

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

**CWP No.2163 of 2001 (O&M)**

**Date of Decision: 11.11.2016**

Surat Singh

... Petitioner

Versus

The State of Haryana and others

... Respondents

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

Present: None for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. O.P. Goyal, Sr. Advocate,  
with Ms. Sunita Gupta, Advocate,  
for respondent No.3.

**RAJIV NARAIN RAINA, J.**

1. The petitioner secured an irregular appointment as a Clerk in the year 1987. It was an ad hoc arrangement or one which we may call temporary and through the back door. Recruitment of Clerks at the time was within the purview of the Subordinate Services Selection Board and still is with the Board rechristened the "Haryana Staff Selection Commission, Panchkula". The irregular appointment, if one is to excuse the words 'illegal' or 'unlawful', was regularized *ex post facto* by the department without reference to the Board under the garb of executive instructions dated February 28, 1991 w.e.f. December 31, 1990 but in the meantime, the Board seized of a requisition sent by the government for direct recruitment of Clerks sent its recommendations to Government against the advertised vacancies and private respondent was recommended for appointment in the

list forwarded by the Board on August 06, 1990 to the government for offering appointments. However, at the time when she received the letter of appointment the private respondent was in the family way and could not join service. She made a request for postponing her joining. She was declared medically fit to join by medical certificate dated December 26, 1990 and joined service in January 1991. The private respondent thus secured an order of regular appointment on March 18, 1991 [albeit retrospectively] and thereby from the date of physical joining on the post the petitioner who was issued letter of regularization later than the joining of the private respondent would remain junior.

2. The dispute of seniority inter se between the petitioner and the private respondent engaged the attention of the department. The question was that though the petitioner had been regularized in March 18, 1991 retrospectively from December 31, 1990 then would it be by the deeming fiction of the law, the date of regular appointment confer automatically seniority on the petitioner above the private respondent joining service earlier. On the basis of this retrospective benefit the petitioner claimed seniority over the private respondent which request has been rejected by the Government twice over by reason of the instructions of the Punjab Government applicable to Haryana dated March 16, 1962 which deal with the subject of determination of seniority of candidates recruited by the Board. The instructions applied read as follows:-

*“Copy of letter No. 946-4GS-62/8282, dated the 16<sup>th</sup> March, 1962 from Shri E.N. Mangat Rai, I.C.S., Chief Secretary to Government Punjab to all Heads of Departments etc. etc.*

*Subject: Determination of seniority of the candidates recruited by the Board.*

*I am directed to invite a reference to Punjab Government letter No. 1028-GII-57/27804, dated the 29<sup>th</sup> March, 1957 stating that a temporary appointment made without the recommendation of the S.S.S. Board is just a make-shift arrangement and cannot, therefore, count for seniority, which therefore should, in such cases, determined with reference to the date on which the recommendations of the Board are received. It has been represented to Government that the seniority of the candidates recommended by the Board should be determined with reference to the date of issue of the Board's letter and not from the receipt of their recommendation as in the letter case the letters are liable to be delayed in transit or mis-sent and diarised very late at destination thereby causing undue hardship to the candidates concerned. After carefully considering the matter it has been decided that the seniority of the candidates should be determined with reference to the date of issue of the Board's recommendations.*

*2. It has also been decided that in the case of such officials as are recommended to another office for regular absorption; but are allowed to remain in their present office in the interest of work or on the request of the official concerned, their seniority will be determined with reference to the date of the Board's original recommendations for their regular absorption in other offices.*

*3. These instructions may be brought to the notice of all concerned. The receipt of this letter may also please be acknowledged."*

3. The admitted fact is that the private respondent's name was recommended by the Board when there was not even a move afoot to make the irregular engagement of the petitioner regular and therefore, the deeming fiction of the law can at most be used in favour of the petitioner's personal interest but not against the regular recruitment-interest of the

private respondent whose name was recommended before the retrospective date of regularization assigned to the petitioner. In weighing both these competing interests carefully, the private respondent cannot be held at fault for being in the family way, which circumstance postponed her joining service as against the recommendations of the Board sent on August 06, 1990 and therefore, I find no intrinsic merit in this petition to justify or warrant interference in the matter of seniority and further promotions based thereon. The petitioner can at best cherish the date December 31, 1990 as a personal trophy without winning the race and pipping the private respondent at the post.

4. I find no patent illegality or error in the administrative judgment of the department in the impugned orders downgrading the seniority of the petitioner below that of the private respondent by applying the relevant instructions dated March 16, 1962 in the fact situation based on the date of recommendations of the Board. Moreover, I find no firm footing in retrospective regularization at the cost of a direct recruit who came by the process of regular selection in accordance with law.

5. Accordingly, the petition being devoid of merit is ordered to stand dismissed but without any costs.

(RAJIV NARAIN RAINA)  
JUDGE

11.11.2016  
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*Whether speaking/reasoned* Yes

*Whether reportable* Yes