

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13868 of 2012 (O&M)

Date of Decision: 02.12.2016

Asha and others

... Petitioners

Versus

The Punjab and Haryana High Court, through
its Registrar and others

... Respondents

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

Present: Ms. Asha, petitioner in person.

Mr. Lalit Thakur, Advocate,
for Mr. Anand Chhibber, Sr. Advocate,
for respondent No.1.

Mr. N.C. Kinra, Advocate,
for respondents No.4, 8, 14, 19, 22, 24 and 25.

RAJIV NARAIN RAINA, J.

1. The petitioners led by Ms. Asha appearing in person has brought this petition for setting aside the orders passed by the Administrative Judge of Panchkula Sessions Division dated May 10, 2012 in service appeal setting aside the order passed by the learned District & Sessions Judge, Panchkula dated December 30, 2010 accepting the representation of the applicants for granting to them accrued seniority from Ambala Sessions Division on their transfer to Panchkula Sessions Division carved out from the former by bifurcation of a single larger Division.

2. The noticeable facts relevant to the case are that the petitioners were originally recruited in Ambala Sessions Division to serve on the

establishment of the District Court. They were transferred on options to the newly created Panchkula Sessions Division where a Sub Division was already functioning. As a result, there were employees already working in Panchkula Courts with their seniority coming from Ambala. In the Ambala Sessions Division when the petitioners were transferred to the Panchkula Sessions Division dispute as to seniority arose *inter se* between the petitioners and the officials stationed earlier at Panchkula opting to remain there and officials coming like the petitioners from Ambala in the newly carved out Panchkula Sessions Division. The dispute arose because some of the employees transferred from Ambala Sessions Division to Panchkula Division were given benefit of past seniority in the Panchkula Sessions Division while the petitioners were denied their right to accrued seniority which created disparity in seniority within the same class of employees.

3. Shortly before Panchkula was declared Sessions Division in May 2005 the D&SJ Ambala sought options for absorption/adjustment of the employees in the two bifurcated Sessions Division as to which place they want to join i.e. either at Ambala or Panchkula vide letter dated April 11, 2005. The petitioners exercised their options for transfer to Panchkula. Fourteen employees who had submitted options with the petitioners were transferred along with their old seniority from Ambala to Panchkula without asking them to submit an undertaking that they would surrender original seniority on their transfer. Six employees similarly-placed as the petitioners, who had submitted options and whose options were declined by the D&SJ, Ambala filed representations demanding carry forward of the erstwhile seniority and on acceptance of the requests were transferred along with

seniority by the then Administrative Judge from Panchkula to Ambala vide order dated January 11, 2006 and were not required to submit any undertaking waiving right to original seniority. The last of the candidates namely Sanjay Sharma, Judgment Writer was transferred by the Administrative Judge and relinquish the charge in the year 2008 without any undertaking and enjoy the benefit of past seniority in the transferred Sessions Division. Similarly, three employees whose options were declined by the Ambala office filed writ petitions and they were also transferred along with seniority without asking them to submit any undertaking. These petitions were CWP No.18324 of 2005 and CWP No.16724 of 2005 both decided on same date i.e. January 10, 2007. The Court noticed that there are no separate rules of allocation of employees from one Sessions Division when another Sessions Division was carved out from the earlier Sessions Division. The respondent-State had placed reliance before the Bench on Rule 10 of the Haryana Subordinate Courts, Establishment (Recruitment and General Conditions of Service) Rules, 1997 ("1997 Rules") which provides as under:-

"A member of a service may be transferred to any equivalent post:-

1 Within the sessions Division, by the District and Sessions Judge.

2. Every member of the service shall be liable to transfer under the order of the Chief Justice anywhere within the state of Haryana.

3. On his written request, anywhere within the State by the High Court. If post is available subject to the following conditions:-

a. That he will not claim any seniority over and above the officials already working in the cadre of the sessions

Division to which he is seeking transfer.

b. No T.A/D.A. will be permissible and he will not avail joining time, provided that official has put in at least 5 years of service in the Sessions Division in which he is initially appointed.

Provided that High Court in a given case may relax the requirement of condition of 5 years of service.”

4. The Court found it a fit case where the petitioners should be considered for allocation to Panchkula Sessions Division provided a post lying vacant in the transfer division. The petitioners were allowed. In this way, 23 similarly situated employees, who had submitted options along with the petitioners were transferred along with seniority without enforcing undertaking in the years 2005, 2006, 2007 & 2008. The petitioners cite the example of the Yamuna Nagar Sessions Division created out of Ambala Sessions Division in the year 2002. Options were sought vide letter dated March 26, 2002 and seven officials who had submitted options were transferred to Yamuna Nagar Sessions Division from Ambala Sessions Division with seniority and without taking any undertaking from them that they would surrender rights to past seniority. In this way, 23 employees from Ambala Sessions Division to Panchkula and 7 to Yamuna Nagar were transferred as per options with their seniority. As a result, only five employees were left in the lurch and against whom undertakings were used to deny them seniority from the dates of appointment in the Ambala Sessions Division, it is these employees who are the petitioners in the instant petition.

5. It is the case of the petitioners that the Ambala office did not convey them the outcome of their options and they were not placed in a

position to question denial of past seniority. Nobody can presume that any adverse order has been passed against him or her till the outcome is not conveyed officially to them to seek legal redress. The petitioners assert that had the Ambala office informed them of the adverse consequences of options. They would have produced proof in their favour. They came to know only when their representation was remanded by the Administrative Judge to the D&SJ, Panchkula vide order dated September 03, 2009. The order reads:-

“Previously, there was a sessions Division Ambala and area of Panchkula fell within the jurisdiction of Sessions Division Ambala. Thereafter, a new district was carved out at Panchkula and new Sessions Division was set up there.

The dispute raised by the present applicants, who are originally employees of Ambala Sessions Division, is that they are entitled to seniority in accordance with their seniority in the Sessions Division at Ambala. Some of the employees transferred from Ambala Sessions Division to Panchkula Sessions Division have been stated to be allowed seniority as per their seniority in Sessions Division Ambala, whereas the present applicants have been stated to have been ignored. However, from the perusal of the records and from the arguments, it emerges out that Learned District and Sessions Judge Panchkula, has not decided the question of seniority by passing any speaking order to remove the grievance of the applicants.

So, in these circumstances, all these representations are ordered to be put up before learned District & Sessions Judge, Panchkula, who shall decide their representations regarding inter se seniority of the employees according to the rules and also keeping in view parity among the other employees concerned.

Records be sent to District & Sessions Judge, Panchkula at the earliest.”

6. The case of the petitioners in summary is that Rule 10 of the 1997 Rules does not deal with transfers where one Session Division is carved out from another Sessions Division by bifurcation of the same cadre. The case of the petitioners is not normal case of transfer. It is an allocation or adjustment of an employee based on options to apply from one to the other division. It is only when a written request is made for transfer within the State to an equivalent post only then can an employee claim no seniority over the officials working in the cadre of the Sessions Division to which he is seeking transfer. The principle has been recognized by this Court in the aforesaid two writ petitions. The petitioners claim parity of treatment with the order passed on the judicial side and the same relief cannot be denied to similarly situated employees even if they were not to file a writ petition. It is the duty and obligation under Article 14 of the Constitution of India that equals would not be treated unequally. Not maintaining the seniority of the petitioners from their original dates of appointment in Ambala Sessions Division would be discriminatory without any reasonable classification. It is well settled in law that a citizen cannot waive his right under Article 14 or relieve the State from its duty. The reliance placed by the petitioners on case Ajit Singh v. The Punjabi University, Patiala, 1997 (3) SCT 416 is appropriate to answer the defence that the petitioners had given undertaking to surrender seniority rights. The Court was dealing with case involving the terms of appointment of Ajit Singh and because he accepted the terms he was established from claiming a higher rate of emoluments. This Court negated the contentions by holding as under:-

“16. This contention cannot be accepted. Firstly, it is the

duty of the University to act fairly and in conformity with the provisions of Article 14 of the Constitution. A citizen cannot waive his right under Article 14 or relieve the University of its duty. Secondly, the petitioner did not really waive his right. Apparently, forced by circumstances, he had accepted the offer. Simultaneously, he had represented. In this situation, the principle of estoppel cannot be invoked to deny the petitioner his rightful dues. Still further, the University having imposed an unfair condition cannot be permitted to take advantage of its own wrong. Thus, the plea of estoppel as raised by the respondents cannot be sustained.”

7. The petitioners contend that there is no estoppel against law. The petitioners cite Dr. Preet Kanwal Singh v. State of Punjab, 2000 (2) SCT 270; AIR 2000 P&H 156 where Court dealt with the case of admissions to Master of Dental Surgery in Periodontics. The Court held that if merit is the sole key to the admission and allotment of seats, no candidate can be deprived with the same if he is entitled to the seat and stipend attached to that seat. Grant of admission or allotment of superior seat subject to filing of affidavit not to claim stipend attached to that seat contrary to the rules would not bind the candidates with the doctrine of estoppel from subsequently claiming the same. An affidavit obtained from the candidate would be of no consequence. By analogy the ruling holds good in this case. There can be no estoppel against the Constitution.

8. In Olga Tellis and others v. Bombay Municipal Corporation and others, AIR 1986 SC 180 the Supreme Court observed:-

“There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and substance of all laws. Its provisions are conceived in public interest and are intended to serve a

public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estopped valid, an all-powerful State could easily tempt an individual to forgo his precious personal freedoms on promise of transitory, immediate benefits.”

9. It is argued that the undertaking given by the petitioners are not binding on their rights and deserve to be ignored since there are administrative and judicial orders in the cases of 23+7 employees who are similarly situated as the petitioners and not asked to submit any undertaking and were transferred with their seniority on bifurcation of the Sessions Division.

10. The transfers of the petitioners from Ambala to Panchkula was not declined and yet the adverse result of options was not conveyed. Therefore, it is safe to assume that the petitioners were dealt with behind their back with inadequate input supplied by the Ambala office. They cite the order dated July 06, 2005 as proof that transfers were allowed based on options.

11. As the case of the petitioners had been remanded by the Administrative Judge, Panchkula on September 03, 2009 to the D&SJ

Panchkula directed to decide the representation of the petitioners regarding the inter se seniority of the employees according to rules and also keeping in view the parity among the other employees concerned. This is how the learned District & Sessions Judge heard the objectors and the petitioners at a prolong hearing comprising 13 dates. Written submissions were made and oral arguments were addressed before the learned District & Sessions Judge, Panchkula. By an elaborate order, the learned District & Sessions Judge, Panchkula decided the objections/representations of the affected parties. The case of the State was that the petitioners had been transferred to the Panchkula Sessions Division with the condition that they will not claim any seniority over and above the officials working in the cadre of Clerks in the Panchkula Sessions Division. The learned D&SJ noticed that the seniority of 30 officials would be effected in case, the representation of Ms. Asha etc. was accepted. Out of 30 officials, 24 filed objections which all were remanded for a decision by the D&SJ Panchkula. The crux of the matter revolved around the undertaking taken from the petitioners then using them by singling them out for adverse and hostile discrimination. The petitioners in their address before the learned D&SJ cited case law in Prabhu Dayal and others v. State of Haryana and others, 1989 (4) SLR (P&H) 627 canvassing that they could not be denied their seniority even if they give any undertaking to the D&SJ, Ambala. They do the attention of the authority to the ruling in Maharaj Krishan Bhatt v. State of Jammu & Kashmir, 2008 (4) SCT 62. The Supreme Court on the principle of parity of treatment provided the claim is not illegal since illegality cannot be perpetuated. Following an earlier precedent is not perpetuating an illegality

and that is how the decision of this Court in the two writ petitions (Supra) comes to the aid of the petitioners arguing that similarly situated persons will be treated differently. This is the cardinal rule elaborately dealt with by the Supreme Court in State of U.P. and others vs. Arvind Kumar Srivastava and others, 2015(1) SCC 347. Guideline (i) of para. 22.1 of the judgment reads as follows:-

“(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

12. It would be travesty of justice if some employees were transferred with seniority and without any undertaking to disallow the claim of the petitioners based on the same principle and there being no distinguishing features between the two. The petitioners had no option but to sign on the dotted line and it was not a fair thing to demand the undertaking even when equivalent posts were available in Panchkula Sessions Division. Even if no posts were available even then the petitioners would have a right to equality of treatment because Rule 10 of the 1997 Rules does not deal with a peculiar situation arising in this case where employee is transferred from one Division on bifurcation of the same Division in two parts. Then some adjustments would have to be made

conforming to the mandates in Article 14. No person or authority howsoever how he may be has the power to treat equals unequally. The Sessions Division in question could not arrogate to himself an absolute discretion to act according to his wish and desire. The opposition argued before the Sessions Judge that it was not clear from record whether the petitioners herein give their options within the period allowed by letter dated April 11, 2005 within two days. They further argued that the request of the claimants for their transfer to Panchkula Sessions Division at the time of its creation was not accepted by the D&SJ Ambala. They were transferred by intervention of superior authorities but after taking consent in writing that their transfer will not entail claim for seniority over and above the officials already working in the cadre of the Panchkula Sessions Division. They pressed delay and laches against the petitioners when they remained silent till March 21, 2007 when they moved representations before the Inspecting Judge, Panchkula at the time of annual inspection. Moreover, the respondents had not given any consent for losing seniority. The respondents relied on *Giri Raj Jain and others v. Punjab and Haryana High Court Chandigarh and others* in CWP No.12461 of 2008 and CWP No.14208 of 2008 decided on July 07, 2009 contending that applicants had no legal right to seek transfer which can only be as per option because transfers are in the exigencies of service. They drew attention of the authority that District & Sessions Judge, Ambala had declined the representation of the petitioners on March 23, 2005 and the approach for legal redress was belated. Their seniority in Ambala Sessions Division should not be disturbed. The learned District & Sessions Judge, Ambala in his order after noticing the facts of the

case found that this is not a normal case of transfer. It is a case of allocation and adjustment of employees in the new Sessions Division carved out from existing Sessions Division. He ruled out the applicability of sub-Rule 2 and sub-Rule 3 of Rule 10 of the 1997 Rules. The options were submitted when Panchkula Sessions Division was created for their transfer to Panchkula. He dwelt on the order dated May 23, 2005 of his predecessor wherein it was maintained that from Ambala to Panchkula and from Panchkula to Ambala 14 posts of different cadres had already been adjusted. However, the problem was that 16 employees were willing to go to Panchkula Sessions Division and against them no employee was ready to get himself transferred to Ambala. The predecessor declined the request citing reason that work in Ambala Sessions Division suffered badly as already 50 posts of Clerks and 34 posts of Process Servers and 2 posts of Peons were lying vacant in Ambala Sessions Division. He did not file any compelling reasons with the officials for their opting from Ambala to Panchkula. In recording his findings, the learned D&SJ observed and rightly so that the case of the present petitioners stood on same footing as the petitioners in the two writ petitions decided on January 10, 2007 and, therefore, they were entitled to the same relief. He correctly applied Articles 14 & 16 of the Constitution of India to grant equality before the law and equality of opportunity. He observed in his order by applying analogy of the transfers of Sh. Rajesh Chawla etc. and Sh. Sham Lal Verma etc. in the two writ petitions that the present petitioners led by Asha could have been transferred to Panchkula Sessions Division without disturbing their seniority. The learned D&SJ culled out the principle correctly that even if the petitioners had given

undertaking while in Ambala that they would not claim seniority over the employees of Panchkula Sessions Division in the corresponding cadre could not be denied benefit of seniority in the presence of candidates who had been given preferential treatment in preservation of their erstwhile seniority. The authority correctly applied the principle of law in *Prabhu Dayal* (Supra) where also the State had asked the petitioner to give an undertaking that he would not claim any arrears resulting from re-fixation of seniority was not approved by the High Court holding that the proforma annexed for giving the undertaking was void and unconstitutional. The writ petition was allowed. The principle against unfair discrimination was re-affirmed. It could not be that in one division there were persons whose seniority was protected while others not.

13. On the question of delay and laches, the learned District & Sessions Judge, Panchkula answered the same in favour of the present petitioners finding that they had already filed their objections at Ambala when the adverse action came to their knowledge since indisputably the order dated May 23, 2005 passed by the learned D&SJ, Ambala was never conveyed to them. They came to know of the order only after inspecting the record received from Ambala Sessions Division on October 22, 2009 when orders were passed by the Administrative Judge, Panchkula on September 03, 2009 directing the D&SJ, Panchkula to decide the question of seniority by passing a speaking order to remove the grievances of the applicants. There was no delay. Even if there was delay then right to equality being fundamental will eclipse the objection. So long as the petitioners entitled to same treatment they could not even being forced to litigate and the relief

should have come from the administration itself but alas they have to litigate. The representation of the petitioners was allowed. An anonymous complaint dated Nil made by some aggrieved employees of the District Courts, Panchkula was put up before the Administrative Judge, Panchkula Sessions Division against Sh. P.L. Ahuja the then District & Sessions Judge who passed the order dated December 30, 2010. The allegations in the anonymous complaint were these. Mala fide was imputed against the retired Judge in passing the order determining inter se seniority among the employees of the Panchkula Sessions Division. The order was dubbed to be illegal having not been communicated to effected persons; it was passed on day before his retirement where all the affected officials were availing winter vacations and, therefore, the same is liable to be set aside. It was noticed by the Administrative Judge that the Full Court had allowed transfers from Ambala to Panchkula Sessions Division on certain conditions (i) that they will not claim any seniority over and above the officials already working in the cadre of Sessions Division to which they were seeking transfers; (ii) that no TA/DA will be permissible to them and (iii) that they will not avail any joining time. This was the reflection of the provisions of Rule 10 of the 1997 Rules. It was urged in the anonymous complaint that despite specific and clear conditions of the Full Court, Sh. Ahuja passed the order in favour of the petitioners herein and made them entitled to benefit of seniority from Ambala. It was alleged against learned District & Sessions Judge that not only was the order passed one day before the retirement but under influence and pressure of Sh. Manoj Manchanda posted as Secretary to this Court and husband of sister of petitioner No.1 Ms. Asha (brother-in-

law) one of the representationists besides the order was announced in their absence which shows mala fide intention as it was passed at the back of the effected persons and were still the orders were not conveyed to any of the effected employees. It was prayed that record be summoned and appropriate action be taken on the complaint.

14. It is recorded in the order against which this present petition has been filed that the order dated December 30, 2010 passed by Shri P.L. Ahuja the then District and Sessions Judge, Panchkula prima facie seems to be against Rule 10 of the 1997 Rules and earlier decision of this Court, the complaint was treated as a service appeal, vide order dated July 11, 2011 and in consonance of rule 14-G of the aforesaid Rules notice was served upon the affected persons through District and Sessions Judge, Panchkula. The Inspecting Judge noticed the orders passed in CWP No.18324 of 2005 by which the petition was allowed vide judgment dated January 10, 2007. This writ petition had been filed when the request of the petitioners was not accepted for migrating to Panchkula which action was undone on the judicial side. The Administrative Judge thought that the representationists (Asha and others) had not adopted such course on the judicial side. Therefore, they did not stand on similar footing and not entitled to the same relief on the administrative side. For these reasons, it was held that same relief is not sustainable particularly keeping in view the order dated December 30, 2010 having a direct impact on the seniority of 24 officials of Sessions Division, Panchkula who are not granted an opportunity of hearing. As a result, the finding as to inter se seniority was set aside. The argument raised by the representationists/petitioners herein argued through

their counsel that orders passed by Sh. P.L. Ahuja in compliance of the order dated September 03, 2009 of Administrative Judge, Panchkula amounts to a judicial order and as such the same cannot be interfered with on anonymous complaint. This contention was found to have no force and was rejected on the judicial side in CWP No.18324 of 2005 allowed on January 10, 2007 being the writ petition filed by Pawan Kumar and Sanjay Gautam. The District Judge had been directed pass orders as per rules. It was urged by the representationists that the complaint is anonymous and cannot be converted into service appeal suo motu and should be filed. This contention was noticed and rejected. The complaint in question can be altered into service appeal when any illegality is brought to the notice of this Court and this Court is well within its jurisdiction to look into the matter in the interest of justice since it impact the inter se seniority of 24 employees of Panchkula. The anonymous complaint was treated as a service appeal. On delay, the findings of D&SJ Panchkula were reversed for the reason that the request for transfer to Panchkula Division was declined on March 23, 2005 but was allowed by the Full Bench on the three conditions as noticed above. Therefore, the Administrative Judge, Panchkula held that they have no right as such at a late stage to claim that their seniority in Ambala Sessions Division should not have been disturbed. The rule of estoppel was applied against the representationists/petitioners for claiming seniority of Ambala Sessions Division in Sessions Division, Panchkula by their own act and conduct after availing the benefit of the transfer in pursuance to the decision of the Full Court. For these reasons, the impugned order dated December 30, 2010 passed by District Judge suffers from

factual errors and legal infirmities which cannot be allowed to continue and deserve to be set aside. The anonymous complaint was converted into a service appeal and the same was allowed by the incumbent District & Sessions Judge, Panchkula to restore the inter se seniority among employees as it stood before passing of the impugned order dated December 30, 2010. It may be noticed that Mr. Anurag Goyal, learned counsel appeared for the representationists and Mr. M.S. Kohli, Joint Registrar for the Sessions Division, Panchkula before the Administrative Judge. It appears that notice was not issued to 24 employees to know their views on the issue and if they were anonymous in the private complaint then there was no aggrieved person except in anonymity. With great respect to the Administrative Judge, Panchkula and quite apart from what has been noticed above there is no discussion in the impugned order of the pertinent findings of the then learned D&SJ Panchkula in his order. The anonymous complaint was converted into a service appeal and the order was set aside for three noticeable reasons; one, that Rule 10 of the 1997 Rules applied to the case and, therefore, the petitioners could not claim seniority on transfer. If the order was passed one day before retirement then this is not a shortcoming and does not *per se* render the order as illegal or void as one would still have still to venture into the reasons recorded by the lower authority and if they are germane to the cause, then the order will not be set aside only because it was passed one day short of retirement. In any case, the District Judge was under a mandate of the then Administrative Judge, Panchkula while remitting the representation to him vide order dated September 03, 2009 to decide the matter and to which end there was prolonged

proceedings for granting hearing to the parties. There is no rebuttal that 13 dates were spent on hearing the representation and the objections received. The question as to whether the order was passed under influence and pressure of Manoj Manchanda, a Secretary on the establishment of the High Court and who was a brother-in-law of petitioner No 1 Asha is a rather remote reason to pick up the anonymous complaint and put it through administrative determination. A perusal of the order passed by the then District & Sessions Judge, Panchkula does not confirm the allegation that both sides were not heard in the making of the order. Their arguments were duly noticed and dealt with by the Id. D&SJ Panchkula and, therefore, it cannot be said with any certainty that order was ex parte respondents who are anonymous but assumed to be 24 aggrieved employees whose seniority has been upset by the order dated May 10, 2012. I do not think that these reasons in passing an order one day before retirement or on relationship influencing the decision to the degree of malafides is not supportable in law or in fact. The anonymous complainants had ever right to question the order on the judicial side by filing a writ petition, which course they did not choose to adopt and which if followed would have been the more appropriate way to deal with the order of the District Judge which has been set aside on the administrative side on a compliant made on the administrative side by converting the anonymous complaint as a service appeal to decide the questions agitated. I believe that the Administrative Judge fell in error in reading Rule 10 of the 1997 Rules assuming they would apply to the case in hand. Rule 10 to my mind does not apply to the case in hand as it does not cover the peculiar subject matter or address it on

all fours. These are not transfers from one division to another but transfers from one division bifurcated into two parts with the original seniority of both parties going back to the parent Ambala Sessions Division. The Full Court was seized of representations declined by the then District & Sessions Judge for reasons of administrative exigencies and while ordering the employees to be transferred as per their options has to be viewed as a decision limited to transfers and not as an authority on the interpretation of Rule 10 of the 1997 Rules which were not in mind. I also believe that the then D&SJ Panchkula was not incorrect in his reasoning as to interpretation of Rule 10 holding that they did not apply and that finding deserves to be affirmed. When the field is not occupied by a specific rule then it does not mean that the petitioners should be disadvantaged by occasioning loss of previous seniority and instead, to my mind, in non-rule territory, the principles of justice, equity and good conscience should be employed which principles are recognised in absence of rules, regulations and instructions. The petitioners could have been divested of the hard earned seniority only by an amendment of the rules carving out a change in Rule 10 to take away rights on bifurcation of one Sessions Division and not a mere transfer from one to the other. There is none of this in this case.

15. Non-suiting the petitioners primarily on delay and laches in the presence of valuable actionable rights under Articles 14 & 16 of the Constitution of India may not be sustainable. Where fundamental rights of equality are involved they cannot be waived and the Court must act in aid of Article 14 and not demean it which will be flustering on the oath. It is well settled that when fundamental rights are involved cases cannot be dismissed

on a jejune grounds of delay and laches. The Administrative Judge, Panchkula erred in not dealing with the findings of the lower authority on delay which findings appeal to reason based on facts that the order dated May 23, 2005 was not officially conveyed to the petitioners to be read against their interest. In any case, the order dated May 23, 2005 stands dissolved by the Full Court and is rendered meaningless. When principles of parity are invoked then equals cannot be treated unequally in the matter of seniority when persons have come to Panchkula from Ambala who are not put to waiver of right to accrued seniority from Ambala.

16. The reason given by Administrative Judge, Panchkula to differentiate the cases of advantage lot as against the petitioners rests on the ground that the petitioners did not approach court like those in CWP No.18324 of 2005 and connected cases. The right to legal redress stands established by the order dated September 03, 2009 passed by the Administrative Judge, Panchkula directing the District Judge to decide the representations of the petitioners regarding the inter se seniority to remove their grievance. The administrative order sufficiently explains the period from 2005 till the petitioners made a representation. I do not find any glaring of palpable legal or factual infirmity in the work of the learned District & Sessions Judge, Panchkula in making the order which might vitiate the decision. I also do not find clue in the order dated December 30, 2010 which reeks of malafides. I find no reason to upset the order dated December 30, 2010 based on sound reasoning. If this reasoning is found then the timing of the order becomes immaterial or whether it was conveyed. I assume that the issue was serious enough to have been common

to the knowledge of both the regime in Ambala Sessions Division and the Panchkula Sessions Division and, therefore, conveying the impugned order or failing to do so, recedes into the background. I am inclined to think that the anonymous complaint should have been filed at the threshold, leaving the anonymous complainant to seek legal redress in a court of law by showing his face so that there was left no suspicion of overreaching and undermining valuable rights of the petitioners on the administrative side in relation to the newly founded division. If it is the case that relevant considerations have been kept in mind in making the order dated December 30, 2010 then it is one thing but if irrelevant considerations have crept in the decision making process, they have to be ruled out to restore the balance of equality to remove any shadow of unfair discrimination. If we believe in this constitutional mandate of Articles 14 & 16 and take them forward to their logical end then I fail to see why the impugned order, for the variety of reasons recorded above, does not deserve to fall. I am not prepared to hold that the decision of the learned District & Sessions Judge, Panchkula dated December 30, 2010 was a dishonest one merely because he passed the order at the eleventh hour of his retirement or because the first petitioner was related to someone working in the High Court establishment and held sway. This would be acknowledging family relationship as a systemic fault. The decision of the learned District & Sessions Judge, Panchkula has to be reviewed standalone and for the reasoning contained therein. If they pass muster of logic, the decision should not be criticized for extraneous considerations or as having been passed as a favour.

17. As a result of the above discussion, the order passed by the

Administrative Judge dated May 10, 2012 is with respect is found erroneous in law and fact and is accordingly set aside and the order passed by the learned District & Sessions Judge, Panchkula dated December 30, 2010 is restored as a correct rendition of the legal position. The seniority list in Sessions Division, Panchkula be drawn accordingly.

18. The writ petition is allowed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

02.12.2016
manju

Whether speaking/reasoned Yes

Whether reportable Yes