

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

CWP No. 3690 of 1996(O&M)

Date of decision: 29.2.2016

Gurmakh Singh Panesar & anr.

... Petitioners

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioners .

Mr. Harkesh Manuja, Addl.A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. This petition was filed in 1996 praying for quashing of the seniority list [Annex P-3] on the ground that the representations/objections against the impugned seniority list were not decided by the Government before the promotions were ordered. The grievance was that the Government was in the process of promoting persons junior to the petitioners and their rights were likely to be adversely affected if the promotions were not stayed by an interim order.

2. This Court issued notice of motion on March 13, 1996 and directed that the promotions, if any, would be subject to the result of writ petition.

3. No one is present on behalf of the petitioners to assist the Court. From the petition, it is found that the petitioners were direct recruit Sub Divisional Engineers [SDEs] against vacancies meant for members of the Backward Class category. They were appointed in 1976 and from

that incontrovertible fact it is aptly assumed that the petitioners have retired from service. There is no dispute that the service conditions are governed by the provisions of Punjab Service of Engineers, Class II, PWD (Public Health) Rules, 1965. It is explained in the written statement that the department has two branches i.e. B&R Branch and Public Health Branch. Seniority lists of the two cadres have been maintained separately as per the written statement filed by the State. On the recommendations of the Punjab Public Service Commission, 20 candidates were appointed as SDEs on March 1, 1976. The petitioners were appointed to the PWD B&R Branch vide letter dated October 4, 1976. They worked their till October 13, 1977 and were transferred to PWD Public Health Branch. State contends that when the petitioners have accepted the appointment offered to them in PWD B&R Branch on their own volition they are estopped from raising the issue of seniority over other candidates in the department appointed in a different branch under the same administrative department. Hence, they have no claim based on seniority lists separately maintained.

4. A priori, the recruitment process may have been the same before the PPSC on a requisition sent by government to fill up vacancies, yet the advertised vacancies fell in two separate branches in the department where seniority lists were maintained separately. A total number of 17 SDEs were selected. The first 15 candidates were allocated to the B&R Branch as per merit, whereas the remaining SDEs were allocated and posted in Public Health Branch of the Public Works Department. The grouse of the petitioners is that there names were sent to

the Public Health Branch by way of transfer without seeking option and without determining seniority and publishing final seniority lists after considering objections from persons likely to be affected. Petitioners urge that the respective positions in the original merit list should have been kept in view before promotions are ordered and they deserve to be assigned seniority in Public Health Branch over and above those SDEs who joined earlier in the said Branch but were lower in merit as per merit determined by the Commission. They have been put below the respondents. Nevertheless, the fact remains that the petitioners were appointed to service after the respondents were deployed to the Public Health Branch and became members of the service before the petitioners. They willingly accepted their offers of appointment and allocation to the Public Health Department and therefore, they cannot make any grievance as to who joined first and who joined later in the PWD Department and I would, therefore, not interfere in the matter regarding seniority. Right to seniority is neither a fundamental right nor of any constitutional value and is not part of the rights under Article 16 of the Constitution of India when such rights are exerted in Court to obtain relief.

5. No merit. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

29.2.2016
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