

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.14722 of 2013 (O&M)
Date of Decision: 22.07.2016**

Rajinder Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Sourabh Goel, Advocate,
for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

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. The private respondents despite notice and service of summons have not put in appearance. They are proceeded against ex parte.
2. Heard Mr. Sourabh Goel, learned counsel appearing for the petitioner and Ms. Shruti Jain Goel, AAG, Haryana.
3. It is beyond cavil that because of an illegal decision taken by the Government imposing five years' prior additional experience as a Driver of a motor vehicle as a condition precedent to appointment, the Division Bench of this Court in the case of the petitioner himself i.e. CWP No.2094 of 1992 allowed the petition on July 07, 1992 and refusing to accept the condition as legally permissible on the ground that the requisite additional qualification of experience was not mentioned in the terms and conditions of the advertisement calling applications from eligible candidates for selection of Light Transport Vehicle Drivers to serve in the office of the

Chief Secretary, Haryana. The State could neither show any instructions or rules to the Court to support its stand that five years' experience was necessary for appointment to the post. The Court observed that the very fact the Haryana Subordinate Services Selection Board selected the petitioner shows that he fulfilled all the conditions of eligibility mentioned in the advertisement. The Law Officer of the respondent State appearing before the Bench conceded that one post of Driver was still available in the office of the Chief Secretary, Haryana. The petition was allowed and a direction was issued to the respondents to appoint the petitioner on the post of LTVD forthwith. This order has been treated by the Department as the date of appointment of the petitioner in implementation of the order by misinterpreting the words "forthwith" in the operative part of the final order. When this Court uses the word "forthwith" by way of a direction it ordinarily means that the court order should be complied with immediately, but seniority is another matter which cannot be made to run from the date of decision of the case, which is just a fortuitous circumstance, unless it is expressly directed. If this position is accepted as canvassed by the respondents it would do grave harm to the rule of seniority itself when seniority has to be accrue on the basis of *inter se* merit determined by the Board amongst the competitors for direct recruitment against one lot of advertised vacancies. The petitioner's name was recommended by the erstwhile Board (presently called the Haryana Staff Selection Commission) to the Government and he had thus secured a right of consideration for appointment in 1990 itself along with other successful candidates but his rights were shelved by the appointing authority placing an insuperable

hurdle in his way by superimposing the additional condition of 5 years' experience beyond the criterion published in the original advertisement, which action was faulted by the Division Bench of this Court paving the way to appointment in the year 1992. In this rightful pursuit of legal remedy considerable delay was caused due to litigation brought for vindication of rights and for no fault of the petitioner he was denied appointment for the wrong reason. The problem would not have occurred but for the unlawful act of the respondent State and the seniority of the petitioner would without doubt have to be fixed according to his merit position secured in his own batch. As often said, the right to appointment may not be an indefeasible right but it turns fundamental in nature when selection becomes proximate to appointment according to recruitment rule on Board making recommendations in favour of successful candidates. In other words, it becomes a vested right and an actionable claim when the recommendations are forwarded to the Government by the Board for offering appointments from the select list of candidates. If the rest are offered appointment and join service then the right no longer remains in a state of flux but becomes crystallized when all things are equal admitting of no exception to the rule of recruitment and fulfilling all other conditions, which the petitioner eminently possessed but for the illegal obstacle which had left him out of the fray. There is no dispute that the seniority of the petitioner has to be fixed in terms of merit determined by the Board in view of the Haryana Government executive instructions dated April 05, 1971.

4. Ms. Shruti Jain Goel, learned AAG, Haryana submits that because the petitioner himself pegged his case for proper seniority on the

instructions dated March 16, 1962 issued in joint Punjab which prescribe the date of recommendation by the Board as a point of measuring seniority, the petitioner has no case to press and must be pinned down to his initial pleading. However, the 1971 instructions altered the principle of seniority shifting from date of recommendations to the more logical date of appointment. All that can be said is that the petitioner may have placed reliance on the wrong instructions but his case cannot be defeated on this specious plea and on the other hand has to be governed by the 1971 instructions issued by the Haryana Government and not on whether he depended on 1962 instructions in writing in his representation to correct his position in the seniority list when it was finalized by the department. One cannot change or divert the existing legal position in the 1971 instructions so long as the rights of the petitioner can be traced to the prevailing policy. It is trite to say that not only a duty but an obligation is cast on the respondents to fix the seniority of the petitioner in accordance with rules and extant instructions at the time of selection and appointment under the same advertisement. The Division Bench did not direct seniority of the petitioner to be fixed from the date of the decision when it employed the word “forthwith” which meant that the order had to be complied with immediately and nothing more. Nor could the Division Bench have ever thought of depriving the petitioner of his valuable right to seniority next below the candidate higher than him on merit appointed within the advertised vacancies. Moreover, the term “appointment” in the Instructions of 1971 will not suffer literal interpretation but in harmony with right to appointment based on merit determined within a single recruitment process

unless the candidate suffers disabilities by his own act and conduct, say for instance by not accepting the offer of appointment within the maximum time allowed in the letter of appointment or within the period prescribed in the rules, if any. There may be other situations. The petitioner cannot be discounted for seeking his legal remedies to secure appointment.

5. Therefore, I have no hesitation in rejecting the contention of Ms. Shruti Jain as untenable and accepting the petition by issuing a direction to the State to re-fix the seniority of the petitioner as per merit determined by the Board in the recruitment process of 1990. Let the exercise be done within two months from the date of receipt of a certified copy of this order.

6. In case objections are required from persons likely to be affected by this order, they would be offered opportunity of hearing within the legal declarations made by this Court in the earlier writ petition and the present one on the rule of seniority *vis-à-vis* the petitioner. It may be noticed that the rule position and method of fixation of seniority is not disputed by the State but it is only the point from where seniority should reckon in the facts of this case that has been contested, which principle adopted by the respondents is held illegal and arbitrary and not authorised by Court or by the instructions covering the subject matter. There has been a gross misreading of the orders passed in CWP No.2094 of 1992 grievously injuring the petitioner and relegating him downward in seniority by separating him from his batch of Drivers. This order seeks to correct that wrong done in the highest offices of the none other than the Chief Secretary, Haryana himself and to do so not only as mandated by the instructions of

1971 but also on principles of justice, equity and good conscience.

Accordingly, the petition is allowed.

(RAJIV NARAIN RAINA)
JUDGE

22.07.2016

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