

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

Date of decision: 26.09.2016

CWP No.17819 of 1998

Sunita & another

...Petitioners

Vs.

The State of Haryana & others

...Respondents

CWP No.200 of 1999

Usha Rani & another

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Malik, Senior Advocate, with
Mr. Bhupinder Malik, Advocate, for the petitioners
in CWP No.17819 of 1998.

Ms. Monika Arora, Advocate, for the petitioners
in CWP No.200 of 1999.

Ms. Shruti Jain Goel, AAG, Haryana, for the respondent State.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the aforementioned two petitions, as a common issue is involved in both the cases, which can conveniently be decided by a consolidated order.

The only argument raised by Mr. R.K.Malik, learned senior counsel representing the petitioners in CWP No.17819 of 1998, is that the

petitioners were appointed by the Deputy Commissioner; regularised by the Deputy Commissioner; their seniority list was finalized by the Deputy Commissioner; they were promoted to the next higher post by the Deputy Commissioner and transferred from one Panchayat Samiti to another Panchayat Samiti within the district by the Deputy Commissioner. The successor-in-interest reviewed the work of his predecessor-in-interest to remove the error committed in drawing up the seniority list at the hands of the Deputy Commissioner, whereas each Panchayat Samiti was an independent unit with its own cadre strength of Art & Crafts Teacher. The cadre was not provincialized and, therefore, seniority could not have been intermingled among the member staff of the Panchayat Samities so as to trample upon the rights of existing employees of each of those Panchayat Samities falling within the Tehsil Brara, District Ambala.

Mr. Malik further submits that a successor-in-interest while reviewing the work of his predecessor-in-interest cannot arbitrarily pass an order without hearing the affected parties in a matter of seniority. Also points out that; during the pendency of the writ petitions, one of the petitioners was promoted in 2010 although a post was available for promotion since 2002-03. He submits that since the matter was pending, the promotion was delayed. This is a subsequent event and cause of action for which aggrieved petitioner will be at liberty to seek legal remedies in an independent proceeding.

Nevertheless, it is not explained by the petitioners, as to whether the Deputy Commissioner had the legal authority to draw up the earlier seniority list. It is well settled that every executive action must have legislative sanction. Power has to be traced to some provision of law to authorize acts of Officers of Government in the matter of casting a seniority

list. Principles of natural justice and rules of *audi alteram palteram* do not stretch to breaking point and there is a rule introduced by the Supreme Court of what is called 'empty formality' or 'useless formality' to avoid the drill of hearing on show cause when the matter goes to the root of jurisdiction. Principles of notice and hearing justice are devised to secure justice not to promote injustice. Still further, an order will not be passed to revive an earlier illegal order. Therefore, I have no doubt in my mind that the seniority drawn by the Deputy Commissioner in the order dated 31.07.1995 was not in accordance with law for want of jurisdiction over Panchayat Samities which maintain their own seniorities where transfer entails loss of seniority by placing name at the end of the seniority list in the category of post.

Still further, Mr. Malik draws strength from a Division Bench order of this Court passed in CWP No.19728 of 1996 titled 'Gurdip Kaur & another Vs. State of Haryana & others' disposed of on 12.03.1997. This case did not express any opinion of the court on merits on the issue of seniority since it was disposed of with a direction to the authorities to pass a fresh order in accordance with law for want of hearing afforded to the petitioners when Art Teachers came on transfers to the Panchayat Samiti and upset the seniority of the existing cadre.

The reliance on this order is not well-conceived because it has no ratio which binds this Court. Nothing was decided except for a direction for hearing the petitioners before causing their reversion. The Division Bench did not go into the question of jurisdiction in the Deputy Commissioner to pass the order fixing seniority.

In CWP No.15492 of 2006 titled 'Partap Singh Vs. State of Haryana & others' decided on 05.10.2003 and other connected cases, this Court has held as follows and which ha bearing on this case:

“21.The impugned order dated 8.9.2006 proceeds on the basis that the predecessor in office had no power or authority in entertaining the mercy petition itself and, therefore, that order was passed without jurisdiction. The argument can be split into two parts; firstly, on lack of jurisdiction and secondly, if there was lack of jurisdiction, then it matters little whether the order of the predecessor-in-office was passed after conscious application of mind. If resort to the first is not possible, then the question of taking a conscious decision to revoke an order of dismissal would not lie on first principles of law. An administrative order passed without jurisdiction is non est in the eyes of law and nothing can breathe life into it not even the factum of reinstatement of the petitioner to service or that he had served for two years under the colour of an illegal order. The petitioner may have been paid salary for that period but it does not confer by itself a vested and accrued right based on sound principles of law.

22. The first order must be legally valid before an argument can be accepted that a successor-in-office would remain bound by an order passed by his predecessor-in-office. The shield of the words 'conscious order' is not impenetrable to its kernel. The veil can be lifted by a successor-in-office to know its true nature and whether it was passed within the four corners of the law.”

On the question that an order will not be passed to revive another illegal order, the learned Law Officer relies on the Division Bench judgment in Satish Kumar Vs. State of Haryana & others, 2006 (8) SLR 698. Besides, the petitioners were reverted in 1998 and they were unable to secure interim protection. They have continued to serve on the lower posts and for this reason as well interference is not warranted.

However, in CWP No.200 of 1999, a difference is sought to be introduced by Ms. Monika Arora, learned counsel appearing for the petitioners. In the previous case, which involves transfer from one Panchayat Samiti to another Panchayat Samiti within the same district is inapposite since in the present case also transfers were within the same district except that the promotion took place within the transfree Panchayat Samiti itself.

I see no distinction in the two cases since the transfers have been from Panchayat Samiti to Panchayat Samiti within the same district and this case would also be governed by the findings recorded in the first case that the first Deputy Commissioner exceeded the bounds of his jurisdiction to draw seniority list which the subsequent Deputy Commissioner corrected.

Consequently, for the foregoing reasons, I find no merit in both the writ petitions and the same are ordered to stand dismissed.

[RAJIV NARAIN RAINA]
JUDGE

26.09.2016
Vimal

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*