

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 22783 of 2011

Date of Decision : December 10, 2015

Naveen Kumar and others Petitioners

vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. A. D. S. Bal, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. R. K. Malik, Senior Advocate
with Mr. Kuldeep Sheoran, Advocate
for respondents no. 6 to 10 and 12 to 27.

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DEEPAK SIBAL, J. :

The petitioners, who belong to the Scheduled Caste category, are serving as Inspectors in the Department of Co-operative Societies, Haryana. Through the present petition, they seek issuance of a direction to the official respondents to consider the respective roster points, against which they were appointed by way of direct recruitment, as their seniority points and on the basis thereof, to further promote them.

After having heard counsel for the parties and perusing the records of the case, I am of the firm opinion that the aforesaid prayer made by the petitioners cannot be granted, in view of Rule 11 of The Haryana Cooperative Department Group-C (Executive) Rules, 1980 (hereinafter referred to as – the Rules), which is applicable in the case of the petitioners and provides as under :-

“11. Seniority – *Seniority inter se of the members of service shall be determined by length of continuous service on any post in the service ;*

Provided that where there are different cadres in the services, the seniority shall be determined separately for each cadre;

Provided further that in case of members appointed by direct recruitment, the order of merit determined by the Commission or the Board as the case may be, shall not be disturbed in fixing seniority;

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

- e) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;*
- f) a member appointed by direct recruitment shall be senior to a member appointed by transfer;*
- g) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority*

of such members in the appointments from which they were promoted or transferred; and

- h) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to the pay, preference being given to a member who was drawing 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 the appointment, and if length of service is also the same, the older member shall be senior to the younger member.”*

A perusal of the above-quoted Rule makes it abundantly clear that inter-se seniority of the members of the service, to which the petitioners belong, is to be determined by length of continuous service and as per the second proviso to Rule 11 of the Rules, in case of members appointed by direct recruitment as in the case in hand, the order of merit determined by the Commission or the Board is not to be disturbed while fixing seniority.

Even otherwise, in the instructions dated 27.04.1972, issued by the Chief Secretary to Government of Haryana, pertaining to grant of reservation for members of Scheduled Castes and Backward Classes and fixation of the seniority, it has specifically been provided as under :-

“2. It has to be pointed out that this was irregular and inter se seniority of all candidates taken together (i.e. whether appointed against

reserved vacancies or against reserved vacancies or against open ones), must be fixed according to the combined merit list and not otherwise. Vacancies assigned to Scheduled Castes/ Backward Classes under the block system are so assigned for purpose of reservation only and are not intended for fixing inter seniority of the candidates contrary to their order in the combined merit list prepared by the Public Service Commission/S.S.S. Board. [Emphasis supplied]

The afore-quoted instructions clearly stipulate that the roster points are assigned only for the purpose of grant of reservation and are not intended for fixation of inter se seniority of the candidates contrary to their order in the combined merit prepared by the Public Service Commission/S. S. S. Board.

A combined reading of the second proviso to Rule 11 of the Rules and the instructions dated 27.04.1972 make it abundantly clear that the prayer made by the petitioners for considering the roster points, against which they were granted reservation at the time of their initial appointment, must fail.

It deserves notice that the petitioners have neither challenged the Rules nor the afore-referred instructions.

The above view expressed by me finds support from the five Judge Bench decision of the Apex Court in **Ajit Singh and others (II) v. State of Punjab and others – 1999 (7) SCC 209**, wherein it was held as under :-

“It must be noted that whenever a reserved candidate goes for recruitment at the initial level (say Level 1), he is not going through the normal process of selection which is applied to a general candidate but gets appointment to a post reserved for his group. That is what is meant by “reservation”. That is the effect of “reservation”. Now in a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster is set at Level 1 for promotion of the reserved candidate at various roster points to Level 2, the reserved candidate, if he is otherwise at the end of the merit list, goes to Level 2 without competing with general candidates and he goes up by a large number of places. In a roster with 100 places, if the roster points are 8, 16, 24 etc. at each of these points the reserved candidate if he is at the end of the merit list, gets promotion to Level 2 by side-stepping several general candidates. That is the effect of roster-point promotion.

It deserves to be noticed that the roster points fixed at Level 1 are not intended to determine any seniority at Level 1 between general candidates and the reserved candidates. This aspect we shall consider again when we come to **Mervyn Continho v. Collector of Customs, (1966) 3 SCR 600** lower down. The roster point merely becomes operative whenever a vacancy reserved at Level 2 becomes available. Once such vacancies are filled, the roster has worked itself out. Thereafter

*other reserved candidates can be promoted only when a vacancy at the reserved points already filled arises. That was what was decided in **R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745.** [Emphasis supplied]”*

In view of the aforesaid facts and settled position of law, the present petition being bereft of any merit, is ordered to be dismissed.

No costs.

**(DEEPAK SIBAL)
JUDGE**

December 10, 2015

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