

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

Date of decision: 08.11.2016

CWP No.17039 of 2013

Paramjit

...Petitioner

Vs.

The High Court of Punjab & Haryana, Chandigarh through its Registrar
General

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Puneet Gupta, Advocate, for the petitioner.

Mr. Suresh Monga, Advocate, for the respondent.

RAJIV NARAIN RAINA, J.

1. This Court while issuing notice of motion on September 30, 2013 crystallized by an interim order the issue involved in this case. The order is reproduced and reads as follows:-

“The petitioner had submitted a representation to the respondent for fixation of his seniority in the cadre of Clerks as per the High Court Establishment (Appointment and Conditions of Service) Rules, 1973. The writ petition filed by him bearing CWP No.21076 of 2012 was disposed of on November 2, 2012 by a Coordinate Bench of this Court with a direction that representation of the petitioner shall be considered and appropriate steps will be taken by passing a speaking order within a period of six months from the date of receipt of certified copy of the order. As per the judicial dictum, the committee constituted for the purpose vide proceedings dated February 28, 2013 has arrived at a conclusion that

seniority of the petitioner has to be reckoned from the date of his appointment on regular basis and not from the date of passing of the type-writing test.

Grievance of the petitioner, at present is that despite order dated November 2, 2012 the tentative seniority list of the employees working in the cadre of Clerks as per the Rules has neither been framed nor circulated.

When confronted as to what prejudice has been caused to the petitioner, the petitioner relies upon observations of the Division Bench of this Court in CWP No. 8426 of 2007, decided on January 28, 2008, *Sunder Lal Vs. State of Haryana* wherein it has been observed as follows:-

“After hearing counsel for the parties, we feel that there is no plausible reason with the respondent State not to circulate the seniority list of the officers working in the cadre of the petitioner so that the employees may have clear idea as to where they stand and at what point of time they will have chance of promotion. To avoid any heart burning in the state service, it is necessary for the State to prepare and circulate seniority list as per rules. Representation of the petitioner for the abovesaid purpose (annexure P-4) is still pending undecided. Keeping in view the facts and circumstances of this case, we dispose of this writ petition and direct the Secretary, Department of Forests, Civil Secretariat, Haryana, Chandigarh to circulate the tentative seniority list of the officers in the cadre of Assistant Conservator of Forests, within a period of one month from today and after getting objections, if any, the regular seniority list be prepared and circulated, preferably within a period of four months thereafter. It is made clear that if the petitioner wishes, personal hearing be given to him before finalization of the seniority list, as per law.”

Notice of motion for November 22, 2013.

The seniority list of the cadre of Clerks (tentative/ final) maintained in the office as per the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 be made available on next date of hearing.”

2. Thereafter, when this matter came up for hearing on October 18, 2016, I passed the following interim order:

“The issue involved would represent a common grievance of the employees of the establishment of this Court that in different cadres seniority lists are not in place so no one knows where one stands for purposes of promotion etc. Seniority lists are meant as a running list of names of employees cadre-wise where objections are invited from the likely to be effected persons and hearing offered to them before making a seniority list final as contra-distinguished from provisional seniority list, tentative, gradation or working lists. This is the sum total prayer in this petition for a direction to draw a seniority list of clerks, which petition can be decided by a simple direction that the process of drawing seniority lists should be initiated in the High Court for each cadre of service and completed within a reasonable time after inviting objections.

List again on 26.10.2016.

To be shown in the urgent list.

Mr. Monga will hand over a copy of this order to the learned Registrar General.”

3. Having heard Mr. Puneet Gupta, learned counsel appearing on behalf of the petitioner and Mr. Suresh Monga, learned counsel representing the High Court, I believe that it will serve no useful purpose to keep this matter pending adjudication on merits only to prolong the proceedings since the principles involved in preparing and drawing seniority of Clerks etc. lie in the administrative domain of the High Court to be finalized as per rules of service.

4. The grievance of the petitioner is limited to the extent that even a tentative seniority list has not been framed or circulated in the cadre of Clerks in the establishment of this Court, so no employee would know where he stands in the queue of promotions. It is a right in every employee to find his name in a seniority list as distinguished from a gradation list; a tentative seniority list; a provisional seniority list or a working seniority list which is

treated as final inter se the members of the service. A seniority list in service law means no more than that it has been framed after inviting objections from all persons likely to be affected, deciding those objections and publishing the result and is thereafter updated from time to time. Every employee on the establishment of this Court has a fundamental right to access information to measure where he/she stands in the queue of seniority though he may not enjoy as a matter of right to a particular seniority position as that is dependent on several foreseeable and unforeseeable factors which only time can tell. But at any rate, employees of the High Court have a right to hold in their hands at all times a certified seniority list. Article 229 (2) instructs that the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose. We must venture in our home to dispel darkness and quell simmering discontent: “Seniority being an important condition of service”; See, for quote, Supreme Court in B.S.Yadav Vs. State of Haryana, 1984 Supp SCC 524.

5. Mr. Monga agrees that the position regarding non-finalization of seniority lists obtains not only in the cadre of Clerks, but in all other cadres in the establishment of this Court. This is not a very happy situation obtaining in an institution, which is the fountain head of justice within the States it administers the laws. It is an obligation and a duty of the High Court to draw and frame seniority lists in accordance with the Rules in each cadre of service and, therefore, I think it would be fair and proper that this petition should be expanded beyond the purview of Clerks to all other categories of employees, so that their names find places in a final seniority list.

6. I would, therefore, dispose of this petition with a request to the Learned Registrar General of this Court to immediately initiate steps for framing seniority lists in each cadre of service in the establishment of this Court and towards this end the following steps may be taken, in addition to what may be conceived fair and proper in completing the huge task:

- (i) In the first instance, the tentative seniority lists as they exist in each of the cadres may be placed on the Notice Board or by circulation among the staff including requesting the NIC to study the feasibility of creating a special portal of 'Establishment/ Cadre Seniority' in the official website of the High Court which would make it easily accessible to all concerned. This exercise of publishing the tentative seniority lists as they are may be done within a period of one month from receipt of a copy of this order;
- (ii) Objections would then be invited from persons likely to be affected by giving them a reasonable opportunity to file their objections, if any, within the next 6 weeks after direction (i) is in place;
- (iii) Consider and decide the respective objections within the next three months in terms of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 as amended from time to time; and,
- (iv) An earnest endeavour be made to finalize the seniority lists of all the cadres and to upload the same on the proposed portal within eight months from today.

7. It will not be taken unsightly, by the persons interested, if there are errors and omissions in the tentative seniority lists already available in the drawers of the establishment of officials in whose custody they may lie. Since the object is only to take steps towards achieving the goal of drawing final seniority lists in the respective cadres, to make the work of future promotions transparent and less taxing the seniority positions being broadcast and well known to the stakeholders.

8. Meanwhile promotions, if any, will not be held up only on account of non-finalization of seniority lists so that work is not impeded, but in the promotion orders, if any, to be issued a caution be entered that the promotion/s will remain subject to finalization of seniority list and no one will have a right based on them.

9. With these directions and hope expressed, the arduous work may be put in motion so that no employee in the future expresses a grievance of the kind herein before his own Court only on account of the fact that he/she does not know where he/she stands in the respective seniority lists as per rules on which valuable rights of promotions etc. are based.

10. However, apart from submitting compliance report at the end of eight months of the steps taken and achieved, the Registrar General would submit the view of the High Court, as to why this exercise should not be extended to cover the Subordinates Courts in the States of Haryana, Punjab & Chandigarh. The view on the subject may be placed before the appropriate Bench by listing the case for which limited purpose the matter will be come up initially on the expiry of two months from receipt of a copy of this order and thereafter would await the compliance/status report at the end of total period specified, as above.

11. Accordingly, office to list the matter firstly; on January 10, 2017 for the limited purpose of eliciting the views of the High Court, as requested in the previous paragraph 10 and thereafter post the matter in the urgent cause list on the reopening of the Court after the summer vacations on any day convenient in July 2017.

12. Thereupon, the case of the petitioner would be heard on merits, if prayed for, by reopening the writ petition on fitment in the final seniority list, if required.

08.11.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*