the impugned order which which does not present any manifest error on the face of it or on the face of the record. The rules of service are impermeable and seniority can only be fixed in accordance with the rules while no one has any right to a particular position in the seniority list. Any person, who has had an unfair advantage of placement in the seniority list and getting his name entered at a particular point in the running list does not earn a fundamental right to retain the position if there is an error apparent. It is well settled, and to re-emphasise, no one has a right of cling to a particular point in the seniority list to the detriment of a third party and that too, to repaint a painted picture to unsettle settled things. The principle of non-interference in cases of inordinate delay in approaching Court lies in unjust deprivation of rights which have accrued to the respondents, see **Rabindranath Bose & Ors v. Union of India & Ors**, AIR 1970 SC 470=1970 (2) SCR 697 [CB]. I am therefore unable to see how *Yadav* case helps Mr. Sharma to bring relief to his clients. Inordinate delay is not only a factor but relevant consideration to refuse relief, cf. **Malcolm De'Souza v. Union of India**, AIR 1975 SC 1269 [at 1272].

18. He next submits that a loss of seniority entails penal consequences leading to an inference that the order challenged is one

imposed by way of punishment. He cites para.17 in **Appar Apar Singh v. State of Punjab & Ors.**, 1971 SLR 71, where the Supreme Court observed as follows:-

“17. At the outset we may state that the learned Single Judge has taken the view that by allowing the juniors of the appellant to continue in P.E.S. Class I while reverting him to P.E.S. Class II, it cannot be held that thereby the appellant's seniority has been affected. We are not inclined to agree with this view. Loss of seniority established by virtue of an order may amount under certain circumstances to a penal consequence leading to an inference that the order challenged is one imposed by way of punishment. In paragraph 28 of the writ petition the appellant has clearly stated that at the time of the passing of the impugned order as many as nine persons were officiating in P.E. S. Class I in schools and instruction cadre and amongst them the appellant's name appears at No.5 in the seniority list. He has further stated that there were four persons junior to him who were still permitted to officiate in P.E.S. Class I. In paragraph 26 of the return filed by the State, the averments of the appellant, referred to above, have been admitted. The State, however, added that the two officers who were senior to the appellant were still officiating in P.E.S. Class I. Therefore, it is clear from the admission of the State that on the date when the appellant was reverted to P.E.S. Class II, some of his juniors in that class were allowed to continue in P.E.S. Class I.”

19. This is a case of reversion from P.E.S. Class I to P.E.S. Class II resulting from change in seniority. The facts of this case are different.

No person will be substantially hurt or injured as a result of the impugned order which only restores rights by preventing future right deprivation of the respondent No 3 etc. by correctional power over ex facie wrong committed by the dealing official who went out of his way to help the petitioners to secure an appointment despite lack of one year's experience as Clerks de hors the rules of service. In *Appar Apar Singh's* case the rule was not breached. The case is of no help of the petitioners and is distinguishable on facts.

20. Mr. DV Sharma then relies on the Division Bench judgment of this Court in **Bimla Premi v. State of Haryana**, 1994 (4) SCT 428, to hammer his point that the seniority has to be determined in the order of merit as determined by the Board. But there is no quarrel to this well settled proposition of law. When we talk of the order on merit *vis-à-vis* seniority, it means order of merit determined by the recruiting agency and seniority both fixed in consonance with rules of service. It is equally well settled that no one can contract out of the law. Rules suffer estoppel and restrict discretion in administrator to act in conformity with the law. If the Rules does not permit the appointment which is illegal or not irregular, in both cases the wrongful action cannot be sustained by this Court lending its approving hand. A wrong committed cannot be cured by a court of law.

21. He next places reliance on the decision of the learned Single Judge of this Court rendered in **Vinod Kumar v. State of Haryana**, 1996(4) SCT 325. This cases also deals with determination of seniority in the cadre of Clerks covered by the Haryana Panchayats Department State Service, Group C, Rules, 1979 where Rule 12 determines seniority

by the length of continuous service on any post in the cadre. The merit list in this case was prepared by the Subordinate Services Selection Board, Punjab which is a sacrosanct determination of merit and consequential seniority. While citing this case, Mr. Sharma forgets that his clients came in through the rear window to the front office of stenographers in violation of statutory rules. When the rule is violated we ought not to speak of merit determining seniority. It is not known whether in 1992 the Punjab Subordinate Services Selection Board was functioning or not. The merit in the present case was however determined by a Departmental Selection Committee. Be it either, in any case, the first proviso to Rule 9 speaks of “recruiting authority” which would include the Departmental Selection Committee. Eventually, this argument is besides the point in the face of clear violation of rule of experience laid down in Rule 9 of the Punjab Civil Secretariat (State Service Class-III) Rules, 1976 in offering appointments before the experience qualification was satisfied and the petitioners will take whatever they get when the conditions envisaged in the rule of recruitment of stenographers is met. Their seniority will accrue accordingly.

22. The subterranean forces had ruled the day in 1992. Even after we leave aside all the rest of it, this petition is still liable to be dismissed by reason of delay and laches in approaching Court after seven years in 2011 challenging an order passed in the year 2004. It is equally well settled that in matters of promotion and seniority delay is more often than not fatal to the prosecution and for this proposition one can profitably read **P.S. Sadasivaswamy v. The State of Tamil Nadu**, AIR

1974 SC 2271 and many other judgments which are not necessary to notice the rule being well embedded. Moreover, if the cause of action is stale and the right to sue has expired by lapse of time prescribed to bring a civil suit, it would ordinarily be prudent for the writ court not to interfere when limitations have run out. For this proposition and unreasonable delay in moving court reference may be had to the decision of the Supreme Court in **State of Madhya Pradesh v. Bhailal Bhai**, (1964) 6 SCR 261 = AIR 1964 SC 1006 [CB].

23. If the argument is that once the writ court has entertained the petition the question of delay and laches recedes into the back ground and a decision is to be delivered on the merits of the case, then I would only say that the principle applies after admission of the writ to regular hearing. That event has not happened. The case is still in motion hearing which is no better than what the position was when notice of motion was issued or better still when the State filed its written statement. In any case rights of the parties are to be declared as on the date when parties approach Court.

24. For these reasons, I find no substance in this petition and the same is accordingly ordered to be dismissed.

(RAJIV NARAIN RAINA)
JUDGE

21.09.2015
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