

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10273 of 2016

Date of Decision: 23.05.2016

Gurmail Singh and others

... Petitioners

Versus

State of Punjab and another

... Respondents

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

Present: Mr. Madhav Pokhrel, Advocate,
for the petitioners.

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

RAJIV NARAIN RAINA, J.

1. The complaint and the grievance expressed in this petition is that the petitioners have been ignored for promotion to the post of Master from the post of JBT. The operating principle of promotion and how it is to be considered and accorded is prescribed in Rule 9 of the Punjab State Education Class III (School Cadre) Service Rules, 1978. The mode of promotion from JBT to Master Cadre is by selection based on merit and seniority, while the proviso to Rule 9 obligates the State to apply the principle of selection with merit and seniority but determined on the length of service as teacher in the district cadre. The petitioners argue their case through counsel from the Proviso to insist that length of service is the primary rule taking away the sting of the main rule. However, if the post of Master is a selection post tempered with merit and seniority then a junior can well supersede a senior on pure merit based on better service record.

When asked to show the ACRs of the petitioners or in gist, the learned counsel draws a blank. He submits they have not been conveyed to his clients but that is not pleaded. The petition has therefore been built on inadequate documentary evidence to support the claim that the petitioners were wrongly ignored. The petitioners instead of rushing to court could have applied for supply of relevant material from the record of the department and then pleaded their case with full particulars. As petitioners they have to make out a prima facie case for interference since the initial burden is on them. The writ court is not bound in its discretionary jurisdiction to make fishing inquiries to make out a case for the petitioners.

2. Without resolving the issue on merits at this stage in absence of relevant material placed on file, the preferred option is to dispose of the petition with a direction to the respondents to supply the ACRs of the petitioners throughout their the service which is, in any case, a duty of the department/State in terms of the judgment of the Supreme Court in Dev Dutt v. Union of India and others, (2008) 8 SCC 725. In the passing of this order, the State need not be heard as supply of attested copies of the ACRs are a matter of right of the petitioners. The State would thus in discharge of its obligations comply with this order within one week from the date of receipt of certified copy of the order by supplying copies of the confidential rolls for the entire period of service.

3. In addition, the petitioners would remain at liberty to make representation to the State to disclose to them the reason why they were ignored while their juniors were promoted to the higher post. In case, the request is made, the department would also supply the reason in a gist as to

why the petitioners were ignored for promotion. This part of the instant order be complied within two weeks from the date of the representation, if submitted, for consideration.

4. The competent authority may have due regard to the contents of the legal notice (P-12).

5. With these observations and directions, the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

23.05.2016
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