

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 6113 of 2011

Reserved On : August 11, 2015

Pronounced On : 17.08.2015

Darshan Singh

.... Petitioner

vs.

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Ram Niwas Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner, who is working as a Laboratory Attendant, seeks consideration of his case for promotion to the next higher post of Junior Lecture Assistant (JLA), from the date his juniors – respondent no. 4 and 5 have been promoted, with all consequential benefits.

The undisputed facts, which are borne out from the record, as

also from the submissions made at the bar, are that the petitioner was appointed as a Laboratory Attendant w.e.f. 12.02.1981, whereas respondents no. 4 and 5 were appointed to the same post and in the same College as the petitioner, on 14.11.1990. On 09.09.2008, respondents no. 4 and 5 were promoted to the posts of JLA, while the petitioner was ignored giving cause to the petitioner to approach this Court for the reliefs referred to earlier.

It is admitted by counsel appearing on behalf of the respondent – State of Haryana that respondents no. 4 and 5 were appointed as Laboratory Attendants much later than the petitioner. However, it is submitted that they were promoted as JLAs on 09.09.2008 in preference to the petitioner on the ground that as per the applicable rules, the eligibility for promotion to the post of JLA was Matric and therefore, since respondents no. 4 and 5, at the time of their appointments as Laboratory Attendants on 14.11.1990, were matriculates, whereas the petitioner passed his Matriculation examination only in the year 1998, respondents no. 4 and 5, for the purpose of promotion to the posts of JLAs, were granted seniority as Laboratory Attendants w.e.f. 14.11.1990, whereas the petitioner was granted seniority from the date he had passed his Matriculation examination i.e. from the year 1998. Thus, treating respondents no. 4 and 5 to be senior to the petitioner, they were promoted as JLAs in preference to the petitioner.

The prescribed qualifications for the post of JLA, as prescribed in the Haryana Educational (College Cadre) Group-C Service Rules, 1986

(hereinafter referred to as – the 1986 Rules), are reproduced below :-

14.	<i>Junior Lecture Assistant</i>	(i) <i>Matric with science with 5 years experience in a college</i> (ii) <i>In case of appointment of Junior Lecture Assistant in Music</i> <i>B. A. Music from -</i> (a) <i>Sangeet Prayag Samiti, Allahabad</i> (b) <i>Bhat Khande University of Music, Lucknow or Madhav Sangeet Vidyalaya, Gwalior</i> (c) <i>Gandharav Mahavidyalaya Mandal, Bombay</i> (d) <i>Punjab or Kurukshetra University or any other University to which the Government Colleges in Haryana are affiliated</i> (iii) <i>Knowledge of Tunning</i> (iv) <i>Knowledge of Hindi up to Matric standard</i>	<i>Same as for direct recruitment</i>
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From the perusal of the above quoted qualifications, prescribed for promotion to the post of JLA, it is clear that a Matriculate with Science with five years' experience in a College is eligible for consideration of his case for promotion. On 09.09.2008, when respondents no. 4 and 5 were promoted as JLAs, the petitioner, being Matriculate with five years' experience, was also eligible for being considered for promotion. It is further the admitted position that the petitioner was appointed as a Laboratory Attendant on 12.02.1981, whereas respondents no. 4 and 5 were

appointed on the same post in the same College on 14.11.1990. As per Rule 11 of the 1986 Rules, inter se seniority of the members of the service is to be determined by the continuous length of service on any post in the service. Thus, the petitioner was much senior to respondents no. 4 and 5.

The petitioner, being senior to respondents no. 4 and 5 and also being eligible on the date when respondents no. 4 and 5 were promoted as JLAs had a preferential right to be promoted. Merely because respondents no. 4 and 5 had acquired the prescribed academic qualification prior in point of time than the petitioner, it would not place them in an advantageous position vis-a-vis the petitioner. No Rule has been shown, which would permit that. Thus, no priority could have been given to respondents no. 4 and 5 for promoting them in preference to the petitioner.

The above view taken by me finds support from a judgment of the Apex Court in **R. B. Desai and another vs. S. K. Khanolkar and others** reported as **1999 (4) RSJ 75**, wherein it has been held as under :-

“9. We are unable to agree with this reasoning of the High Court. As noticed above, promotion to the post of ACFOs. is made from the post of RFOs to the extent of 75% of the vacancies. There is no dispute that both the appellants and the first respondent belong to the cadre of RFOs.

The only difference between them being that the appellants were promotees in the said cadre while the first respondent was a direct recruit. It is an accepted principle in service jurisprudence that once persons from different sources enter a common cadre, their seniority will have to be counted from the date of their continuous officiation in the cadre to which they are appointed. On facts, there is no dispute that the appellants entered the RFOs' cadre on a date anterior to that of the first respondent, therefore, in the cadre of R.F.Os., the appellants are seniors to the first respondent. However, to be considered for promotion, the Rule required the RFOs. to acquire the eligibility as provided therein. Therefore, the question for consideration is : can the acquisition of an earlier eligibility give an advantage to the first respondent as against the appellants when an avenue for promotion opens in the cadre of ACFs. even though at

that point of time the appellants had also acquired the required eligibility. We are of the opinion that if at the time of consideration for promotion the candidates concerned have acquired the eligibility, then unless the Rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. The Rule under consideration does not give any such priority to the candidates acquiring earlier eligibility and, in our opinion, rightly so. In service law, seniority has its own weightage and unless and until the Rule specifically exclude this weightage of seniority, it is not open to the authorities to ignore the same.

10. The High Court has relied upon the language of Note 1 of the Rule to come to the conclusion that the persons with earlier date of eligibility have a weightage over others solely on the basis that the note required the list of eligibility to be

maintained on the basis of the date of acquisition of such eligibility, hence eligibility has preference over seniority. Our reading of the said Note does not persuade us to give any such preference. If the rule did contemplate such advantage, it should have stated so in specific terms. We also do not see any special objective in giving preference to the date of eligibility as against seniority. Eligibility, of course, has a relevant object but date of acquisition of eligibility, when both competing persons have the eligibility at the time of consideration can not, in our opinion, make any difference.

11. If on the date of consideration, the appellants did not have the eligibility then certainly it is the first respondent who ought to have been considered for the said promotion and if he was so promoted earlier than the appellants he would have acquired a higher ranking in the seniority

list of ACFs. That not being the case, we are unable to agree with the view taken by the High Court, as stated above, because on the date on which the avenue for promotion to the cadre of A.C.Fs. opened both the appellants as well as the first respondent had the necessary eligibility and their names figured in the eligibility list. That being so, as stated above, it is the appellants whose case ought to have been considered first and it was so done and they having been found otherwise suitable, they were rightly promoted earlier than the first respondent. Consequently, they are entitled to a higher ranking in the cadre of A.C.Fs. vis-a-vis the first respondent. The view taken by us also finds support from the judgment of this Court in Union of India represented by the [U.T. of Pondicherry v. B. Jayaraman and Ors.](#) (1994 Supp. 1 SCC 95) wherein considering a similar argument this Court held :-

“The note in column 11 is only for purposes of giving eligibility to the erstwhile Assistants working as Superintendents Grade II for purposes of being considered for promotion to the post of Superintendent Grade I and not for the purpose of seniority at all.”

with which view we respectfully agree.

[Emphasis supplied]

In view of the above factual position and the settled position of law, the present writ petition is allowed and the respondents are directed to consider the case of the petitioner for promotion to the post of JLA, from the date respondents no. 4 and 5 have been promoted, with all consequential benefits.

No costs.

**(DEEPAK SIBAL)
JUDGE**

Pronounced On : 17.08.2015

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