

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

**Civil Writ Petition No. 17012 of 2012
Date of Decision: 06.01.2015**

Kaptan Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents.

2. Civil Writ Petition No. 20892 of 2013

Vijay Kumar

....Petitioner

Versus

State of Haryana and others

.....Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. J.S.Hooda, Advocate
for the petitioners.

Mr. Ashok S. Chaudhary, Additional A.G. Haryana.

Mr. R.K. Malik, Sr. Advocate with
Mr. Mandeep Singh, Advocate
Mr. J.S.Maani pur, Advocate
for respondents No. 3 to 5.

Mr. J.P.Dhull, Advocate
for respondent No.6 in CWP No. 17012 of 2012.

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?

RAMESHWAR SINGH MALIK J.

These two identical writ petitions based on similar set of

facts and raising same issues for consideration of this Court, are proposed to be decided together vide this common order. However, for the facility of reference, facts are being culled out from CWP No. 17012 of 2012.

Both these writ petitions are directed against the order dated 14.1.2011 (Annexure P-2), whereby respondents No. 3 to 5 were promoted and the order dated 14.8.2012 (Annexure P-9), whereby the petitioners were denied their due seniority, as per the merit list prepared by the selection board.

Brief facts of the case are that the petitioners in both the writ petitions and the private respondents competed together in the same selection process conducted by the Haryana Staff Selection Commission (for short 'the Commission'), for filling up 662 posts of Clerk. The merit list was prepared by the Commission on 15.10.1989 and name of the petitioners were put in the merit list, being successful candidates. Since the Commission recommended the names of the candidates higher in merit to such departments where requisite number of vacancies were not available, some selected candidates like the petitioners could not get appointment, despite being higher in merit. Writ petitions came to be filed before this Court and finally, the matter was decided by the Hon'ble Supreme Court in **Roshni Devi Vs. State of Haryana, 1998 (8) SCC 59**. The merit list prepared on 15.10.1989 by the Commission was upheld by the Hon'ble Supreme Court issuing directions to the respondent State to consider the selected candidates for appointment to the posts of

Clerk against the existing vacancies because they were higher in merit. Although private respondents No. 3 to 5 were admittedly lower in merit than the petitioners, yet they were appointed in the year 1989-90 whereas the petitioners came to be appointed in the year 1999, in compliance of the abovesaid judgment of the Hon'ble Supreme Court in Roshni Devi's case (supra). Thereafter, respondents No. 3 to 5 came to be promoted by respondent No.1 vide impugned promotion order dated 14.1.2011 (Annexure P-2), without finalising the inter se seniority of appointees of 1989-90 and appointees of 1999 like the petitioners.

Feeling aggrieved, petitioners served the respondents with legal notice dated 8.2.2012 (Annexure P-7), but when the same was not being decided, they approached this Court by way of CWP No. 6685 of 2012 which was disposed of vide order dated 16.4.2012 (Annexure P-8), directing respondent No. 2 to consider and decide the grievance of the petitioners raised in their legal notice, within a period of two months from the date of receipt of a certified copy of the order. Impugned order dated 14.8.2010 (Annexure P-9) came to be passed by respondent No.1 in compliance of the abovesaid order passed by this Court. Since respondent No.1 has rejected the claim of the petitioners for granting them due seniority as per the merit list dated 15.10.1989 prepared by the Commission, they have approached this Court by way of these two writ petitions.

Notice of motion was issued and pursuant thereto, written statement was filed by respondent No.1 and 2. A separate written

statement was filed on behalf of private respondents No. 3 to 5.

Learned counsel for the petitioners in both these writ petitions submits that the material fact that the petitioners were higher in merit than the private respondents No. 3 to 5 was not in dispute. He further submits that it was not the fault of the petitioners that their names were recommended by the Commission to a department where vacancies were not available. The Commission ought to have sent the names of the candidates higher in merit to the departments where vacancies were available. He would next contend that because of sheer lack of coordination between the departments and the Commission, candidates higher in merit like the petitioners were made to suffer, firstly by litigating in the courts and thereafter, they were not granted due seniority, as per the merit prepared by the Commission. He also submits that to deny the due seniority to the petitioners on the basis of alleged delay on their part, was a factually incorrect ground, because seniority list has not been finalised by the respondent-department even till date. There was no cause of action in favour of the petitioners before passing of the impugned promotion order dated 14.1.2011(Annexure P-2), but after passing of the said order, petitioners did not waste any time and approached the respondent-authorities by way of self contained legal notice dated 8.2.2012 (Annexure P-7). Petitioners had to approach this Court even for getting their legal notice decided. He concluded by submitting that respondents were trying to get undue benefit out of their own wrong and the petitioners were entitled for their due

seniority, as per the merit list prepared by the Commission. In support of his contentions, learned counsel for the petitioners relies upon two orders passed by this Court in **CWP No. 20151 of 2010 (Satyavir Singh Vs. State of Haryana and others)** decided on 4.7.2013 and **CWP No. 20868 of 2011 (Smt. Sukanya and another Vs. State of Haryana and others)** decided on 27.8.2013. He prays for allowing of both the writ petitions.

Per contra, learned counsel for the State submits that the impugned orders Annexures P-2 and P-9 were rightly passed by the respondent authorities. Since the private respondents were appointed much earlier than the petitioners, they were rightly treated senior to the petitioners and accordingly, promotion order Annexure P-2 was passed subject to the finalisation of the seniority. He further submits that while considering the grievance of the petitioners raised in their legal notice Annexure P-7, it was found that claim of the petitioners was suffering from delay and laches having been raised after an inordinate long period of 12 years. He concluded by submitting that since there was no service rule governing inter se seniority of the employees, only length of service was being made the basis to determine the seniority. He prays for dismissal of the writ petitions.

Similarly, learned senior counsel for the private respondents submits that since the petitioners were appointed at a much belated stage, i.e. in the year 1999, whereas the private respondents were appointed in the year 1989, petitioners were rightly

denied the benefit of seniority over and above the private respondents. Relying upon the judgments of the Hon'ble Supreme Court in Roshni Devi's case (supra), he submits that since the petitioners were appointed against the vacancies of later years, there was no scope of granting them seniority above the private respondents. He places reliance on two more judgments of the Hon'ble Supreme Court in **P.S.Sadasivaswamy Vs. State of Tamil Nadu, 1975 (1) SCC 152** and **B.S.Bajwa Vs. State of Punjab, 1998 (1) SCT 670**, to contend that since the claim of the petitioners was suffering from delay and laches, the settled seniority cannot be disturbed at this belated stage. He prays for dismissal of the writ petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of these cases, both these writ petitions deserve to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that petitioners and private respondents faced the same selection process. After completion of the selection process, the Commission prepared the merit list dated 15.10.1989. It is also not in dispute that the petitioners were higher in merit than the private respondents. It was the exclusive domain of the selection making authority to recommend the names of the selected candidates to different departments of the

respondent-State. Petitioners had no role to play, despite being higher in merit.

Accordingly, names of the petitioners were recommended by the Commission but to the departments where no vacancies were available. On the other hand, names of the candidates lower in merit like private respondents No. 3 to 5, were recommended by the Commission to the departments where vacancies were very much available. Because of this apparent illegal action, candidates higher in merit list like the petitioners could not get appointment in the year 1989, whereas the candidates much lower in merit like private respondents No. 3 to 5 got the appointments.

Feeling genuinely aggrieved, candidates like the petitioners had to approach this Court. Finally, the matter was decided by the Hon'ble Supreme Court in Roshni Devi's case (supra) and following directions were issued:-

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“(1) The appointments already made from out of the list prepared on 15-10-1989 will not be annulled.

(2) The last person who is stated to have been appointed being at serial no. 4645, persons occupying higher position than him could be considered for appointment to the post of clerk if there exists any vacancy for them.

(3) The vacancy in this context would mean the vacancies which were available in the State of Haryana prior to the advertisement issued for selecting persons for the said post for the year 1995. It is to be made clear that if no vacancies exist on the aforesaid date then no further

appointment would be made from out of the list prepared on 15.10.1989 notwithstanding the directions of the Punjab and Haryana High Court in Sudesh Kumari's case.

(4) If vacancies did exist on the date as aforementioned then the appointments from out of the list prepared on 15.10.1989 could be made strictly on the basis of their merit position in the list.

(5) We strongly deprecate the practice of selecting and preparing an unusual large list compared to the vacancy position and the State Government should either amend the Recruitment Rules in that respect and till then should issue positive administrative instructions giving the right to the Selection Board to select only some persons in excess than the requisition for which the Board is going to select people.

(6) We also do not approve of the inaction on the part of the State Govt. in not assailing the judgment of the Punjab and Haryana High Court in Sudesh Kumari's case and now coming up before us making submissions that the judgment is practically incapable of being implemented."

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A bare reading of the abovesaid directions issued by the Hon'ble Supreme Court would show that validity of the merit list prepared on 15.10.1989 was upheld. Candidates higher in merit like the petitioners were found entitled for appointment. Consequently, the petitioners were appointed in the year 1999 in compliance of the abovesaid directions issued by the Hon'ble Supreme Court.

So far as seniority list of Clerks appointed out of the merit

list prepared in 1989 is concerned, learned counsel for the parties are ad idem that the respondent department has not finalised the same even till date. A bare perusal of the impugned promotion order dated 14.1.2011 (Annexure P-2), whereby private respondents No. 3 to 5 were promoted, also shows that these promotions were subject to the finalisation of the seniority. As soon as the petitioners came to know about the promotion order Annexure P-2, they approached the respondent authorities by way of self contained legal notice Annexure P-7.

However, when no action was taken by the official respondents, petitioners approached this Court by way of CWP No. 6685 of 2012 and the same was disposed of vide order dated 16.4.2012, directing the respondents to consider and decide the legal notice within a period of two months. The impugned order dated 14.8.2012 (Annexure P-9) was passed by respondent No.1 in compliance of the abovesaid order passed by this Court. However, the benefit of seniority was denied to the petitioners primarily on the ground that claim of the petitioners was suffering from delay and laches.

Under the peculiar facts and circumstances of the case noted hereinabove, following twin questions fall for consideration of this Court:-

“(i) Whether a person lower in merit list prepared by the selection making authority, can be treated to be a senior only because he was

appointed at an earlier point of time, despite the fact that a person higher in merit was not at fault for his late appointment?

(ii) Whether the claim of the petitioners for due seniority over and above the appointees of 1989 like the private respondents No. 3 to 5 can be said to be suffering from delay and laches, particularly when the seniority list is yet to be finalised?

Taking the first question first, it is pertinent to note even at the cost of repetition that peculiar fact situation of these cases, as noticed hereinabove, clearly goes to show that petitioners were not at fault in any manner for their late appointment in the year 1999. Petitioners participated in the same selection process and were rightly selected with private respondents. They were admittedly placed higher in merit list than the private respondents. Petitioners could not be granted appointment only because of the lack of coordination between the departments of the respondent State and the Commission, which caused serious prejudice to the petitioners. Consequently, the candidates higher in merit like the petitioners had been litigating in the Court which consumed some time and finally, the Hon'ble Supreme Court issued abovesaid directions in Roshni Devi's case (supra).

During the course of hearing, when a pointed question was put to the learned counsel for the respondents that petitioners were

appointed against the vacancies of which year, none of them including learned counsel for the State, had any answer and rightly so, because it was a matter of record. Further, it is neither pleaded nor argued case on behalf of the respondents that petitioners were, as a matter of fact, appointed against the vacancies of any later years, i.e. 1990-95.

Since the respondents, including the respondent-State, did not place any material before this Court to show that the petitioners were appointed against the vacancies of any later year and they were not entitled for the benefit of seniority, petitioners cannot be denied the benefit of seniority over and above the candidates who were lower in merit like the private respondents. As noted hereinabove, petitioners were admittedly higher in merit than the private respondents. The delay in appointment of the petitioners was not because of their fault. In fact, it was a result of lack of coordination between different departments and the Commission. Having said that, this Court feels no hesitation to conclude that answer to the first question posed above, is and has to be in favour of the petitioners and against the respondents and the same is answered accordingly.

Coming to the second question of delay and laches on the part of the petitioners in raising the issue of seniority, it is to be noted that seniority is yet to be finalised. This fact is further supported by the impugned promotion order itself, wherein it has been specifically mentioned that these promotions are subject to the finalisation of the

seniority. Even learned counsel for the respondents admitted this factual position during the course of arguments.

Once the seniority was not finalised and private respondents No. 3 to 5, despite being lower in merit than the petitioners, were promoted vide order dated 14.1.2011 (Annexure P-2), there was no scope, whatsoever, to allege any kind of delay on the part of the petitioners, particularly when they submitted their self contained legal notice dated 8.2.2012 (Annexure P-7), raising their protest against the said promotion order and claiming seniority over and above private respondents No. 3 to 5. Under these circumstances, it can be safely concluded that respondent No.1 proceeded on a factually incorrect and legally misconceived approach, while passing the impugned orders, thereby illegally denying the genuine claim of the petitioners for their seniority over and above the candidates lower in merit, including respondents No. 3 to 5. Thus, second question is also answered in favour of the petitioners and against the respondents.

So far as the judgments relied upon by learned counsel for private respondents in the cases of P.S. Sadasivaswamy (supra) and B.S. Bajwa (supra) are concerned, there is no dispute about the law laid down therein. However, on a careful perusal thereof, the same have not been found to be of any help to the respondents, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law

thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Exactly the similar issue fell for consideration of this Court in Satyavir Singh's case (supra). Relevant observations read as under:-

“The petitioner was a part of the recruitment process initiated by the Haryana Staff Selection Commission for filling up 662 posts of Clerks. The petitioner remained successful in the selection made on 15.10.1989. Since there were large number of posts of Clerks to fill up the vacancies existing in various departments, the name of the petitioner was recommended in the Social Welfare Department, Haryana. However, it was a fortuitous circumstance that there was no post available in the department recommended. Since there were other candidates left in the same quandary, the matter was litigated and finally the issue went up to the Supreme Court which was resolved on 18.8.1998 with a direction to recommend the names of the candidates where the posts were found lying vacant. This is how the petitioner's name was recommended to the Treasury and Accounts Department, Haryana where he joined on 22.1.2000.

Rule 12 of the Haryana Finance Department Treasury (Group – C) Service Rules, 1980 lays down that the seniority of Clerks has to be determined in order of merit determined in the same selection. The seniority according to merit was denied to the petitioner. Aggrieved, he filed CWP No.7061 of 2009 which was decided on 24.9.2009. This Court directed as follows -

“The facts in the present case are identical. Adopting the same course as a matter of following the precedents, the writ petition is allowed. Directions are issued to the respondents to re-fix the seniority of the petitioner in terms of Rule 12 of the Rules as has been laid down in the Division Bench judgment of this Court within a period of six months. Consequential benefits, if any, of course would follow.”

The respondents were directed to follow Rule 12 and to re-fix the seniority within 6 months. After considerable and contemptuous delay, the respondents passed an order dated 21.4.2010 assigning the correct seniority position to the petitioner according to his original merit determined in the selection process.”

Similarly, in the case of Sukanya (supra), this Court observed as under:-

Admittedly, the petitioner No.1 in CWP No.20868 of 2011 and the private respondents were part of the same direct recruitment process leading to appointments of clerks. The petitioner was selected and joined the revenue department on 30.7.1991. The private respondent for reasons of litigation could secure appointment on 7.10.1999 after much delay and on conclusion of which she also secured appointment as a clerk in the revenue department.

It has not been disputed before me that in the merit determined by the erstwhile Haryana Subordinate Services Selection Board, that made the selection, the

private respondent was placed at merit position No.544 while the petitioner was much lower in merit falling at serial No.1142. The seniority Rule 11 laid down that the seniority, inter se of members of the service shall be determined by the length of continuous service on any post in the service. However, there is a proviso to Rule 11 which lays down that in the case of members appointed by direct recruitment, the order of merit determined by the Board will not be disturbed in fixing seniority. Merely because a provisional seniority list was issued in the year 2001 which showed the petitioner senior to the private respondent that would not be to his benefit even though the private respondent may not have objected to it. Seniority in such circumstances cannot be made dependent on objections. In any case, in the final seniority issued later after objections were received and considered, the inter se seniority position stands rectified and the private respondent has been shown senior to the petitioner. This reflects the correct seniority placement under the statutory rules of which the petitioner cannot make a justiciable grievance. No one has a right to a particular seniority position unlawfully obtained or given under bona fide mistake. No ground for interference is made out. The petition is devoid of merit.”

Reverting back to the facts and circumstances of the case

in hand and following the observations made by this Court in the cases, referred to hereinabove, it is unhesitatingly held that the petitioners are entitled to be placed in the seniority as per their merit in the merit list dated 15.10.1989.

The abovesaid cases of Satyavir Singh (supra) and Smt. Sukanya (supra), were also pertaining to the same very selection. In the absence of any statutory rules governing the issue of fixation of seniority, respondent authorities were duty bound to fix the final seniority as per the merit list prepared by the Commission. Any contrary view will result into miscarriage of justice and will also run counter to the settled principle of law that while determining the seniority, merit list prepared by the selection making authority cannot be disturbed. Since respondent No.1 has miserably failed to consider the abovesaid factual as well legal aspect of the matter, while passing the impugned orders Annexure P-2 and P-9, the same cannot be sustained, being violative of Articles 14 and 16 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders Annexures P-2 and P-9 have been found to be patently illegal, the same are hereby set aside. Petitioners are declared entitled for their due seniority as per the merit list dated 15.10.1989. Since private respondents No. 3 to 5 were lower in merit, they will rank junior to the

petitioners.

Consequently, respondent No. 1 is directed to grant seniority to the petitioners over and above respondents No. 3 to 5, strictly in accordance with law, at an early date but in any case within a period of six months from the date of receipt of certified copy of this order.

Resultantly, with the abovesaid observations made and directions issued, both these writ petitions stand allowed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

6.1.2015
AK Sharma