

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

CWP No. 14815 of 2012
Date of Decision: 05.12.2015

Charanjit Kaur

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Sourabh Goel, Advocate,
for the petitioner.

Mr. Avinith Awasthi, AAG, Punjab.

None for respondent no. 11.

Mr. Vivek Sharma, Advocate,
for respondents no. 4 to 10, 12 to 16 and 18 to 26.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges order dated 09.03.2007 (Annexure P-11) and the Appellate Order dated 18.06.2012 (Annexure P-17) whereby, her claim for seniority from 06.08.1987, date of her initial joining in Ferozepur District, has been rejected. Resultantly, her claim to be shown at Sr. No. 18 of the seniority list of clerks instead of Sr. No. 42 has been declined.

The claim of the petitioner is based solely on the reading of the letter dated 06.06.2006 (Annexure P-7) wherein, while asking for options from employees in the newly created District SAS Nagar, the State mentioned that the length of service in their respective cadre/post in their parent district or department would be the basis of seniority. Resultantly, the petitioner claims seniority from 06.08.1987, which is her date of initial joining.

The reason for rejecting the claim of the petitioner by respondent no. 3, which has further been upheld in appeal by respondent no. 2, is that the petitioner was transferred from District Patiala to District Ropar and, therefore, that is to be the date of seniority since she has joined on 08.12.1997 in Ropar district.

The facts show that the petitioner was initially appointed vide letter dated 08/11.05.1987 (Annexure P-1) as a Clerk by the Deputy Commissioner, Ferozepur. It is not disputed that on her request, she was transferred as a Clerk to the office of the Deputy Commissioner, Patiala on 23.03.1992 (Annexure P-2) by the Financial Commissioner (Revenue). It was specifically mentioned that she will not be allowed any seniority of her past service and would be assigned seniority in the office of the Deputy Commissioner, Patiala from the date she joins there. On a subsequent similar request, she was then transferred to district Ropar vide order dated 17.11.1997 (Annexure P-3). The terms of transfer were also similar that the employee was not to get any benefit of service rendered in District Patiala for seniority and her seniority would be calculated from the time of joining the office of Deputy Commissioner, Ropar (Rupnagar).

On the creating of District SAS Nagar, three tehsils namely Kharar, Mohali and Derabassi became part of the new district, which were earlier part of District Ropar, in which the petitioner was already serving. Options were invited from the employees by the Divisional Commissioner to fill up the posts for the said district which were to be done on seniority-cum-merit basis as per letter dated 16.04.2006 (Annexure P-5). Thereafter, sanction was granted on 16.05.2006 (Annexure P-6) to various posts which were of the newly created district. By letter dated 06.06.2006 (Annexure P-

7), the State fixed the last date for getting the options from the employees for transfer to the new district in which, the clause was mentioned that the seniority would be on the basis of the length of service in their respective cadre/post in their parent district/department. The relevant part of the clause reads thus:-

“2. It has been decided at the Government level for those employees who have opted to be absorbed by transfer against vacant posts in the newly created district of SAS Nagar, their seniority shall be determined on the basis of the length of services in their respective cadre/post in their parent district or department. 17th July, 2006 shall be cut of date for determining and fixation of seniority of those employees who have or shall be absorbing in the new district of SAS Nagar. All applications for this purpose may be sent direct to the Commissioner, Patiala Division, Patiala.”

It is in pursuance of the consent given by the petitioner and other employees that the seniority list was approved regarding which objections were raised by the petitioner, as noticed above. She accordingly sought readjustment at a higher level at Sr. No. 18 by taking into consideration the initial date of joining i.e. 06.08.1987.

Counsel submits that on the creating of the new district, the length of service in the parent district or department had to be seen and, therefore, since the petitioner had joined in the year 1987, therefore, she should be given the benefit of period of 10 years for the purpose of seniority as she had joined the department in 1987. Accordingly, he submits that the order rejecting her case and the appellate order are not justified.

In the opinion of this Court, the said argument is not

acceptable. The petitioner's appointment letter would go on to show that she is governed by the 1976 (Class III) Rules. The relevant clause reads thus:-

“7. Class III rules shall be applicable to you.”

Admittedly, the petitioner had chosen to forfeit her seniority from 06.08.1987 when she was transferred to Patiala on her own request, on 23.03.1992. Thereafter, she opted to move to district Ropar and gave an undertaking that she should not claim her earlier seniority in District Patiala also. The order dated 17.11.1997 (Annexure P-3) whereby she was conditionally transferred reads thus:-

“Smt. Charanjit Kaur, Clerk, Tehsil Office, Rajpura, District Patiala is transferred to the office of Deputy Commissioner Roopnagar against the vacant lying post of clerk.

2. This transfer is done on the request made by Smt. Charanjit Kaur. Therefore this employee will not be given any T.A/D.A and joining time. This employee will not get any benefit of the service rendered in the District Patiala for seniority and her seniority will be calculated from the time of joining the office of Deputy Commissioner Roopnagar. Employee has given an undertaking for giving up the seniority.”

Thus, at that point of time, the petitioner had already lost out 10 years of seniority on her own account. By the creation of the new district and on account of her consent to join the same district in view of the wordings of the letter dated 06.06.2006, would not give her any legal right as such to claim back her seniority which she had already voluntarily opted out from. Her parent district at that point of time had become Ropar and, therefore, her seniority had to be seen from the date of joining in the parent

district which was 08.12.1997. As per Rule 11(c) of the Punjab District Service (Class III) Rules, 1976, seniority is to be seen from the date of transfer. The said Rule reads thus:-

“11. Seniority of members of Service - The seniority inter se of members of Service in each cadre shall be determined by their continuous appointment to that cadre of the Service:

Provided that in the case of members recruited by direct appointment, the order of merit determined by the Commission of the recruiting authority shall not be disturbed in fixing the seniority and persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection :

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

- (a) a member recruited by direct appointment shall be senior to a member recruited otherwise;*
- (b) a member appointed by promotion shall be senior to a person appointed by transfer; and*
- (c) in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the cadre from which they were promoted or transferred; and*
- (d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member 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 those appointments; and if the length of such Service is also the same, an older member shall be senior to a younger member.*

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13. Liability of members of Service to transfer - A member of a cadre may be transferred by the Financial Commissioner, Revenue to an equivalent post in other cadre on the same terms and conditions as are applicable to him in the original cadre.”

A perusal of the above said Rule would go on to show that the length of continuous service for determining the seniority inter se has to be seen from the date of transfer and in the case of the petitioner, the last date was 08.12.1997. The petitioner's services as per Clause 7 of her appointment letter were governed by the Class III (1976 Rules) and, therefore, the reliance upon the letter dated 06.06.2006 is without any basis also.

In such circumstances, no fault can be found in the action of the respondents and accordingly, the present writ petition is dismissed.

05.12.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

