

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

DATE OF DECISION: - 24.4.2015

(1) CWP No. 17968 of 2010

Sanjeev Kumar ...Petitioner

versus

Chairman Board of Governors & ors ...Respondents

(2) CWP No. 17561 of 2011

Naresh Chand ...Petitioner

versus

Chairman Board of Governors & ors ...Respondents

CORAM: - HON'BLE MR. JUSTICE AJAY TEWARI

Present: - Mr. Anurag Goyal, Advocate for the petitioner.

Ms. Shruti Goyal, AAG, Haryana

Mr. Anand Bhardwaj, Advocate for respondent No. 3.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J (ORAL)

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This order shall dispose of above mentioned two petitions as
common question of law and facts are involved in both the cases.

The petitioner have challenged the order whereby the

absorption of respondent No. 3 has been made with retrospective effect. The brief facts are that the petitioners were selected in Government Polytechnic Education Society, Uttarwar (Mewat), Haryana-respondent No. 2 on 3.8.2007 as lecturers in Mechanical Engineering. Respondent No. 3 had been appointed as a lecturer in Engineering in Technical Education Department of State of Haryana earlier vide order dated 6.3.2007 and was sent on deputation to respondent No. 2 on 12.3.2007. He moved an application on 17.5.2007 praying that he be permanently absorbed with respondent No. 2 above mentioned. The said application for absorption was allowed on 30.11.2007 and respondent no. 3 was absorbed permanently in respondent No. 2. Thus, on 30.11.2007, respondent No. 3 admittedly become junior to the petitioners. However, he made another representation claiming that he should have been absorbed w.e.f. 17.5.2007 i.e., the date of his application. This application was allowed by order dated 28.7.2008 and his absorption was made effective with retrospective effect i.e. from 17.5.2007. In the writ petition, the challenge is to the absorption of respondent No. 3. In my opinion, that challenge cannot succeed and to be fair learned counsel for the petitioners have not pressed the same.

However, the second issue which arises is that on 30.11.2007, respondent No. 3 became junior to the petitioners since he was absorbed with effect from that date and if it at any stage any order was to be passed which would affect the seniority, it would be incumbent upon respondents No. 1 and 2 to invite objections from the petitioners because the fact of retrospective absorption of respondent No.3 would have the effect of making the petitioners junior to their erstwhile junior. Admittedly, no

objection was ever sought from the petitioners before the order dated 28.7.2008 (Annexure P-8) was passed. In the circumstances, the challenge to the order dated 28.7.2008 (Annexure P-8) has to be sustained and the said order is quashed. However, this would not render the original order of absorption dated 30.11.2007 illegal. The respondents No. 1 and 2 would be at liberty to pass a fresh order but only after taking and considering the objections of the petitioner as per law.

If no action is taken by respondents No. 2 and 3 within a period of two months from the date of receipt of certified copy of this order, the petitioners would be entitled to all consequential benefits of the order Annexure P-8) having been set aside.

Disposed of.

[AJAY TEWARI]
JUDGE

24.4 2015
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